

The complaint

Mr M complains through his representative that AvantCredit of UK, LLC lent him money on a high interest loan which he was unable to afford to repay.

What happened

AvantCredit provided Mr M with a loan on 20 April 2016, for £7,900, repayable in monthly instalments of around £278, over 60 months. Mr M repaid the loan in February 2017 by taking out another loan elsewhere.

He complained to AvantCredit that he had been in a cycle of taking out payday loans, and had become addicted to gambling in an effort to pay them off. He felt that the loan repayments were unaffordable to him. AvantCredit said that the loan amount requested was £7,900. Following its creditworthiness and affordability assessment, it concluded that this amount was affordable and sustainable based on Mr M's financial circumstances and offered him a loan for that value. At no time did it offer a loan for an amount higher than it considered Mr M could afford. To carry out its assessment, it considered Mr M's application, obtained independent confirmation of his income and obtained a credit report.

Mr M's representative has sent in to us copies of Mr M's bank statements from before and after the date of the loan, and an up-to-date credit report.

Our adjudicator said that from AvantCredit's assessment Mr M had a monthly income of £2,000, and with the new loan repayments he wouldn't be able to afford this. She said that while Avant Credit said the loan was for debt consolidation, it hadn't specified what debts were to be repaid.

AvantCredit didn't agree, it said that prior to applying for the loan, Mr M had credit commitments of two loans totalling £841 a month, about 42% of his income. The loan enabled him to clear those loans and so reduce his credit commitments to just the AvantCredit loan, about 15% of his income. He would also have been left with a disposable monthly income of £462 which he could have used to put towards his defaulted loans, or his bank overdraft.

I issued a provisional decision. In it I said that whilst Avant Credit carried out proportionate checks I thought the credit report should have alerted it to carry out more checks. In the circumstances I didn't think it had made a fair lending decision.

Mr M accepted my provisional findings.

AvantCredit confirmed it had no further comment to make.

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.

The following were my provisional findings:

"We've set out our general approach to complaints about unaffordable/irresponsible lending - including all the relevant rules, guidance, and good industry practice - on our website.

Considering the relevant rules, guidance, and good industry practice, I think the 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 M would be able to repay the loan in a sustainable way?*
- *If not, would those checks have shown that Mr M would have been able to do so?*

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 be sustainable. In practice this meant that the business had to ensure that making the repayments on the loan wouldn't cause Mr M 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 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.

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 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).*

It appears that AvantCredit was correct about Mr M's credit commitments before taking out this loan. From its credit report I can see that he had two outstanding loans, one with around £6,300 outstanding repayable at £341. The other was a short term loan with about £568 outstanding repayable at £500 a month.

However effectively the short term loan only had one instalment remaining, and would normally be discounted. So I think it more realistic to say that Mr M had a credit commitment of £341 a month. From his bank statements I can see that he did pay those two loans off, but I question what use the loan was to him if it extended a £500 commitment for five years and replaced a loan for a £341 a month payment with a £298 payment. However he would have had £1,000 balance from the loan and it's not clear why he needed that.

It's clear from the credit report that Mr M had a current account that was over £1,980 overdrawn (with a limit of £2,000). This had been overdrawn for at least the eight months the report covered. In the two months prior to taking out the loan, it had increased from £655 overdrawn. He had also clearly defaulted on loans in the past and had had a number of short term loans. I wouldn't expect AvantCredit to take account of any loans that had been paid off, but it certainly looks like Mr M had been keeping within his overdraft by using short term loans.

I think from the information shown on the credit report about Mr M's overdraft, this should have alerted AvantCredit to carry out a more detailed assessment of Mr M's finances. This could for example, have been by asking for bank statements. In considering Mr M's bank statements for the two months before the loan I can see that he had a considerable number of entries for betting. These amounted to over £1,300 for February to March and over £1,700 for March to April 2016. These gambling transactions continued after the loan was issued.

This accords with Mr M's statement that he was addicted to gambling. I think if AvantCredit had carried out a more thorough assessment of Mr M's finances it wouldn't have issued the loan, as with the level of spending on gambling it would have been clearly unaffordable.

So, whilst I think AvantCredit carried out proportionate checks I think the credit report should have alerted it to carry out more checks. In the circumstances I don't think it made a fair lending decision."

As neither party has commented on my provisional findings, those findings are now final and form part of this final decision.

Putting things right

Mr M has had the capital payment in respect of the loan, so it's fair that he should repay this. So far as the loan is concerned, I think AvantCredit should refund all interest and charges as follows:

- Remove all interest, fees and charges applied to the loan.
- Treat any payments made by Mr M as payments towards the capital amount of £7,900.
- If Mr M has paid more than the capital, refund any overpayments to him with 8%* simple interest from the date they were paid to the date of settlement.
- Remove, as appropriate, any adverse information about the loan from Mr M's credit file.

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

My final decision

I uphold the complaint and require AvantCredit of UK, LLC to provide the remedy set out under "Putting things right" above.

.Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 7 June 2022.

Ray Lawley
Ombudsman