

The complaint

Mr D complains that AvantCredit of UK, LLC (Avant), lent to him irresponsibly.

What happened

Mr D was approved for a £5,000 loan on 16 September 2015 repayable over 24 months at just under £316 each month. The total charge for credit was £2,582.07. Mr D had told Avant he needed the loan to consolidate debt. Avant's records tell us that Mr D paid off the loan in September 2017.

Our adjudicator thought that there was a significant risk Mr D would have had to borrow again to meet his existing and Avant commitments and that Avant needed to put things right for Mr D.

Mr D has acknowledged the view and appears to have accepted the outcome. Avant did not.

Recently, knowing the complaint was being passed to an ombudsman, Avant sent us further information to help defend its lending decision. One was a 16 page set of Mr D's bank account statements covering 14 August 2015 to 14 September 2015. It had obtained those at the time of lending.

The other information Avant has sent to us was a table it had compiled of all the outstanding loans Mr D had at the time of his application to it, together with a list of all the credit cards (limits and balances and estimated minimum repayment figures) and made the following points.

For Mr D to use the Avant loan to consolidate the other loans (highlighted in green on its table) then Mr D would have replaced his monthly repayments of £2,796, which it calculated to be 90% of his income – to just under £316 monthly payment to Avant – 10% of his income. Avant went on to say that would have released additional money each month for Mr D to be able to paydown and manage his credit card balances and repayments. Avant thought that by doing that Mr D would have had around £1,204 of 'disposable income' to do that.

The unresolved complaint was passed 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 general approach to complaints about unaffordable/irresponsible lending - including all the relevant rules, guidance and good industry practice - on our website.

Taking into account the relevant rules, guidance and good industry practice, what I need to consider in deciding what's fair and reasonable in the circumstances of this complaint are whether Avant completed reasonable and proportionate checks to satisfy itself that Mr D would be able to repay in a sustainable way? And, if not, would those checks have shown

that Mr D would've been able to do so?

If I determine that Avant did not act fairly and reasonably in its dealings with Mr D and that he has lost out as a result, I will go on to consider what is fair compensation.

The rules and regulations in place required Avant to carry out a reasonable and proportionate assessment of Mr D's ability to make the repayments under this agreement. This assessment is sometimes referred to as an "affordability assessment" or "affordability check".

The checks had to be "borrower" focused – so Avant had to think about whether repaying the loan would be sustainable and/or cause significant adverse consequences for Mr D. In practice this meant that Avant had to ensure that making the payments to the loan wouldn't cause Mr D undue difficulty or significant adverse consequences.

In other words, it wasn't enough for Avant to simply think about the likelihood of it getting its money back, it had to consider the impact of the loan repayments on Mr D. Checks also had to be "proportionate" to the specific circumstances of the loan application.

In general, what constitutes a proportionate affordability check will be dependent upon a

number of factors including – but not limited to – the circumstances of the consumer (e.g. their financial history, current situation and outlook, and any indications of vulnerability or financial difficulty) and the amount/type/cost of credit they are seeking. Even for the same customer, a proportionate check could look different for different applications.

I think that a reasonable and proportionate check ought generally to have been *more* thorough:

- the *lower* a consumer's income (reflecting that it could be more difficult to make any loan repayments to a given loan amount from a lower level of income);
- the *higher* the amount due to be repaid (reflecting that it could be more difficult to meet a higher repayment from a particular level of income);
- the *greater* the number and frequency of loans, and the longer the period during which a customer has been given loans (reflecting the risk that repeated refinancing may signal that the borrowing had become, or was becoming, unsustainable).

I've carefully considered all the arguments, evidence and information provided in this context and what this all means for Mr D's complaint.

Reviewing the credit search results Avant had sent us, Mr D's personal credit file which covers this period, and Avant's recent table of Mr D's debts for September 2015 it had compiled, I can see that the details are broadly similar.

The first point is that Avant's debt table compiled using the information it had about Mr D's credit commitments reveals a lot of debt and several other loans. And I can say that debt table does not include a loan Mr D had just obtained from another high cost lender on 7 September 2015 for £5,000. That credited the bank account (copy statements of which Avant has sent to us) on 7 September 2015.

Added to which, Avant's records show that Mr D had made it clear that he wanted the Avant loan for debt consolidation and so it's relatively clear Mr D knew he had debt issues and

needed to reduce his outgoings each month in some way. For him that was applying for a further loan which I anticipate he considered a solution. And for Avant it was to lend to him responsibly. And I don't think it did that.

I say this because Avant's own recent submissions demonstrate to me that even if the theory was correct, that with the Avant loan only, Mr D would have been able to address his credit card debt situation more successfully, it has not demonstrated that. There were contemporaneous account notes and there was no record of Avant having done something to ensure that Mr D achieved the debt consolidation aim or had plans to achieve that aim. One way, for instance, may have been for Avant to have paid down some of the outstanding loans to which it has referred and are listed in that debt table. And with a debt level as high as monthly repayments taking 90% of Mr D's salary then I think that was a vital part before lending.

And without doing that, I think it left Mr D in this position where it is likely Mr D would have had no money left to pay Avant – especially with the 7 September 2015 loan from that other lender.

I think that Avant knew of Mr D's situation in detail and ought not to have added to his indebtedness with a further large loan for a further 2 years.

In addition, I can see from the account notes before Avant approved the loan that it needed to see copies of his most recent bank statements before lending. This may have been to verify his income but either way, it asked him for this several times and Avant received copies. Our adjudicator asked for them and at the time she did her view she had not received them. Recently we received the 16 pages of bank statement transactions for Mr D covering August 2015 up to 14 September 2015.

Reviewing those then I can see the figure Avant had taken from those statements to verify Mr D's income.

And I can see many forms of credit from a series of lenders crediting that account, including the £5,000 loan from another high cost lender on 7 September 2015 (referred to earlier in this decision). I can see many payments to these and several other lenders all of which I recognise and would be easily recognisable to any regulated firm in the lending business. These confirm Mr D's high level of debt.

Added to which, peppered through these 16 pages of bank statements are betting and gaming transactions and so it is quite clear Avant was fully aware of his gambling tendency.

As well as upholding Mr D's complaint for the same reasons as that of the adjudicator, I also can see that Avant knew of the extensive betting and gaming transactions and of the very recent £5,000 loan taken with another provider days before Mr D obtained this from Avant.

I uphold Mr D's complaint.

Putting things right

I think it's fair that Mr D should only have to repay the money he borrowed and had the use of. So, I think Avant should refund all the interest and charges Mr D has paid on this loan. I note that Mr D repaid the loan some time ago.

While I think it's fair that Mr D's credit file is an accurate reflection of his financial history, I don't think it's fair that he should be disadvantaged by the business' decision to lend to him irresponsibly. Therefore, under the circumstances, I think the business should also remove

any negative payment information recorded on Mr D's credit file.

To settle Mr D's complaint, Avant needs to do the following:

- add up the total amount of money Mr D received because of having been given the loan. The repayments Mr D made should be deducted from this amount. If this results in Mr D having paid more than he received, any overpayments should be refunded along with 8% simple interest (calculated from the date the overpayments were made until the date of settlement). †
- remove any negative information recorded on Mr D' credit file relating to this loan.

† HM Revenue & Customs requires the business to take off tax from this interest. Avant must give Mr D a certificate showing how much tax it's taken off if he asks for one.

My final decision

My final decision is that I uphold Mr D's complaint and I direct that AvantCredit of UK, LLC does as I have directed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 18 April 2022.

Rachael Williams
Ombudsman