

The complaint

Mr A complains about a loan from AvantCredit of UK, LLC, ("ACUK"), which he says was unaffordable.

What happened

ACUK provided Mr A with a loan of £4,750 in August 2018. ACUK also added a £250 administration fee to the credit amount. The interest rate was 35.51%, (49.8% APR). The loan was to be repaid by 23 monthly repayments of £296.69 and one monthly payment of £296.73. If Mr A made each payment when it was due, he'd pay £7,120.60 in total. The loan was repaid in June 2019. Mr A said that the loan was to be used for home improvements.

Mr A said that ACUK provided him with a loan when it was unaffordable for him, as he had many other loans and credit cards (at max limit) appearing on his credit file at the time. He had to take out further high interest loans to make payments for this loan.

Our investigator's view

Our investigator assessed the complaint and didn't recommend that it be upheld.

Mr A disagreed and responded to say, in summary, that he had raised similar complaints with a number of other loan companies that he had loans with during this period, and the majority had ruled in his favour saying they should not have lent to him in this instance. These loans caused him major financial problems, and he had to take out more loans at higher rates to pay off these existing loans. He was only able to get out of this cycle after getting help from family.

As this complaint hadn't been resolved informally, it was passed to me, as an ombudsman, to review and resolve.

my provisional decision

After considering all the evidence, I issued a provisional decision on this complaint to Mr A and to ACUK on 21 March 2022. I summarise my findings:

I'd noted that Mr A had referred to decisions by other lenders. But I'd said that we assessed each case on its own merits and it wasn't appropriate to compare the outcomes of complaints as the circumstances could be very different.

When ACUK lent to Mr A, the regulator was the Financial Conduct Authority (FCA) and relevant regulations and guidance included its Consumer Credit Sourcebook (CONC). Its rules and guidance obliged ACUK to lend responsibly. As set out in CONC, this meant that ACUK needed to take reasonable and proportionate steps to assess whether or not a borrower could afford to meet his loan repayments in a sustainable manner over the lifetime of the agreement.

Repaying debt in a sustainable manner meant being able to meet repayments out of normal income while meeting normal outgoings and not having to borrow further to meet these repayments.

The lender was required to carry out a borrower focussed assessment each time - sometimes referred to as an “affordability assessment” or “affordability check”. Neither the law nor the FCA specified what level of detail was needed to carry out an appropriate assessment or how such an assessment was to be carried out in practice. The FCA said that the level of detail would depend on the type of product, the amount of credit being considered, the associated cost and risk to the borrower relative to the borrower’s financial situation, amongst other factors.

The checks had to be “borrower” focussed – so ACUK had to think about whether Mr A could sustainably repay his loan. In practice this meant that the lender had to ensure that making the payments to the loan wouldn’t cause Mr A undue difficulty or adverse consequences. In other words, it wasn’t enough for ACUK to simply think about the likelihood of it getting its money back, it had to consider the impact of loan repayments on Mr A.

In general, I’d expect a lender to require more assurance the greater the potential risk to the borrower of not being able to repay the credit in a sustainable way. So, for example, I’d expect a lender to seek more assurance, potentially by carrying out more detailed checks

- the lower a person’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 longer the term of the loan (reflecting the fact that the total cost of the credit was likely to be greater and the borrower was required to make payments for an extended period);

Bearing all of this in mind, in coming to a decision on Mr A’s case, I’d considered the following questions:

- Did ACUK complete reasonable and proportionate checks when assessing Mr A’s loan application to satisfy itself that he would be able to repay the loan in a sustainable way? If not, what would reasonable and proportionate checks have shown?
- Did ACUK make a fair lending decision?

Did ACUK complete reasonable and proportionate checks when assessing Mr A’s loan application to satisfy itself that he would be able to repay the loan in a sustainable way?

