

The complaint

Mr B says AvantCredit of UK, LLC (Avant) irresponsibly lent to him. He says that he had a large number of other credit commitments at the time and so he couldn't afford the repayments to the Avant loan as well.

What happened

This complaint is about one high cost loan Avant provided to Mr B on 25 April 2019. Mr B borrowed £5,000 and he was due to make 36 repayments of £240.29. The total he would repay was £8,650.30.

Avant has said that Mr B was unable to make the repayments to the loan and it has now been passed to a third-party collection agency.

Our adjudicator upheld Mr B's complaint and thought Avant shouldn't have been given the loan. This was because Mr B had taken out a large amount of other short term and high cost loans in the months running up to the sale of the Avant loan. She thought it was clear that Mr B would struggle to repay all of this lending sustainably.

Avant disagreed, it said that Mr B took this loan to consolidate some other debt and this would allow him to move away from high cost and short-term credit. If he did this then he could possibly reduce his monthly credit payments from £1,686 to £624. And adding this to his declared expenditure of £1,399 means he would have enough left over from his monthly income of £2,162.

As no agreement has been reached the complaint was passed to me.

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 of the relevant rules, guidance and good industry practice - on our website.

Taking into account the relevant rules, guidance and good industry practice, I think the overarching questions I need to consider in deciding what's fair and reasonable in the circumstances of this complaint are:

- Did Avant, each time it lent, complete reasonable and proportionate checks to satisfy itself that Mr B would be able to repay in a sustainable way? If not, would those checks have shown that Mr B would've been able to do so?
- Did Avant act unfairly or unreasonably in some other way?
- If I determine that Avant did not act fairly and reasonably in its dealings with Mr B and that as a result he lost out, 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 B'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 B. In practice this meant that business had to ensure that making the payments to the loan wouldn't cause Mr B 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 B. 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 particular 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.

In light of this, 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 of time 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 of the arguments, evidence and information provided in this context and what this all means for Mr B's complaint.

Avant has provided evidence that it says show that before lending this loan it made proportionate checks. And based on those checks Avant thought it was fair to lend. I've looked to see if this is reasonable.

In its response to the opinion Avant didn't dispute that Mr B had taken a large amount of other short term and high cost credit in the months running up to this loan. Mr B had taken at least six loans very recently, and he had opened 17 credit accounts in the previous six months. But Avant says that this new loan was to help Mr B repay this lending and reduce his reliance on more expensive forms of credit.

I've looked to see if what Avant says is reasonable. I've not seen any detailed reference to debt consolidation from the point of sale. And so, it doesn't seem certain that this was discussed in any detail, or that Mr B planned to use the loan in this way.

And, as has been established, Mr B was borrowing and repaying significant amounts to other creditors including short term lenders before he took this loan. And even if I accept what the business says above about debt consolidation this loan wouldn't entirely remove Mr B's need to repay these loans. Whichever way any consolidation was done, he would still be

left with a significant amount of high cost credit to repay on top of the Avant loan. And given that he had a large longer-term loan already this would be for the foreseeable future.

And the amount of spare money Mr B had left over was very low over this longer term. And he was either needing to spend more than he had, or having problems managing his finances in some other way.

So, I don't think it's reasonable to say that the information Avant had makes it fair to assume Mr B would be able to repay enough of his existing debts for this loan to have made a difference. It looks like his financial situation would have remained precarious after this loan.

So, I don't think that Avant could say with any degree of confidence that taking a new loan would allow Mr B to make the loan repayments sustainably. And I don't think it was responsible to lend.

And this was borne out going forward. Mr B has provided a current credit report This shows that he continued to use other short term and high cost credit providers. So, it's clear that the Avant loan didn't improve his circumstances enough to make a lasting difference.

I've also thought about whether Avant acted unfairly in some other way and I haven't seen any evidence that it did.

Avant needs to put things right for the sale of this loan.

Putting things right

Avant needs to do the following.

- Remove all interest, fees and charges applied to the loan,
- Treat any payments made by Mr B as payments towards the capital amount of £5,000,
- If Mr B has paid more than the capital then any overpayments should be refunded to Mr B with 8%* simple interest from the date they were paid to the date of settlement,
- But if there's still an outstanding balance, Avant should come to a reasonable repayment plan with Mr B.
- Remove any adverse information about the loan from Mr B's credit file.

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

My final decision

For the reasons given above, I'm upholding Mr B's complaint. AvantCredit of UK, LLC should put things right for Mr B as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 12 April 2022.

Andy Burlinson
Ombudsman