

## The complaint

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

## What happened

AvantCredit provided a loan to Mr G as follows:

Date taken	Loan amount	Term	Typical monthly repayment	Total amount payable	Date repaid
9/04/2018	£3,000	48 months	£87.94	£4,221.32.	Still outstanding

When Mr G 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.

Mr G was happy with our adjudicator's recommendations. AvantCredit disagreed. It mainly said that using the loan for debt consolidation – in other words, to repay other debt – could've benefitted Mr G and improved his financial situation.

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 G'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 loan. AvantCredit took steps to verify Mr G's declared income and recorded that his pay was around £1,550 per month. AvantCredit also carried out its own credit checks to understand his credit history and current credit commitments.

I think AvantCredit should have been concerned to see that when Mr G applied for this loan, the credit report it obtained for him showed that he had already opened one new credit account within the previous 3 months and during this period there had been an increase in the balances on four of his accounts. It was apparent that he had made a substantial number of minimum monthly repayments to his credit cards – 121 in the last 3 years. And he had been relying on his credit cards for cash advances which is a particularly expensive way to obtain spending money – including using them to obtain £2,580 cash within the last 12 months.

AvantCredit's checks showed that Mr G's debt repayments amounted to around a third 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 G'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 G 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 G 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 G was already responsible for paying, I think it's fair to say that Mr G 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 G would likely struggle to repay this loan – especially bearing in mind the 48 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 G 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 G would use the loan to meet his immediate financial demands. And even if Mr G had used this loan to repay some existing 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 his outstanding indebtedness overall and reliance on using credit cards – which of course would make available more credit if he paid the balances down.

So, all the indications were that he would most likely remain in serious financial trouble regardless.

For these reasons, I'm upholding the complaint.

### **Putting things right**

I think it is fair and reasonable for Mr G to repay the capital amount that he borrowed, because he had the benefit of that lending.

But he has been charged extra for lending that should not have been provided to him.

In line with this Service's approach, Mr G 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 G received as a result of having been given the loan. The repayments Mr G made should be deducted from this amount
- if this results in Mr G 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 G bearing in mind its obligation to treat Mr G sympathetically and fairly if he still needs further time to pay
- whilst it's fair that Mr G'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 G's credit file regarding the loan.

\*HM Revenue & Customs requires AvantCredit to deduct tax from this interest. AvantCredit should give Mr G 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 G.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 22 April 2022.

Susan Webb  
**Ombudsman**