ACUK had gathered some information from Mr A about his income and it verified this against information available to it from a credit reference agency. It had also asked Mr A for a bank statement to verify his income and carried out credit checks. And ACUK had used information from data analysis to assess the likelihood of him falling behind with his repayments under the agreement.

Mr A told ACUK that he was single and was a homeowner. ACUK’s notes showed that Mr A had a monthly income of £3,664. His mortgage payments were £666, his credit commitments were £554.59, and his estimated bills were £524.92. The lender said that Mr A would have a disposable income of £1,621.79 allowing for a £100 buffer. In its final response

letter, ACUK concluded that following its creditworthiness and affordability assessment, the loan was affordable and sustainable based on Mr A's financial circumstances.

The lender provided this Service with its credit checks which I'd reviewed. The credit checks showed that Mr A had 12 active accounts – two mortgages, one loan, seven credit cards and two current accounts. He'd opened one account in the three months prior to the loan application and five accounts in the six months prior to the application. The checks showed a "red" mark for Mr A's credit card balance to limit ratio three months prior to the application although this was "amber" at the time of the credit checks. His revolving credit balance was £17,320 and his loan balance was £700.

The credit checks also showed that four accounts were defaulted between June 2014 and December 2015, but Mr A had settled the default balances since. I appreciate that having some historic debt isn't automatically a barrier to taking on further credit.

More worryingly, ACUK ought to have seen from its checks that in the 12 months prior to Mr A's loan application, he had taken out 14 credit accounts with the credit borrowed totalling around £59,000. This amount included a second mortgage for £26,330 in May 2018 and it appeared Mr A used this to repay at least eight of his credit accounts. I'd also noted that a loan for £8,292 taken out in January 2018 was likely to have been used to pay off a loan for £6,713 taken out in October 2017. But Mr A still had a relatively large amount of credit outstanding at the time of the loan application notwithstanding the earlier debt consolidation and debt repayment. Mr A had three large credit card balances totalling around £16,300 each near their respective credit limits. I'd noted that a payment for £6,416 had been made in May 2018 to clear the balance on one of these cards, but the most recent balance was again around £6,400. I'd also noted that Mr A's current account was overdrawn.

I'd said that simply performing credit checks isn't enough. A lender needs to react appropriately to the information that any checks show. Altogether I thought the relatively recent high amount of credit taken out by Mr A and the fact that his three credit cards were near their respective credit limits should have put the lender on notice that Mr A's finances might be under pressure. And I thought they might also have reasonably caused doubt on the accuracy of the disposable income amount ACUK had calculated.

I couldn't see that ACUK had asked for evidence of Mr A's expenditure. Although it said that it had asked Mr A for a bank statement to verify his income, it hasn't said that it checked the bank statement for Mr A's expenses. I hadn't seen the bank statement ACUK received from Mr A. So, I didn't know what expenses it would have seen on that statement, if it had checked it for expenses.

I'd noted that ACUK had estimated Mr A's expenditure, but I didn't think it was reasonable for ACUK to rely on an estimate. ACUK knew when it lent to Mr A, that it was providing a loan to someone whose credit file suggested they were not a typical borrower whose expenditure could be reasonably estimated from data analysis. I thought it would have been proportionate here for ACUK to have taken steps to verify Mr A's actual expenditure instead of choosing to rely on an estimate.

ACUK said that Mr A would have a surplus income of around £1,621.79 which would appear to have left enough disposable income for the loan to be repaid. But ACUK was required to establish whether Mr A could sustainably make his loan repayments – not just whether the loan payments were technically affordable on a strict pounds and pence calculation.

Looking at everything in the round, I wasn't satisfied that ACUK's checks went far enough here. I thought ACUK should reasonably have taken steps to gain a more thorough understanding of Mr A's financial position in order to satisfy itself that he could repay the loan sustainably. Mr A was entering into a relatively long and expensive loan agreement. The loan was running for 24 months and Mr A was committing to repay £7,120.60 over that period. The loan wasn't being used for debt consolidation, so Mr A's overall debt was being increased. Given the length of time Mr A was committing to repay the credit and what ACUK would have likely seen on its credit checks, I didn't think its checks were sufficient for ACUK to get a clear picture of Mr A's finances at the time.

