

The complaint

Mr B, through a representative, says AvantCredit of UK, LLC irresponsibly lent to him.

What happened

Mr B took out a 36-month instalment loan for £3,900 on 6 January 2017. The monthly repayments were £118.21 and the total repayable was £6,775.39.

Mr B says AvantCredit ought to have better assessed his creditworthiness to be sure he could sustainably repay the loan.

Our investigator upheld Mr B's complaint. She said AvantCredit's checks showed the loan was not affordable for Mr B. Whilst the loan was for debt consolidation the lender took no steps to understand which debts would be settled and how this would impact Mr B's financial circumstances.

Unhappy with this assessment Mr B asked for an ombudsman's review. It said its checks showed Mr B's income was higher than declared and based on this and his detailed expenses he had £531.82 of disposable income and so could afford the loan. It said assuming Mr B consolidated some of his credit card debts, he would then be spending around 45% of his income on credit commitments. Mr B was also repaying his two defaulted accounts.

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.

Our approach to unaffordable/irresponsible lending complaints is set out on our website and I've followed it here.

The Financial Conduct Authority (FCA) was the regulator when AvantCredit lent to Mr B. Its rules and guidance, set out in its Consumer Credit Sourcebook (CONC), obliged AvantCredit to lend responsibly. Amongst other things, AvantCredit was required to carry out a reasonable and proportionate assessment of whether Mr B could afford to repay what he owed in a sustainable manner. This is sometimes referred to as an affordability assessment or an affordability check.

The checks also had to be borrower-focused. So AvantCredit had to think about whether repaying the credit sustainably would cause any difficulties or adverse consequences for Mr B. 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 B.

Checks also had to be proportionate to the specific circumstances of each loan application. In general, what makes up 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 and cost of credit they have applied for.

In light of this, I think that a reasonable and proportionate check ought generally to have been *more* thorough:

- the *lower* a customer's income (reflecting that it could be more difficult to make any repayments to credit from a lower level of income);
- the *higher* the amount due to be repaid (reflecting that it could be more difficult to meet higher repayments from a particular level of income);
- the *longer* the period of time a borrower will be indebted for (reflecting the fact that the total cost of the credit is likely to be greater and the customer is required to make repayments for an extended period).

There may also be other factors which could influence how detailed a proportionate check should've been for a given application – including (but not limited to) any indications of borrower vulnerability and any foreseeable changes in future circumstances. I've kept all of this in mind when thinking about whether AvantCredit did what it needed to before agreeing to lend to Mr B, and have considered the following questions:

- did AvantCredit complete reasonable and proportionate checks when assessing Mr B'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 AvantCredit make a fair lending decision?
- did AvantCredit act unfairly or unreasonably in some other way?

AvantCredit asked for some information from Mr B before it approved the loan. It asked for details of his income and outgoings and his employment and residential status. It checked his declared income using data showing Mr B's current account turnover. It checked his credit file to understand his existing credit commitments. It also asked about the purpose of the loan which was debt consolidation. From these checks combined AvantCredit concluded Mr B would be able to sustainably repay the loan.

I think these checks were proportionate but I am not satisfied AvantCredit made a fair lending decision based on the information it gathered.

It could see from the credit check that Mr B had £24,297 of active unsecured debt and two defaulted accounts with a total unsettled balance of £2,555. Mr B's credit cards were either at or close to their limit and he had opened three new credit accounts in the last three months. It also knew from Mr B's banking data that he had taken out a payday loan just a couple of weeks earlier, and had done the same the month before. So I think there were indications that Mr B's finances were under pressure.

In response to the investigator's assessment AvantCredit set out how its checks showed Mr B had £531.82 of disposable income and so the loan was affordable. But I think it is focusing solely on pounds and pence affordability, without considering the sustainability of the loan repayments as it was obliged to. AvantCredit did not ask Mr B which of his existing debts he intend to repay, but assuming, for example, he was able to reduce his monthly credit commitments by around £200 (he had an outstanding loan with a balance of £3,849 and a monthly repayment of £197) he would still be spending around £1,295 on credit each month. This is over 45% of his income – and at such a level I think AvantCredit ought to have realised there was a high risk Mr B would need to either borrow to repay or suffer some

other type of financial harm. There were already signs of financial instability with sequential payday loans, credit cards close to their limit and multiple new accounts.

It follows I think AvantCredit was wrong to lend to Mr B.

I haven't found any evidence AvantCredit acted unfairly or unreasonably towards Mr B in some other way.

Putting things right

It's reasonable for Mr B to repay the capital amount that he borrowed as he had the benefit of that money. But he has paid interest and charges on a loan that shouldn't have been given to him. So he has lost out and AvantCredit needs to put things right.

It should:

- Refund all the interest and charges on the loan – so add up the total Mr B repaid and deduct the sum from the capital amount.
- If reworking Mr B's loan account results in him having effectively made payments above the original capital borrowed, then AvantCredit should refund these overpayments with 8% simple interest calculated on the overpayments, from the date the overpayments would have arisen, to the date of settlement*.
- If reworking Mr B's loan account results in an outstanding capital balance, AvantCredit should try to agree an affordable repayment plan with Mr B.
- Remove any adverse information recorded on Mr B's credit files in relation to the Loan once any outstanding capital balance has been repaid.

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

My final decision

I am upholding Mr B's complaint. AvantCredit of UK, LLC, must put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 20 July 2023.

Rebecca Connelley
Ombudsman