

## The complaint

Mr M says AvantCredit of UK, LLC irresponsibly lent to him.

## What happened

This complaint is about a 36-month instalment loan for £4,100 that AvantCredit provided to Mr M on 22 August 2017. The monthly repayments were £184.62 and the total repayable was £6,624.39.

Mr M says the loan was provided without full due diligence. The loan was unaffordable, he was in a spiral of debt and had to sell his home to repay his debt.

Our adjudicator upheld Mr M's complaint and thought AvantCredit shouldn't have given the loan. AvantCredit disagreed and the 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 of the relevant rules, guidance and good industry practice - on our website.

Having carefully thought about everything, I think that there are two overarching questions that I need to answer in order to fairly and reasonably decide Mr M's complaint. These two questions are:

1. Did AvantCredit complete reasonable and proportionate checks to satisfy itself that Mr M would be able to repay the loan in a sustainable way without experiencing significant adverse consequences?

- If so, did it make a fair lending decision?
- If not, would those checks have shown that Mr M would've been able to do so?

2. 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 M'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 AvantCredit had to think about whether repaying the loan would cause significant adverse consequences *for Mr M*. In practice this meant that business had to ensure that making the payments to the loan wouldn't cause Mr M undue difficulty or significant adverse consequences.

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 M. 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 M's complaint.

AvantCredit has provided evidence to show that before lending it asked for some information from Mr M. It asked for his monthly income, living costs, his employment status and his residential status. It carried out a credit check to understand his credit history and his existing credit commitments. It asked about the purpose of the loan which was a holiday. Based on these checks AvantCredit thought it was fair to lend.

I'm not wholly persuaded these checks were proportionate – given the term of the loan I would have expected AvantCredit to want to understand Mr M's actual living costs and overall financial position to ensure he would be able to make the repayments sustainably for three years. But I won't comment further on this as I don't think the lender made a fair lending decision based on the information it gathered. I'll explain why.

AvantCredit could see from the credit check it carried out that Mr M had a significant level of unsecured debt - £43,688 – that was costing him at least £1,486 each month. On top of this he contributed £293 to a joint mortgage. He had made minimum repayments 25 times in the last 12 months so he was already failing to sustainably repay his credit card debt. It could see he was using payday loans and had been throughout 2016 and 2017. This was also his third loan with AvantCredit since May 2016.

So I think it was clear Mr M was reliant on credit to make ends meet and was most likely in a cycle of borrowing to repay. This loan was not to repay any of his existing debt, and giving it meant he would need to spend around 60% of his income to service his unsecured debt. At this level I think AvantCredit ought to have realised there was a risk Mr M would be unable to sustainably repay this loan over its 36-month term – so without borrowing to repay or suffering adverse financial consequences. And it needed to consider this to meet its regulatory obligations, not just the pounds and pence affordability. I note even on a pounds and pence basis AvantCredit did not know with any certainty that the loan was affordable: it sets out in its view a number of assumptions about what Mr M had included in his declared expenses.

The lender also argues Mr M paid back the loan in the first year showing no issues with affordability. But as it does not know how he did this; it does not change my conclusion. Indeed Mr M's testimony is that he became so indebted he had to sell his house.

It follows I think AvantCredit was wrong to lend to Mr M.

I've also thought about whether AvantCredit acted unfairly in some other way and I haven't seen any evidence that it did.

### **Putting things right – what AvantCredit needs to do**

I think it is fair and reasonable for Mr M 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 so AvantCredit needs to put that right.

It should:

- refund all interest and charges Mr M paid on the loan;
- pay interest of 8% simple a year on any refunded interest and charges from the date they were paid to the date of settlement†; and
- remove any negative information about the loan from Mr M's credit file.

† HM Revenue & Customs requires AvantCredit to take off tax from this interest. AvantCredit must give Mr M a certificate showing how much tax it's taken off if he asks for one.

### **My final decision**

I am upholding Mr M's complaint. AvantCredit of UK, LLC must put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 31 May 2022.

Rebecca Connelley  
**Ombudsman**