

The complaint

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

What happened

AvantCredit provided loans to Mr B as follows:

Loan	Date taken	Amount	Term	Typical monthly repayment	Total repayment	Date repaid
1	April 2016	£1,300	24 months	£71.41	£1,713.87	23 September 2016
2	October 2016	£2,000	36 months	£88.71	£3,193.66	Outstanding

When Mr B 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 she was recommending that the complaint should be upheld and she set out directions indicating what AvantCredit should do to put things right.

AvantCredit disagreed. It mainly said that using the loans for debt consolidation – in other words, to repay other debt – could've benefitted Mr B and improved his financial situation and he repaid loan 1 within 6 months, showing no signs of affordability issues. AvantCredit said Mr B had enough disposable income to be able to afford the loan repayments for both loans.

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 B'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 the loans. AvantCredit relied on information available from credit reference agencies to verify Mr B's declared income and recorded that his pay was around £2,300 per month. Alongside asking Mr B about his monthly expenses, AvantCredit also carried out its own credit checks to understand his credit history and current credit commitments.

Like our adjudicator, I think the checks AvantCredit did were broadly proportionate. But I think AvantCredit should have been concerned to see that when Mr B applied for loan 1, the credit report it obtained for him showed that he had opened 3 new credit accounts within the previous 3 months, including a short-term loan, making this his sixth short-term loan in the last 6 months. The total value of his payments on short-term loans alone in the last month was £862. He had also increased the balances on 4 of his accounts during this time. The credit report showed that he'd had some payment problems, including 2 active defaults, and Mr B's total credit balance outstanding was £10,671.

AvantCredit's checks showed that Mr B was paying £640 in total each month on his active credit accounts (not including any mortgage) so it was evident that his debt repayments cost Mr B more than a quarter of his declared income.

Whilst having other outstanding lending or even an impaired credit history wouldn't be unusual for a borrower applying for this type of expensive borrowing, and it wouldn't necessarily be a bar to lending, I don't think AvantCredit took properly into account what the information it had gathered showed about Mr B's overall financial situation and the likelihood of him being able to pay its loan in a sustainable manner.

I've thought carefully about what I think a responsible lender should have made of all this information and in particular whether it was enough for AvantCredit to make a fair decision to lend.

I think our adjudicator was right to say that the indications were that Mr B wasn't managing his money well and he was already struggling financially. All the signs were that his finances were, in reality, under significant stress and his debt had become unmanageable. I don't think AvantCredit was reasonably able to be satisfied in these circumstances that Mr B would be able to make its loan repayments in a sustainable way.

Also, bearing in mind the repayment of this loan on top of the debt AvantCredit saw Mr B was already responsible for paying, I think it's fair to say that Mr B needed to pay a significant portion of his income towards credit. And in my opinion, as a responsible lender, AvantCredit should've realised that Mr B would likely struggle to repay this loan – especially bearing in mind the 24 month loan term.

I've taken into account that AvantCredit understood that the loan was intended for debt consolidation. But AvantCredit didn't have control over how Mr B used the loan as it paid the

loan balance to him. Having seen the extent of his evident reliance on taking out expensive credit, I think it was apparent that there was a real risk Mr B would use the loan to meet his immediate financial demands. So, all the indications were that he would most likely remain in serious financial trouble regardless. And, as mentioned above, it was in any event unrealistic to expect him to be able to commit to paying such a significant level of income towards debt repayments over the loan term.

The fact that Mr B repaid the loan early doesn't mean that he was able to do so in a way that was sustainably affordable for him – borne out by the fact that he applied for loan 2 very soon after.

So thinking about all the information AvantCredit had gathered, I can't reasonably say that it made a fair lending decision based on the information in front of it when it provided loan 1. I don't think AvantCredit was able to safely conclude that its loan would be sustainably affordable for Mr B so this is why I'm upholding Mr B's complaint about loan 1.

By the time he took out loan 2, Mr B's circumstances were more or less unchanged, but he had continued to take out new borrowing and his credit commitments were now costing him £1,403 per month – around 61% of his take home pay. I think that the evident extent of Mr B's reliance on expensive credit was a clear sign that he was in serious financial difficulty – despite the previous loan having been intended to consolidate debt and help Mr B improve his financial situation.

Even if some of the cost of this credit was included already in the monthly expenditure figures AvantCredit had recorded, this still meant that Mr B had a shortfall each month – his spending needs exceeded the amount of money AvantCredit worked out he would've had.

To my mind, AvantCredit should have recognised that Mr B would need to spend such a significant proportion of his monthly income just repaying his credit commitments that it couldn't reasonably say that it was likely that he would be able to repay loan 2 sustainably over the next 36 months.

I've taken carefully into account everything AvantCredit said in response to our adjudicator's view, but this makes no overall difference to the outcome. AvantCredit wasn't in control of how Mr B spent the loan. And even if Mr B had used it to repay other debt, I don't think AvantCredit had sufficient reason to think this would've improved his overall position sufficiently to achieve a significant and sustainable improvement in his financial situation given the value of the loan compared to his outstanding indebtedness overall.

So for these reasons, I'm upholding the complaint about loan 2.

Putting things right

I think it is fair and reasonable for Mr B 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 B 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 B received as a result of having been given the loans. The repayments Mr B made should be deducted from this amount
- if this results in Mr B 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 B bearing in mind its obligation to treat Mr B sympathetically and fairly if he still needs further time to pay
- whilst it's fair that Mr B'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 B's credit file regarding the loans.

*HM Revenue & Customs requires AvantCredit to deduct tax from this interest. AvantCredit should give Mr B 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 to take the steps I've set out above to put things right for Mr B.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 6 April 2022.

Susan Webb
Ombudsman