

The complaint

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

What happened

In June 2018 AvantCredit provided Mr J with a loan of £4,000. The loan was repayable over 36 months and the monthly repayments were £186.07. Mr J said the purpose of the loan was debt consolidation.

Mr J complained that AvantCredit hadn't properly checked he could afford the loan. Our adjudicator upheld Mr J's complaint. He thought AvantCredit was wrong to have offered the loan to Mr J.

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

Before granting this loan, AvantCredit verified Mr J's income using a standard industry tool. It obtained information about his expenses and found his average net monthly income was around £1,916. AvantCredit also carried out a credit search. In the early stages of a lending relationship these checks might be considered proportionate but more importantly, having looked at the results of those checks, I don't think AvantCredit reacted appropriately to them.

The credit search showed Mr J had one historic default. He had outstanding unsecured loans of £4,129 and credit card debt of £2,874. The largest loan with an outstanding balance of £3,835 had only been taken out six months previously. I think AvantCredit should have been concerned about Mr J's need to take out another large loan within a relatively short period of time.

Mr J was due to pay around £624 a month in total on his existing credit commitments. With the new loan repayment of £186.07 around 42% of his income would be spent on repaying his debts. That suggests to me that the loan wouldn't be sustainable for Mr J.

In response to our adjudicator's view AvantCredit has argued that Mr J could have consolidated some of his lending. It's true Mr J could have used the loan to repay some of his loans and credit card debt. That could have reduced his credit commitments going forward to about £571 being about 29% of his monthly income. But AvantCredit didn't repay these debts out of the loan advance as it could have done. So it couldn't be sure that it was making his position better rather than worse. 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 J.

In my opinion, AvantCredit should have been aware that Mr J might well struggle to repay this loan and this was borne out by the fact that he hasn't been able to maintain his loan repayments. Overall, I don't think AvantCredit treated Mr J fairly in approving 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 J to repay the principal amount that he borrowed 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 the loan;
- treat any payments made by Mr J as payments towards the capital amount;
- If Mr J 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 J; and
- remove any negative information about the loan from Mr J's credit file.

*HM Revenue & Customs requires AvantCredit to deduct tax from this interest. AvantCredit should give Mr J 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 J'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 J to accept or reject my decision before 26 July 2022.

Elizabeth Grant
Ombudsman