

The complaint

Mr S has complained that AvantCredit of UK, LLC was irresponsible in lending to him.

What happened

In June 2014 AvantCredit provided Mr S with a loan of £1,200. The loan was repayable over 18 months and the monthly repayments were £110.83. The loan was repaid in May 2015.

In November 2015 Mr S took out another loan from AvantCredit. Mr S said the purpose of the loan was to consolidate his debts. He borrowed £3,100 repayable over 48 months and the monthly repayments were £127.61. That loan was repaid in September 2016.

Mr S complained that AvantCredit hadn't properly checked he could afford the loans. Our adjudicator upheld Mr S's complaint in part. She thought AvantCredit was wrong to have offered the second loan to Mr S.

As AvantCredit didn't agree, the complaint has been 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.

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 S would be able to repay the loan in a sustainable way?
- If not, would those checks have shown that Mr S 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 S'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 S 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 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 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 S's complaint.

Loan 1

Before granting this loan, AvantCredit verified Mr S's income figure using a standard industry tool. It found his average net monthly income was £984.

AvantCredit carried out a credit search. The credit search showed Mr S had no outstanding debt at the time and he wasn't using an overdraft facility on his current account. So, I don't think there was any adverse data that should have led the lender to carry out further checks or think there was a risk the repayments wouldn't be sustainably affordable. In my opinion these checks were proportionate given the value and term of the loan; the stage in the lending relationship and the fact the monthly repayment was a low proportion of Mr S's net monthly income.

So like the adjudicator, I'm not upholding Mr S's complaint about this loan.

Loan 2

Again AvantCredit verified Mr S's income figure which was now £1,650.

Its credit search showed that Mr S then had outstanding debt of £9,380 and he was very close to his overdraft limit. He'd opened four new credit accounts in the last three months. He was paying around £636.42 a month in total on his existing credit commitments. I think this ought to have caused AvantCredit some concern as it appeared Mr S's finances might have become strained in the relatively short time since he'd taken out Loan 1 and that any additional lending might not be sustainable. So, I'd have expected AvantCredit to gather some more detailed information about Mr S's finances before it agreed to lend to him, for example, by asking for bank statements or similar.

Although I don't think the checks AvantCredit did before agreeing the loan were sufficient, that isn't a good enough reason for me to uphold Mr S's complaint. In order for Mr S's

complaint to succeed, I need to be able to say that proportionate checks would have shown AvantCredit that there was a real risk Mr S wouldn't be able to afford the repayments sustainably.

I've looked at what I think proportionate checks would have shown.

Mr S has sent us a bank statement for the month before he took out the loan. It shows that in October 2015 he was incurring unplanned overdraft fees and some direct debits had been returned. He'd also taken out two short term loans that month. There were also some gambling transactions.

I think if AvantCredit had carried out proportionate checks it would have realised that Mr S had become over-reliant on credit he couldn't afford and he was unlikely to be able to sustainably afford the new loan repayment over a four year period. I don't think AvantCredit treated Mr S fairly in approving this loan.

I appreciate that the purpose of the loan was said to be debt consolidation. Mr S could have used the £3,100 loan to repay some of his short-term loans which in turn could have reduced his credit commitments going forward. However, AvantCredit didn't pay off any of these loans directly. So, it couldn't be sure it wasn't putting him in a worse position by increasing his overall indebtedness. The stated purpose of debt consolidation isn't enough in itself to make me think that the loan was fairly provided or that it proved helpful in the event to Mr S.

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

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

I think it is fair and reasonable for Mr S to repay the principal amount that he borrowed in respect of Loan 2, 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. If AvantCredit has sold the outstanding debt, it should buy it back if it is able to do so and then take the following steps. If it is not able to buy the debt, it should liaise with the new debt owner to achieve the results outlined below.

AvantCredit should:

- remove all interest, fees and charges applied to Loan 2;
- treat any payments made by Mr S as payments towards the capital amount;
- If Mr S has paid more than the capital then any overpayments should be refunded 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, AvantCredit should come to a reasonable repayment plan with Mr S; and
- remove any negative information about Loan 2 from Mr S's credit file.

*HM Revenue & Customs requires AvantCredit to deduct tax from this interest. AvantCredit should give Mr S 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 S's complaint and require AvantCredit of UK, LLC to put things right as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 19 May 2022.

Elizabeth Grant
Ombudsman