

The complaint

Mr R complains about AvantCredit of UK, LLC (AC) and their decision to provide him with a high interest loan, which he thinks was irresponsible.

What happened

In September 2015, Mr R applied for a high interest loan with AC. This application was approved, and AC provided Mr R with a capital loan of £5,000 which was repayable over a 60-month term with a monthly repayment of £191.97.

Mr R says he struggled to meet the monthly repayments of this loan. And he had to take out other lending to meet these payments before accepting help from friends and family which allowed him to clear the loan in full in January 2018. In 2021, Mr R revisited his past financial commitments. And having done so, he was unhappy that AC provided him with the loan in 2015. So, he raised a complaint.

Mr R thought AC's decision to provide him with the loan was irresponsible. He thought his poor credit status, including his existing credit at the time of the application, should've made it reasonably clear to AC that he'd be unable to afford the loan. And he thought the loan itself had placed him in greater financial difficulty due to the high interest rate. So, Mr R wanted the interest and charges applied to the account to be refunded to him and for the loan to be removed from his credit file.

AC didn't agree. They thought the checks they completed before providing the loan were proportionate to the loan value and Mr R's monthly income. And they didn't think these checks provided any information that suggested the loan wouldn't be affordable. So, they thought they had acted responsibly and didn't think they needed to do anything more. Mr R remained unhappy with this response, so he referred his complaint to us.

Our investigator looked into the complaint and upheld it. They thought the checks AC completed were proportionate. But they thought the checks should've alerted AC to potential issues with affordability. They explained Mr R's credit file suggested a reliance on credit. And they didn't think AC had taken Mr R's true expenses and obligations into account. They thought if AC had, and sought further clarity, it was likely they wouldn't have approved the loan at all. So, our investigator thought AC should deduct the capital £5,000 Mr R received from the total payments he made and any balance left should be refunded to Mr R plus 8% simple interest from the date of the overpayments to the date of settlement. And they thought AC should remove any negative information reported to Mr R's credit file relating to the account.

Mr R accepted this recommendation. But AC didn't. They thought as the loan was intended for consolidation of debts, Mr R would still have been left with a reasonable amount of disposable income even when the loan payment was considered. And they pointed out that Mr R repaid the loan ahead of schedule and showed no signs of affordability issues during the lifetime of the loan. So, they didn't think they should do anything more.

Our investigator responded explaining Mr R's bank statement showed he paid all of the joint

loan payment each month, not 50% as AC had calculated. And they explained Mr R also paid £450 a month for child maintenance which AC hadn't considered. So, they thought Mr R's financial commitments including the loan should still have suggested the loan may not be sustainable, considering the credit information AC would've seen. AC didn't respond to this and so, the complaint has been passed to me for a decision.

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.

Having done so, I'm upholding the complaint for broadly the same reasons as the investigator. I've focused my comments on what I think is relevant. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome.

When someone complains about irresponsible and/or unaffordable lending, there are two overarching questions I need to consider in order to decide what's fair and reasonable in all of the circumstances of the complaint. These are:

1. Did AC complete reasonable and proportionate checks to satisfy itself that Mr R would be able to repay the credit in a sustainable way?
 - a. if so, did AC make a fair lending decision?
 - b. if not, would reasonable and proportionate checks have shown that Mr R could sustainably repay the borrowing?
2. Did AC act unfairly or unreasonably in some other way?

And, if I determine that AC didn't act fairly and reasonably when considering Mr R's application, I'll also consider what I think is a fair way to put things right.

Did AC complete reasonable and proportionate checks to satisfy itself that Mr R would be able to repay the credit in a sustainable way?

There's no set list for what reasonable and proportionate checks are, but I'd expect lenders to consider things such as the amount, duration and payments of the finance being applied for; as well as the borrowers' personal circumstances at the time of each application.

I've seen AC considered the information Mr R provided in his application, which included homeowner and employment status, income and existing credit obligations as well as existing expenses. And they compared this against the information reported to Mr R's credit file. Considering the capital value of the loan against Mr R's declared monthly income, and the monthly repayment of £191.97, I think the checks AC completed initially were proportionate. So, I can't say they acted unfairly here.

Did AC make a fair lending decision?

But as well as ensuring the checks were proportionate, I've also thought about whether AC assessed the information these checks provided fairly. And in this situation, I don't think they did.

I've seen a copy of the credit file AC would've seen at the time of Mr R's application. This credit file showed that Mr R had opened 4 new credit accounts in the previous 3 months. And in the same time, 3 of his outstanding credit balances had increased. The credit file also showed that Mr R's card utilisation had increased in the past 12 months, and even more so in the 3 months before the application. And I can see all of this information was listed as a risk rating score of "R" on the report, which is the highest risk rating out of the 3 available.

