

The complaint

Mr M has complained that AvantCredit of UK LLC lent to him irresponsibly.

What happened

Mr M was given two loans by AvantCredit in 2014 and 2016.

Loan 1 in August 2014 was for £1,600 repayable in 24 monthly instalments of about £122. The total amount payable, including interest was just over £2,942.

Loan 2 in January 2016 was for £8,000 repayable in 60 monthly instalments of about £288. The total amount payable, including interest was just over £17,284.

The adjudicator noted in his view that the first loan appears to have been given more than six years before Mr M complained. But he hadn't seen anything to suggest that the consumer knew, or ought reasonably to have known, that he had reason to complain more than three years before he did complain. So he thought this Service could investigate the complaint. AvantCredit has not raised an objection to this Service investigating Mr M's complaint about this first loan.

The adjudicator looked into the complaint and thought that he hadn't seen enough information to say that AvantCredit had been wrong to provide Mr M with the first loan. But he thought AvantCredit ought not to have provided the second loan. AvantCredit said it accepted the adjudicator's view about the first loan, but it didn't agree with the adjudicator's assessment of the second loan. As the complaint hasn't been settled, it has been passed to me to resolve the matter.

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 considering unaffordable and irresponsible lending complaints on our website - including the key relevant rules, guidance, good industry practice and law. And I've considered this approach when deciding Mr M's complaint.

I think there are some overarching questions I need to consider in order to decide what's fair and reasonable in the circumstances of this particular complaint:

- Did AvantCredit complete reasonable and proportionate checks to satisfy itself that Mr M would be able to repay his loans in a sustainable way? If not, what would reasonable and proportionate checks have shown at the time?
- Ultimately, did AvantCredit make a fair lending decision each time?
- Did AvantCredit act unfairly or unreasonably in some other way?

AvantCredit needed to take reasonable steps to ensure that it didn't lend to Mr M irresponsibly. The lender was required to carry out a borrower focussed assessment or "affordability check" each time. The checks had to be "borrower" focussed – so AvantCredit had to think about whether repaying the loans sustainably would cause difficulties or adverse consequences for Mr M.

AvantCredit had to carry out reasonable and proportionate checks to satisfy itself that Mr M would be able repay his loans sustainably. There was no set list of checks that AvantCredit had to do, but it could take into account a number of different things such as the loan amount, the length of the loan term, the repayment amounts, and the borrower's overall financial circumstances.

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

- the *lower* a customer'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 *longer* the term of the loan (reflecting the fact that the total cost of the credit is likely to be greater and the customer is required to make payments for an extended period).

There may also be other factors which could influence how detailed a proportionate check should've been for any particular application – including (but not limited to) any indications of borrower vulnerability and any foreseeable changes in future circumstances. I've kept all of this in mind when thinking about whether AvantCredit did what it needed to before agreeing to lend to Mr M.

Loan 1

AvantCredit asked Mr M for information about his income and it acquired a credit report. From the summary information provided, it seems there was some adverse information on Mr M's credit report including two defaults. But given the type of lending, I think a lender would reasonably expect to see some adverse information and I think Avant Credit would reasonably have considered the defaults on Mr M's report to be historic.

The information AvantCredit gathered indicated that Mr M held one loan account, one credit card and one current account. He had a total credit balance of £17,712. I think AvantCredit's checks were reasonable and proportionate in the circumstances. Mr M declared a net monthly income of around £3,683. Given the information that the lender gathered at the time, including what Mr M said about his circumstances and outgoings, I cannot fairly say that I think AvantCredit acted irresponsibly when it provided the first loan. So I do not uphold Mr M's complaint about this loan.

Loan 2

Mr M took the second loan a few days after paying off his first loan. AvantCredit acquired a credit check and also requested bank statements. From what I've seen, I think the lender's checks were reasonable and proportionate, in the circumstances.

Mr M declared a net monthly income of £2,200 on his application and that the purpose of the loan was debt consolidation. Avant Credit's credit report says that Mr M now had a current account, three credit card accounts and seven loan accounts with an overall credit balance of over £28,000 and total monthly credit repayments of around £1,014.

AvantCredit says that Mr M would have been able to clear six credit accounts and that by consolidating part of his debt, he would have reduced his monthly credit commitment to a manageable level leaving a 'substantial' amount of disposable income after all credit commitments.

