

The complaint

Mr S complained that AvantCredit of UK, LLC trading as AvantCredit lent to him irresponsibly and provided him with unaffordable lending.

What happened

AvantCredit provided a loan to Mr S as follows:

Date taken	Loan amount	Term	Typical monthly repayment	Total amount repayable	Loan status
23/08/2018	£4,750	24 months	£295.02	£7,080.61.	outstanding

When Mr S complained to AvantCredit it didn't uphold his complaint so he brought his complaint to us. One of our adjudicators looked at the complaint and thought that AvantCredit shouldn't have provided the loan. Our adjudicator explained why he was recommending that the complaint should be upheld and he set out directions indicating what AvantCredit should do to put things right.

AvantCredit disagreed. It mainly said that it carried out a detailed affordability assessment which included asking Mr S about his monthly expenses and factoring in the cost of his credit commitments seen on his credit report. AvantCredit said Mr S had ample disposable income to be able to afford the loan repayments for this loan.

So, as the complaint hasn't been resolved, it comes to me to decide.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

We've set out our approach to unaffordable/irresponsible lending complaints on our website and I've kept this in mind while deciding this complaint. Having done so, I am upholding Mr S's complaint for broadly the same reasons as our adjudicator. I'll explain my reasons.

The rules don't say what a lender should look at before agreeing to lend. But reasonable and proportionate checks should be carried out. Lenders must work out if a borrower can sustainably afford the loan repayments alongside other reasonable expenses the borrower also has to pay. This should include more than just checking that the loan payments look affordable on a strict pounds and pence calculation – a proportionate check might also require the lender to find out the borrower's credit history and/or take further steps to verify the borrower's overall financial situation.

If reasonable and proportionate checks weren't carried out, I need to consider if a loan would've been approved if the checks had been done. If proportionate checks were done and a loan looks affordable, a lender still needs to think about whether there's any other reason why it would be irresponsible or unfair to lend. For example, if the lender should've realised that the loan was likely to lead to significant adverse consequences or more money problems for a borrower who is already struggling with debt that can't be repaid in a sustainable way.

I have reviewed the information AvantCredit gathered when it agreed to provide this loan. Alongside asking Mr S what he spent each month on regular outgoings and servicing his existing credit commitments, AvantCredit also carried out its own credit checks. AvantCredit said it saw a recent bank statement to verify Mr S's income and I can see it relied on the net monthly income figure it saw in its credit checks.

Like our adjudicator, I think AvantCredit should have been concerned to see that when Mr S applied for this loan the credit checks it obtained showed that he had 3 maxed out credit cards which had been stuck at or over the limit for the last few months. It was also apparent that Mr S had been relying on his credit cards for cash advances, which is a particularly expensive way to obtain spending money. And he had taken out a number of payday loans in the run up this loan.

This seems to be significantly at odds with the information AvantCredit had gathered suggesting that Mr S had ample spare cash each month. And I think AvantCredit needed to do more to ensure it had a proper understanding of Mr S's overall financial situation to be satisfied he could afford the loan

So, I've looked at what I think proportionate checks would likely have shown.

Bank statements provided by Mr S are a useful guide to understanding his overall financial situation at the time. These show his average income was around £3,500 in the months leading up to this loan – so less than the £3,900 monthly figure AvantCredit had recorded.

The bank statements also show that Mr S was paying significantly more towards credit commitments than AvantCredit understood based just on the credit report it had obtained. It was evident that Mr S was paying a significant proportion of his monthly income to service his existing credit commitments. He was also paying significant sums out of his account each month - Mr S told us this money was spent on gambling. All in all, Mr S's monthly outgoings were more than his monthly income from wages – so this alone suggests that this loan would have been unaffordable. And despite boosting the funds in his account with multiple other loans, a proportionate check would likely have revealed to AvantCredit that Mr S was making no inroads into his four figure overdraft and reliant on new borrowing to meet his spending needs.

I think that's borne out by the fact that Mr S had taken out around 15 other loans in the months leading up to him applying for this loan.

To sum up, I think all the indications were that Mr S was over-reliant on credit he couldn't afford and he needed to keep on borrowing in order to be able to meet his existing credit commitments. And I believe that if AvantCredit had done a proportionate check it ought reasonably to have been aware that taking further, costly lending was likely to be detrimental to Mr S and recognised that it shouldn't have provided this loan.

So, I am upholding Mr S's complaint that he should not have been given the loan.

Putting things right

I think it is fair and reasonable for Mr S to repay the capital amount that he borrowed, because he had the benefit of that lending. But he has paid extra for lending that should not have been provided to him. In line with this Service's approach, Mr S shouldn't repay more than the capital amount he borrowed.

If AvantCredit sold any outstanding debt it should buy this back if able to do so and then take the following steps. Otherwise, AvantCredit should liaise with the new debt owner to achieve the results outlined below and do the following:

- add up the total amount of money Mr S received as a result of having been given the loan. The repayments Mr S made should be deducted from this amount
- if this results in Mr S having paid more than he received, then any overpayments should be refunded along with 8% simple interest* (calculated from the date the overpayments were made until the date of settlement)
- if there is a shortfall in repayments which leaves a capital amount outstanding, then AvantCredit should try and arrange an affordable payment plan with Mr S bearing in mind its obligation to treat Mr S sympathetically and fairly if he still needs further time to pay
- whilst it's fair that Mr S's credit file is an accurate reflection of his financial history, it's unfair that he should be disadvantaged by any adverse information recorded about a loan that was unfairly provided. So AvantCredit should remove any negative information recorded on Mr S's credit file regarding the loan.

*HM Revenue & Customs requires AvantCredit to deduct tax from this interest. AvantCredit should give Mr S a certificate showing how much tax has been deducted if he asks for one.

My final decision

I uphold this complaint and direct AvantCredit of UK, LLC trading as AvantCredit to take the steps I've set out above to put things right for Mr S.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 17 March 2022.

Susan Webb
Ombudsman