

The complaint

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

What happened

Mr S was approved by Avant for a loan on 30 December 2015. It was for £3,300 repayable over 36 months at just over £154 each month. The total charge for the credit was £2,256.98. Records show that Mr S arranged more than one payment plan with Avant during the course of that loan term. A Notice of Default was sent in May 2016. It was sold to a third party collections agency in July 2017.

In November 2020, Mr S complained to Avant.

Avant sent to him its final response letter (FRL) and that outlined the procedure it had carried out before lending. Avant did not uphold his complaint.

One of our adjudicators looked at the complaint and thought that the information Avant had from Mr S and about Mr S before lending was enough for it to have been aware that he was not in a position to be able to afford the £154 each month and then repay in a sustainable way for 36 months. Our adjudicator thought that the regular expenditure Mr S needed to pay out was high, together with some credit commitments each month and that would have left Mr S with a small amount each month left over. Added to which our adjudicator said Avant had knowledge and awareness of Mr S' gambling expenditure as it had seen a copy bank statement from Mr S for the month leading up to the loan approval in late December 2015. So, our adjudicator considered that Avant should put things right for Mr S.

Mr S agreed with that outcome. Avant did not. Recently Avant has sent to us a table which it says showed the debts it was aware Mr S had at the time he applied for the loan and by taking its loan he would have been in a position to consolidate some of those debts. So, the payment to Avant would have placed Mr S in a better position overall in relation to him managing his money.

The unresolved 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 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 S would be able to repay in a sustainable way? And, if not, would those checks have shown that Mr S would've been able to do so?

If I determine that Avant did not act fairly and reasonably in its dealings with Mr S 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 S'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 S. In practice this meant that Avant had to ensure that making the payments to the loan wouldn't cause Mr S 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 S. 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 S's complaint.

Before the loan was approved, on 28 December 2015, Avant's records show that Mr S was asked to email or upload a bank statement showing 30 days of transaction history and showing his income within that period. Asking for it may have been to verify Mr S' income. And the income figure was £1,491.88.

Having viewed a copy of that statement then it's clear Avant was privy to a lot of information by having that. As well as Mr S' income it also showed his expenditure and the significant gambling each week which for that month added up to around £400.

Avant's records show that it had for him a total expense figure of £400, but then the breakdown for outgoings such as mortgage/rent £300, council tax £57, utilities £30, car expenditure £80 and 'other' expense £100 added up to £567. And so those details do not correlate. I have used the higher, total amount as these are taken from Avant's own records.

On the bank statement Avant had for Mr S, he received his salary on 23 December 2015 and by 29 December Mr S had a zero balance. He had been overdrawn before his salary was paid in, but the header part of his statement, it shows that he had no overdraft facility and so immediately it would have been clear Mr S was in an unauthorised overdraft situation with his bank.

Mr S has explained that he paid his partner the £700 to cover all the household bills and food. And that transaction was visible on the statement. And that is not an unlikely total sum when I consider that the Avant expenditure figure (excluding food) it had was £567 as I outlined earlier.

The combination of Mr S' credit file search results plus the bank statement of which Avant had a copy shows he had outstanding debt and the monthly repayment for those was about £378 and a phone bill of around £163.

So these details all combined, together with the gambling about which Avant knew, leads me to conclude that Avant knew enough to realise that Mr S was not likely able to afford the £154 a month, alternatively not able to sustainably repay that much each month over a three year loan term.

The recent submissions from Avant do not persuade me that this loan was going to assist Mr S' position. Avant has said to us that he took the loan for debt consolidation – the aim being a *'lower and more affordable monthly payment'*.

Avant has created and sent to us a debt table and said that using its own loan Mr S would be able to clear a number of debts *'and with an estimated £73.65 to make minimum payments on other accounts, the customer would be spending around £73.65 in total per month, which is 5% of the customer's stated income of £1,500.'* Avant then went on to say that its loan would be 10% of Mr S' income.

Even using Avant's calculations, outlined above, I am not persuaded that there would be a benefit for Mr S to have had the £3,300 loan over three years. And Avant's submissions do not address the gambling points raised by our adjudicator. And so, I do not think these points make a difference to my decision.

I uphold Mr S' complaint.

Putting things right

Mr S has had the benefit of the loan and it's fair that he should pay back the capital sum. But I think Avant should refund the interest and any charges. Where Avant has sold the debt, it should buy it back if it is able to do that.

Avant should then:

- remove all interest, fees and charges applied to the loan; and
- treat any payments made by Mr S as payments towards the capital amount of £3,300;
- if Mr S has paid more than the capital, refund any overpayments to him 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 S.

- Remove any adverse information about loan 2 from Mr S' credit file once it's been repaid.

*HM Revenue & Customs requires Avant to take off tax from this interest. It must give Mr S 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 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 S to accept or reject my decision before 20 April 2022.

Rachael Williams
Ombudsman