ACUK was required to establish whether Mr A could make his loan repayments without being caused undue difficulty or adverse consequences. It could have done this by, for example, checking the expenses on the bank statements received from Mr A and if appropriate seeking further bank statements, asking for copies of bills and/or receipts for his expenses and by asking him for more information about his existing credit commitments. I couldn't see that ACUK took steps to do this. So overall, I didn't think the checks ACUK carried out on this occasion were reasonable and proportionate.

But that in itself didn't mean that Mr A's complaint should succeed. I also needed to be persuaded that what I considered to be proportionate checks would have likely shown ACUK that Mr A couldn't sustainably afford the loan.

What would reasonable and proportionate checks have shown? And did ACUK make a fair lending decision?

Mr A had provided this Service with copies of his bank statements from around the time of the loan. I'd reviewed Mr A's spending on these in July 2018 to see what better checks would have shown ACUK.

I'm not suggesting that this was the exact check that ACUK should have carried out. Looking at Mr A's bank statements was one way of achieving that although there were other ways that level of detail could have been established. But I thought that by looking at Mr A's bank statements I would have been able to get a good idea of what better checks might have shown.

I could see on the bank statements that Mr A had taken out a high cost loan for £4,000 a month prior to the loan application which wasn't shown on ACUK's credit checks. But more worryingly, Mr A had spent almost double his income on gambling in July 2018. His spending on gambling was frequent enough throughout that month that it was more likely than not that it would continue in the same pattern and posed a risk to Mr A being able to repay the loan sustainably. In these circumstances, I didn't think that ACUK would have lent if it knew this, as I thought it ought to have if it had made better checks.

So, I thought if ACUK had carried out what I considered to be proportionate checks, it was likely it would have discovered Mr A's relatively substantial expenditure on gambling, and the full extent of Mr A's financial commitments. I thought ACUK ought reasonably to have realised that Mr A was over committed financially and that he was having significant difficulties managing his finances. Mr A's finances weren't stable, and I didn't think that further checks would have provided the assurance ACUK needed.

So, I thought ACUK should reasonably have concluded that it made an unfair lending decision when it agreed to lend to Mr A. And, subject to any further representations by Mr A or ACUK, I intended to uphold Mr A's complaint and say that ACUK needs to put things right as follows:-

Putting things right – what ACUK needs to do

I understand that the loan has been repaid. As I intend to conclude that ACUK was irresponsible to have lent to Mr A, he shouldn't have to pay any interest, fees, or charges on the loan.

So, ACUK should:

- Refund any interest and charges paid by Mr A on the loan;
- Add simple interest at a rate of 8% per annum to each of these amounts from the date they were paid to the date of settlement*; and
- Remove any adverse information recorded on Mr A's credit file in relation to the loan.

* HM Revenue & Customs requires ACUK to take off tax from this interest. ACUK must give Mr A a certificate showing how much tax it has taken off if he asks for one.

Mr A hasn't provided a response to my provisional decision.

ACUK responded to my provisional decision to say, in summary,:-

- It provided a list of Mr A's 11 active credit accounts at the time of the loan. After taking its loan, Mr A would have new monthly unsecured credit commitments at an estimated £1,216.59 which was 33% of Mr A's stated income.
- Mr A's mortgage was £666 per month.
- Mr A would be left with monthly disposable income of £1,781.41 before general living expenses were considered.
- As Mr A had a sizeable post loan disposable income after all his unsecured and secured costs had been paid, it believed the loan would be affordable.
- It didn't estimate Mr A's expenditure. This was supplied by Mr A.
- Mr A had provided it with a bank statement, but this wasn't accepted as it was missing information for the two weeks prior to the loan application and it required at least thirty days of transactions. It provided this Service with a copy of the bank statement it received from Mr A. It said that this document did confirm Mr A's income and the income source and based on the other information it had, it was decided enough information had been collected to approve the loan.
- It said that if the gambling transactions had been in the missing time frame from this statement it would have prompted a further review.