I've thought carefully about this. From what I've seen, Mr M did use at least some of his loan from AvantCredit to partially consolidate his debts. But the lender was aware from its checks that Mr M had over £28,000 of debt. I accept that borrowing £8,000 would have enabled Mr M to partially consolidate this debt but he still had to repay the remaining amount outstanding, as well as over £17,000 to AvantCredit if its loan ran to term.

AvantCredit calculated that the second loan was affordable for Mr M. However, I think AvantCredit focussed its calculation of whether the loan was affordable for Mr M on a pounds and pence basis. But as I've already explained, the lender was required to establish whether the borrower could *sustainably* meet the loan repayments – not just whether the loan payments were technically affordable on a strict pounds and pence calculation. The loan payments being 'affordable' on this basis might be an indication a consumer could sustainably make their repayments. But it doesn't automatically follow this is the case. This is because the relevant regulations define sustainable as being without undue difficulties and in particular the customer should be able to make repayments on time, while meeting other reasonable commitments; as well as without having to borrow to meet the repayments. And it follows that a lender should realise, or it ought fairly and reasonably to realise, that a borrower won't be able to make their repayments sustainably if they're unlikely to be able to make their repayments without borrowing further.

From what I've seen, AvantCredit was aware from the information it had gathered that Mr M had been struggling financially for some time and that his total debt balance had increased by over £6,000 in the previous 12 months – during a period when he was still repaying the first loan to AvantCredit. The lender would also have been aware from Mr M's bank statements that he also had a substantial overdraft.

On balance, given the information gathered, I think AvantCredit ought reasonably to have realised that Mr M's financial position was already showing signs of strain and that a loan of this scale was likely to tip him over into an unsustainable position whereby he would most likely struggle to meet his loan repayments sustainably over the whole loan term. I've considered what AvantCredit says about is estimation of how much its loan could have reduced Mr M's monthly commitment to his creditors. I've compared AvantCredit's calculation to the actual amounts that Mr M was repaying to his creditors, as shown on his bank statements. I think AvantCredit ought reasonably to have realised that even with the partial debt consolidation, Mr M was at significant risk of continuing to experience financial difficulty. He was applying for an expensive loan from AvantCredit, repayable over an extended five-year period. Given the level of Mr M's total remaining credit exposure, I think the lender ought reasonably to have realised that Mr M was most likely borrowing again to keep up with his financial commitments and even with partial debt consolidation, he would most likely struggle to meet his loan repayments sustainably over the whole loan term without borrowing further. And from what I've seen, Mr M did experience some difficulties repaying his second loan with late payments, missed payments, and returned payments shown on AvantCredit's records. Taking everything into account, I think in these particular

circumstances, AvantCredit should reasonably have concluded that it was not appropriate to provide the second loan to Mr M.

Mr M has complained that AvantCredit took advantage of his vulnerability. I am sorry if Mr M has struggled financially or otherwise, but I haven't seen anything to suggest that the lender was made aware that he might be a vulnerable customer at the time. Overall, I haven't seen anything which makes me think that AvantCredit acted unfairly or unreasonably towards Mr M in some other way.

In summary, I cannot fairly say that AvantCredit acted irresponsibly when it gave Mr M the first loan, so I am not upholding his complaint about that loan.

But on balance, I don't think AvantCredit ought to have provided the second loan. So I am upholding his complaint about the second loan and directing AvantCredit to put things right.

Putting things right

With regards to the second loan, I think it is fair and reasonable for Mr M to repay the principal amount that he borrowed, because he has had the benefit of that lending. But he has paid interest and charges on this loan that shouldn't have been provided to him.

AvantCredit should:

- Remove all interest, fees, and charges on the second loan and treat all the payments Mr M made as payments towards the capital.
- If reworking Mr M's loan account results in him having effectively made payments above the original capital borrowed, then AvantCredit should refund these overpayments with 8% simple interest calculated on the overpayments, from the date the overpayments would have arisen, to the date the complaint is settled*.
- Remove any adverse information recorded on Mr M's credit file in relation to the second loan.

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

My final decision

For the reasons given above, I uphold the complaint about the second loan and direct AvantCredit of UK LLC to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 4 June 2022.

Sharon Parr
Ombudsman