

The complaint

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

What happened

This complaint is about a loan AvantCredit provided to Mr C in January 2016. The loan was for £4200 and was due to be repaid for Mr C over 36 months. The loan was outstanding at the time Mr C took his complaint to AvantCredit.

Our investigator upheld Mr C's complaint and thought AvantCredit shouldn't have been 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 C's complaint. These two questions are:

1. Did AvantCredit complete reasonable and proportionate checks to satisfy itself that Mr C would be able to repay loan/s in a sustainable way and/or without experiencing significant adverse consequences?
 - If so, did it make a fair lending decision?
 - If not, would those checks have shown that Mr C 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 C'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 and/or cause significant adverse consequences *for Mr C*. In practice this meant that business had to ensure that making the payments to the loan wouldn't cause Mr C 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 C. 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 C's complaint.

Did AvantCredit complete reasonable and proportionate checks to satisfy itself that Mr C would be able to repay loan/s without experiencing significant adverse consequences?

AvantCredit has provided evidence to show that before lending to Mr C it asked him to declare what his income and expenditure was. It also carried out a credit check and with the information it gathered calculated what it thought Mr C's disposable income was. Based on those checks AvantCredit thought it was fair to lend.

Based on the term of the loan and repayment amount, I don't think the checks were proportionate because I can see within the credit report that AvantCredit gathered adverse credit information recorded against Mr C's file. This includes a heavy usage of short term loans, a high utilisation of credit and relatively high overall unsecured debt. Mr C was already committed to around half of his monthly income in credit repayments. So I think AvantCredit should have taken its checks further by verifying some of the information Mr C provided. This is so it could make sure that Mr C could repay the loan repayments in a sustainable way over the 3 year term of the loan.

Mr C has provided copies of his bank statements from the time of the loan and I can see that in the month leading up to him asking for this loan, he was gambling heavily. There were many gambling transactions and he had spent over half his income in this way before he then went on and asked for this loan. It is clear on seeing this that Mr C had problems with his finances. Had AvantCredit carried out proportionate checks, it would have seen that the lending was unsustainable.

AvantCredit needs to put things right.

Did AvantCredit act unfairly or unreasonably in some other way?

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

- Remove all interest, fees and charges applied to the loan,
- Treat any payments made by Mr C as payments towards the capital amount of £4200,
- If Mr C has paid more than the capital then any overpayments should be refunded to 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 C.
- Remove any adverse information about the loan from Mr C's credit file.

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

My final decision

For the reasons given above, I'm upholding Mr C's complaint. AvantCredit of UK, LLC should put things right for Mr C as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 28 June 2022.

Mark Richardson
Ombudsman