And the report also showed that 4 short term loan accounts had been opened in the last 6 months, with 2 of those being opened in the last 3 months and 2 of these accounts remained open at that time. So, I think this information should've suggested to AC that Mr R had an increased reliance on credit in the immediate months before he applied for the loan. And I think AC should've sought further information to satisfy themselves that the loan was affordable to be repaid in a sustainable way, considering this suggested reliance.

I can also see that Mr R's worst current status on his accounts was listed as "U", meaning there had been a time where he had been unable to meet a minimum payment. And it also stated that 2 active revolving accounts were above their credit limit at that time. So again, I think all of this information should've suggested to AC that Mr R was reliant on credit already and struggling to maintain his existing financial commitments in a sustainable way. And again, I think this should've prompted AC to seek further information, such as up to date bank statements and a more in-depth income and expenditure report. While I can see on AC's contact notes it was listed that these statements should be requested, AC have provided no evidence to show these were received or considered.

So, I don't think I'm able to say AC acted fairly when assessing the information available to them from the checks they completed. And I've then thought about what I think AC would most likely have done, had they acted fairly and requested more information.

I've looked at Mr R's statements from the three months before his application in detail. And it shows that each month, Mr R was taking short-term loans for small amounts on a regular basis. And they show that Mr R was using his overdraft each month, with additional charges for entering an unarranged overdraft in one of the months. I think these statements would most likely have led AC to realise Mr R was reliant on credit, and that he needed to take high interest short term credit to help him pay the existing credit he had. And because of this, I think AC would have, and should have, realised that Mr R would be unable to repay the loan in a sustainable way.

They also show that Mr R was paying the full mortgage balance of over £800, rather than the 50% AC assumed when completing their affordability calculations. Alongside this, they show that Mr R was also withdrawing £440 in cash each month, which Mr R has confirmed was for child maintenance. So, I think this alone showed that Mr R had outgoings of £800 more than AC initially calculated.

While I appreciate the loan was intended to consolidate some of Mr R's existing debt, this loan wasn't enough to consolidate it all. And calculating the commitments Mr R would've had after the consolidation, Mr R would've been paying over £1,500 a month to his existing debt. And Mr R's child maintenance and the AC monthly payment would need to be added to this, which would leave Mr R with just under £500 after all of these commitments were paid.

So, Mr R would be expected to pay for any other expenses, including travel and food costs, clothing, healthcare, and any insurance products within this remaining amount. While AC may argue this would be a reasonable disposable income, I don't agree. I say this because if this was a reasonable disposable income, I wouldn't expect Mr R to need to take regular short-term loans. And I don't think this disposable income provided Mr R with any chance of repaying his credit cards or his overdraft in a sustainable way that gave him an opportunity to reduce his debts. So, I think if AC had received this additional information, and assessed this fairly, they would've taken the decision to decline Mr R's loan application. It follows that, as AC approved the application, I think this was unreasonable and unfair.

Did AC act unfairly or unreasonably in some other way?

I haven't seen anything to make me think that AC acted unfairly or unreasonably in some other way.

Putting things right

As I don't think AC acted fairly, I've then thought about what I think AC should do to put things right. Any award or direction I make is intended to place Mr R back in the position he would've been, had AC acted fairly in the first place.

In this situation, if AC had acted fairly, I don't think Mr R would've been given the loan. So, I don't think he should incur a financial loss because of this loan. But I also must recognise Mr R was able to utilise the loan and had the benefit of the capital balance.

So, I think Mr R should be refunded any interest and charges he's paid toward the loan, that was charged on top of the capital balance he received. And I think any negative information reported to Mr R's credit file relating to the loan should be removed, to ensure he is placed back in the position he would've been had the loan not been given.

I understand AC won't agree with this outcome. And I recognise they believe Mr R's management of the loan, and his ability to repay it early, suggests there was no issue with affordability. But Mr R has confirmed he took other credit to maintain his payments to this loan. And considering Mr R's habits shown in his bank statements before the loan was

approved, I think it's reasonable for me to assume this was the case. And Mr R has confirmed he was given money by family to repay the loan to help his financial situation. So, I don't think the fact the loan was paid early is enough to suggest it was affordable. And even so, in this situation while I understand AC have questioned the affordability, I think it should've been reasonably clear to AC that repayment of the loan wasn't sustainable, due to Mr R's financial situation and habits at the time.

My final decision

For the reasons outlined above, I uphold Mr R's complaint about AvantCredit of UK, LLC and I direct them to take the following action:

- Deduct the capital balance of the loan from the total repayments Mr R made and refund the remaining amount to Mr R along with 8% simple interest from the date of the overpayments to the date of settlement; and
- Remove any negative information recorded to Mr R's credit file relating to the loan.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 11 August 2022.

Josh Haskey
Ombudsman