

The complaint

Mr P has complained through a representative that AvantCredit of UK, LLC (AvantCredit) mis-sold him a loan that he couldn't afford to repay.

What happened

On 4 April 2016 AvantCredit provided Mr P with a loan of £1,000. The loan was repayable over 24 months with a monthly repayment of £59.67. Mr P repaid his loan on 12 December 2017.

Mr P, through his representative complaint to AvantCredit on 1 September 2021. It issued a final response letter on 1 October 2021. It explained that it only offered loans that met its lending criteria. It concluded it had carried out an affordability assessment which showed AvantCredit that Mr P was in a position to afford the loan, it also thought the loan was sustainable for him. So, AvantCredit didn't uphold his complaint.

Unhappy with this response, Mr P's representative referred the complaint to the Financial Ombudsman Service.

Mr P's complaint was considered by one of our adjudicator's and he upheld the complaint in full. He concluded, that while the income and expenditure information AvantCredit obtained showed it that the loan was affordable, it didn't react to the credit check results, which in the adjudicator's view showed Mr P was committing to spending a significant portion of his income towards his monthly credit commitments. The adjudicator also provided some details of some recent adverse information that was being applied to his credit file, which indicated financial difficulties.

AvantCredit didn't agree with the adjudicator's assessment. In response, it said (in summary):

- At the time Mr P had nine active credit accounts which based on the information AvantCredit had, he was committed to spending around £500.81 per month repaying.
- After the AvantCredit loan repayment was included, Mr P was committed to spending 22% of his income towards monthly credit commitments.
- This would've left Mr P with more than sufficient disposable income to be able to afford his loan repayments.
- Mr P repaid the loan back early and showed no signs of affordability issues.

As no agreement could be reached, the complaint has been passed to me to resolve.

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 of the relevant rules, guidance and good industry practice - on our website.

Taking into account the relevant rules, guidance and good industry practice, I think the overarching questions I need to consider in deciding what's fair and reasonable in the circumstances of this complaint are:

- Did AvantCredit complete reasonable and proportionate checks to satisfy itself that Mr P would be able to repay the loan in a sustainable way?
- If not, would those checks have shown that Mr P would have been able to do so?
- Did AvantCredit act unfairly or unreasonably in some other way?

The rules and regulations in place required AvantCredit to carry out a reasonable and proportionate assessment of Mr P's ability to make the repayments under the loan agreement. This assessment is sometimes referred to as an "affordability assessment" or "affordability check".

The checks had to be "borrower-focused" – so AvantCredit had to think about whether repaying the loan would be sustainable. In practice this meant that the business had to ensure that making the repayments on the loan wouldn't cause Mr P undue difficulty or significant adverse consequences. That means he should have been able to meet repayments out of normal income without having to borrow to meet the repayments, without failing to make any other payment he had a contractual or statutory obligation to make and without the repayments having a significant adverse impact on his financial situation.

In other words, it wasn't enough for AvantCredit to simply think about the likelihood of it getting its money back - it had to consider the impact of the loan repayments on Mr P. 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 particular 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.

In light of this, 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 of time 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 of the arguments, evidence and information provided in this context and what this all means for Mr P's complaint.

For this loan, AvantCredit asked Mr P for his monthly income, which he declared as being £2,151. AvantCredit says it didn't ask for any independent verification of this figure, such as a wage slip. But it did use the credit reference agencies to confirm the accuracy of the figure. Based on the results, AvantCredit was satisfied to use this sum when thinking about the affordability of the loan.

AvantCredit also asked Mr P for details of his expenditure, which included details of his mortgage, council tax and utilities to name a few. This figure was declared to be £1,800 per month.

Mr P's monthly disposable income (after the loan repayment to AvantCredit) was £291.33 which was, in my view sufficient to show AvantCredit that this loan would likely to be affordable for Mr P.

So, thinking about the loan term and the information mentioned above, it could be argued that a proportionate check was carried out. However, AvantCredit also carried out a credit search and it's provided the full results to the Financial Ombudsman. The adjudicator thought, based on these results, the complaint should be upheld. Having looked at the same information, I'm agreeing with the adjudicator and I've explained why below.

AvantCredit has been able to provide the Financial Ombudsman the results of its credit check. In summary the credit checks showed;

1. Recent indicators to show that Mr P was using more than his available other credit – which would suggest he was above his credit limits on one or more accounts.
2. Within the last month one or more account had got into arrears – this appears to have been a credit card where payment wasn't made in February 2016.
3. Mr P had other outstanding debt (without the mortgage) of just over £7,330.
4. AvantCredit was aware that at least one credit account was at least four months in arrears.
5. At least one account had become delinquent within the last 12 months.

Even the table that AvantCredit supplied us after the adjudicator's assessment showed that Mr P was above his credit limit on two credit cards - and looking at Mr P's credit file the estimated amounts that AvantCredit was proposing that may be used are a little low, given what we can see Mr P had been repaying in the months before.

But looking at the credit file and the information that AvantCredit provided, it looks like Mr P was committing (including the loan repayments to AvantCredit) of at least £725 per month –. So at the time the loan was advanced, AvantCredit ought to have realised Mr P was committing to spend around 1/3 of his income solely on credit commitments before his other costs were taken into account – which wouldn't appear on a credit file for example council tax payments.

I think, in this case, this proportion of income was too high for Mr P to be able to sustain the loan repayments, given that there were indicators in the credit file that Mr P was already having problems maintaining and repaying the credit he already had. As I've mentioned above, he was over his credit limit on two credit cards and he had accounts in arrears owing to missed payments and or making reduced payments. Given these circumstances, I don't consider it fair or reasonable that AvantCredit advanced the loan.

Given the above, this in my view, directly led to the repayment problems that Mr P appeared to have in repaying the loan. I accept the loan was repaid earlier than AvantCredit anticipated, but looking at the statement of account which it has provided there were a number of missed or return payments and these started almost immediately after the loan was approved and continued throughout the time that Mr P was repaying it. In my view, this further supports that the loan wasn't sustainable for Mr P, for the reasons given above.

So, for the reasons set out above, I don't think AvantCredit should have provided Mr P with this loan.

Putting things right

I think it is fair and reasonable for Mr P to repay the principal amount that he borrowed in respect of Loan 1, because he's had the benefit of that lending. But as I have concluded AvantCredit shouldn't have provided this loan, it should look to remove the interest and fees from the amounts due under the loan agreement.

Mr P is also subject to an Individual Involuntary Arrangement (IVA) and his Insolvency Practitioner has told us they have an interest in any refund due to him. I therefore, remind all parties to ensure that the refund is processed in line with the terms as set out in the IVA. AvantCredit should (subject to the terms of the IVA):

- remove all interest, fees and charges applied to Loan 1;
- treat any payments made by Mr P as payments towards the capital amount;
- If and when Mr P has paid more than the capital then any overpayments should be refunded to him with 8%* simple interest from the date the overpayments arose to the date of settlement; and
- remove any negative information about Loan 1 from Mr P's credit file.

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

My final decision

For the reasons given above, I uphold Mr P's complaint.

AvantCredit of UK, LLC should put things right for Mr P as directed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 27 May 2022.

Robert Walker
Ombudsman