

The complaint

Mr S complains that Avant Credit of UK, LLC trading as SpringCoin and as AvantCredit, lent to him when it had not carried out thorough credit checks and if it had it would not have lent to him.

What happened

Using information from AvantCredit here is a brief loan table of the two loans approved for Mr S.

Loan	Date taken	Amount	Term	Monthly repayment	Total amount repayable	Status
1	8 August 2014	£3,100.00	36	£131.60	£4,737.43	Settled
2	19 November 2016	£3,600.00	36	£153.06	£5,510.08	Settled

Mr S complained to AvantCredit in December 2021 and received a final response letter from AvantCredit in which it said that it had carried out proportionate checks including obtaining a credit report record of Mr S' commitments and had seen his bank account statements for the months leading up to the loan approvals. It said it '*...used information from data analysis to make a reasoned estimate of your likely expenditure to assess the likelihood of you falling behind with your repayments under the agreements.*'

After the complaint had been referred to the Financial Ombudsman Service by Mr S, one of our adjudicators looked at all the information from both parties and could see that there were elements of Mr S' financial history and (then) financial position which led him to think that AvantCredit ought not to have lent to Mr S at all. He thought that the checks it had carried out were proportionate for loan 1 (but not for loan 2) but there was evidence of payday loans and high-cost short term instalment loans.

Mr S had sent to us the joint account bank statements and Mrs S is aware and satisfied that we are looking at the transactions relating to her as well.

Our adjudicator was aware that the bank statements were a joint account and he had gathered that Mr and Mrs S had spent around £1,880 more than they had deposited in the account in the lead up to loan 1 being approved. And there was evidence of around £780 on gambling transactions. Our adjudicator considered that was around 50% of Mr S' net salary and he thought that the loans ought not to have been lent. For loan 2 the gambling transactions were less than this but still there was evidence of high-cost loans being utilised too.

AvantCredit responded with copies of the bank transactions it had obtained by having access to Mr S' bank account for the period of three months up to loan 1 and loan 2. And it made many submissions all of which I have reviewed.

The 'access to bank account' evidence from AvantCredit was new and so I compared them to the bank statements that Mr S had sent to us and they do correlate and so it seems the bank statements AvantCredit saw in 2014 and 2016 are the same ones Mr S has sent to us. They are for the joint account ending *0583.

So, having reviewed the complaint and the new evidence I asked Mr S for additional information to assist in the understanding of those bank account transactions. That has been sent to me and I refer to that information about Mr and Mrs S' financial situation in the main part of the decision.

The unresolved complaint was passed to me to decide.

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 the relevant rules, guidance and good industry practice - on our website.

Taking into account the relevant rules, guidance and good industry practice, what I need to consider in deciding what's fair and reasonable in the circumstances of this complaint are whether Avant completed reasonable and proportionate checks to satisfy itself that Mr S would be able to repay in a sustainable way? And, if not, would those checks have shown that Mr S would've been able to do so?

If I determine that Avant did not act fairly and reasonably in its dealings with Mr S and that he has lost out as a result, I will go on to consider what is fair compensation.

The rules and regulations in place required Avant to carry out a reasonable and proportionate assessment of Mr S'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 Avant had to think about whether repaying the loan would be sustainable and/or cause significant adverse consequences for Mr S. In practice this meant that Avant had to ensure that making the payments to the loan wouldn't cause Mr S undue difficulty or significant adverse consequences.

In other words, it wasn't enough for Avant 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 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).

I've carefully considered all the arguments, evidence and information provided in this context and what this all means for Mr S's complaint.

I accept AvantCredit's point that loan 2 was not used to pay off loan 1. I have seen from the AvantCredit account notes that Mr S telephoned on 3 October 2016 (during the life of loan 1) to ask if he was able to apply for a second loan and the answer was that he had to pay it off and wait at least 5 days before re-applying for further credit.

I have seen that AvantCredit obtained credit report information about Mr S' existing credit commitments in 2014 and 2016. It makes a relevant point that the bank account transactions may reveal that the other loans not showing on its credit search but are recognisable in the bank statements may be because they were the other bank account holder's loans. I have investigated that by asking Mr S for additional information. And here is the information I have gathered from Mr S.

Mr S was able to confirm that the larger salary crediting the joint bank account was his – around £1,500 and at its peak with that employer his salary was £1,800 in 2020. Mr S told us that his overtime was severely curtailed in 2015. I had asked Mr S about the record of a salary of £2,450 each month and he did say – *'£2,450 would have been average income at this time, although this included bonuses and overtime of which Mr S was doing a lot of at that time'*

There's a contradiction there – in relation to his income - but as the bank transactions show the higher income I have proceeded on that basis.

And I had asked Mr S why he had under-declared his income on the application to AvantCredit and his answer was that his 'basic pay' was £1,500 a month and *'a good portion of my salary at the town [sic] was made up of overtime payments and attendance bonuses. We decided to declare just my basic pay in case such a time came as that's all I was paid.'* I consider that a sensible approach and now its been explained I've taken it into account.

His wife's consultancy fees were about £260 a month. Mr S confirmed that all household expenditure was paid from this account including rent, council tax, utilities, TV services, food, fuel and childcare costs. And Mr S confirmed that they were making payments to a debt advice charity for its debt management services.

Mr S did confirm that both he and his wife applied for the high cost short term loans but he'd not been able to identify which was which for each of them.

In any event, there were multiple transactions with a specific reference on the bank transaction list AvantCredit obtained and the bank statements Mr S has sent us which I will refer to as 'A+365'. These were so numerous that they cannot be ignored. I asked Mr S about those and he confirmed that they were to a gambling website and it was his wife who was making those payments. There were also payments to a second gaming company as

well but I had not asked Mr S about those and so I do not know who had been using that.

Mr S has explained that they were struggling at the time and the loans from AvantCredit were to pay off other loans such as short term loans or to pay for repairs to their car which was needed to get the children to school and to get to work.

And I have thought carefully about the high-cost short term instalment loans and the payday loans which appear on the account transactions. And to do this I have looked at the versions sent to us by AvantCredit and were obtained in 2014 and 2016 at the time Mr S was applying for loans 1 and 2 respectively.

There are a lot. And even if they did not appear on the credit search records, they are not items on the bank account transaction lists which could be ignored.

And if they were loans obtained by the joint account holder and not Mr S, then additional queries ought to have been raised about them as they were being repaid from that joint-account for which Mr S was jointly and severally liable. It's not realistic to think that Mr S' financial circumstances can be viewed and approached in isolation to the joint account holder's financial circumstances whether that was gambling or payday loans.

Having done all of that, my view is that for loans of this amount and over 36 months then full and financial reviews ought to have been carried out. And having the information AvantCredit had, then I don't consider that this ought to have been ignored and/or further queries not raised about them.

My view is that AvantCredit made decision on pounds and pence and appeared not to account for the gambling and gaming transactions. And it seemed to rationalise the further indebtedness for Mr S as a solution for the serious indebtedness Mr S was already in. As it was using the joint account transactions list then it cannot ignore the transactions (as well as income) attributable to that other account holder.

I uphold the complaint.

Putting things right

AvantCredit needs to put things right for Mr S. It needs to do as follows:

- refund all interest and charges Mr S paid on both the loans;
- pay interest of 8% simple a year on any refunded interest and charges from the date they were paid (if they were) to the date of settlement*;
- remove any negative payment information about the loans from Mr S' credit file;

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

My final decision

My final decision is that I uphold Mr S' complaint and I direct that AvantCredit of UK LLC does as I have outlined in the 'putting things right' part of the decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 30 November 2022.

Rachael Williams
Ombudsman