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.

I have also taken into account the law, any relevant regulatory rules and good industry practice at the time.

I note that ACUK provided a list of Mr A's credit commitments in its response to my provisional decision. I had already considered in that decision Mr A's outstanding credit. And whilst I appreciate that ACUK took Mr A's outstanding credit commitments into account when it assessed his loan application, I think ACUK ought reasonably to have questioned why Mr A, who apparently had a high level of disposable income, had needed to take out such a relatively high and recent amount of credit. I think this should have put the lender on notice that Mr A's finances might be under pressure and might also have reasonably caused doubt

on the accuracy of the disposable income amount ACUK had calculated. And, as I'd said above, I think the lender ought to have made better checks.

I note that ACUK said that it didn't estimate Mr A's expenditure but asked Mr A to supply this. Bearing this in mind, I think it would have been proportionate for ACUK to have taken steps to verify Mr A's actual expenditure in line with CONC 5.3.1(4).

CONC 5.3.1(4) said:

If a firm takes income or expenditure into account in its creditworthiness assessment or its assessment required under CONC 5.2.2R (1):

1. (a)
the firm should take account of actual current income or expenditure and reasonably expected future income or expenditure (to the extent it is proportionate to do so) where it is reasonably foreseeable that it will differ from actual current income or expenditure over the anticipated repayment period of the agreement;
2. (b)
it is not generally sufficient for a firm to rely solely for its assessment of the customer's income and expenditure, on a statement of those matters made by the customer;

I can't see that ACUK took steps to verify Mr A's expenditure. It doesn't appear to have used the list of current account transactions that Mr A provided to verify his expenses. As it said in its response to my provisional decision, it was decided enough information had been collected to approve the loan.

I note ACUK said in its final response letter that as part of its application, it asked Mr A to provide a copy of his most recent bank statement in order to assist it with verifying his stated income. It said that its records indicated Mr A provided this on 3 August 2018. ACUK provided a copy of this document to us in its response to my provisional decision.

I can see that the document Mr A supplied to ACUK was a list of transactions, but not a copy of Mr A's bank statement. I can see from the list of transactions and balances shown on the document that the list wasn't a complete list of transactions for the period. There were transactions missing as the balances shown don't reflect the transactions made. This is apparent, for example, from the first two transactions on the list. On 11 July 2018 the balance was £-840.34. The next transaction shown was on 12 July 2018 when £1,000 was transferred into the account, but the balance was £-975.34.

Mr A had provided a complete copy of his statement for the same account to this Service. The transactions missing from the list provided to ACUK appear to be Mr A's gambling transactions. If ACUK had asked for a copy of Mr A's actual bank statement to cover the period 13 June 2018 to 12 July 2018 and a complete list of his transactions after that date to cover the period it wanted to check, it was likely to have seen the extent of Mr A's gambling I'd described above. And as ACUK said in its response to my provisional decision, this would have prompted a further review.

As I've said above, if ACUK had made better checks, I think it was likely it would have discovered the full extent of Mr A's financial commitments and Mr A's relatively substantial expenditure on gambling which posed a risk to Mr A being able to repay the loan sustainably.

So, the additional information ACUK has provided hasn't persuaded me that I should change my provisional decision. It follows that I uphold this complaint and require ACUK to take the steps set out above under the heading "Putting things right - what ACUK needs to do".

My final decision

My decision is that I uphold this complaint. In full and final settlement of this complaint, I order AvantCredit of UK, LLC to put things right as I've set out above under the heading "Putting things right – what ACUK needs to do".

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 10 June 2022.

Roslyn Rawson

Ombudsman