

complaint

Mr C has complained that AvantCredit of UK LLC lent to him irresponsibly.

background

Mr C was given a loan by AvantCredit in January 2014 for £1,700. The loan was due to be repaid in 18 monthly instalments of around £181. I understand the loan has been repaid.

One of our adjudicators has looked into the complaint. She didn't think AvantCredit should have provided Mr C with the loan and she asked the lender to put things right. AvantCredit didn't agree with the adjudicator's assessment, and so the complaint has been passed to me to make a final decision about the matter.

my findings

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 approach to unaffordable and irresponsible lending on our website and I've considered this approach when deciding Mr C's complaint.

AvantCredit needed to take reasonable steps to ensure that it didn't lend to Mr C irresponsibly. I think there are key questions I need to consider in order to decide what's fair and reasonable in the circumstances of this particular complaint:

- Did AvantCredit carry out reasonable and proportionate checks to satisfy itself that Mr C was in a position to sustainably repay the loan? If not, what would reasonable and proportionate checks have shown at the time?
- Did AvantCredit ultimately make a fair lending decision?
- Did AvantCredit act unfairly or unreasonably towards Mr C in some other way?

AvantCredit was required to carry out a borrower focussed assessment, sometimes known as an 'affordability check'. The lender had to carry out reasonable and proportionate checks to satisfy itself that Mr C would be able to repay the loan sustainably. There was no set list of checks that AvantCredit had to do, but it could take into account a number of different things such as the loan amount, the length of the loan term, the repayment amounts, and the borrower's overall financial circumstances.

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 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 longer the term of the loan (reflecting the fact that the total cost of the credit is likely to be greater and the customer is required to make payments for an extended period).

There may also be other factors which could influence how detailed a proportionate check should've been for any particular 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 give the loan to Mr C.

AvantCredit says it asked Mr C for information about his income and expenditure and it carried out some credit checks. AvantCredit thinks its checks were reasonable and proportionate.

I can see from Mr C's application form that his 'total monthly expenses' were stated as £800 and his income was declared as £1,800. AvantCredit said it verified this information. On the face of it, it would seem that Mr C had sufficient disposable income to afford the loan.

AvantCredit says that Mr C's credit report showed 'he had no monthly payment to credit commitments on a regular basis.' Yet its Affordability Report did show that Mr C had five loan accounts and that he'd opened six accounts in the last three months. AvantCredit has also told us that Mr C did state 'the purpose of the loan was to consolidate existing credit commitments' – all of which I think ought reasonably to have suggested to AvantCredit that Mr C did have some existing, fairly recent, credit commitments which potentially might impact on his ability to repay his loan sustainably. I accept that AvantCredit's report shows little adverse credit information for Mr C, and a low total credit balance. But Mr C was applying to AvantCredit for a costly loan, repayable over an extended period. I think in the circumstances, AvantCredit ought reasonably to have realised that for its checks to be reasonable and proportionate, it needed a better understanding of Mr C's true current financial position - to ensure that he could sustainably repay his loan over the whole loan term.

So I think AvantCredit should have gone further on this occasion and carried out more in depth checks to independently verify some of the information Mr C had given about his financial situation – for example by asking to see bank statements.

The information that AvantCredit has provided suggests that it did request a bank statement from Mr C at the time. But if it did, I haven't seen a copy of this. Mr C has provided us with copies of his bank statements for the period leading up to his loan application so I can determine what better checks might have shown AvantCredit at that time. And I have considered this information in light of what I've set out above.

Of course, different checks might show different things. But I think if AvantCredit had carried out what I consider to be proportionate checks, I think it's likely it would have discovered more about Mr C's financial position. In particular I think it more likely than not AvantCredit would have realised that Mr C was regularly gambling considerable amounts of money. And that he was also borrowing from at least six other short-term or payday lenders in the month prior to his taking the loan from AvantCredit.

As I've already explained, AvantCredit was required to establish whether Mr C could *sustainably* make his loan repayments. I think it's likely that with better checks AvantCredit would reasonably have concluded that Mr C was having serious difficulties managing his finances and that he was most likely borrowing as a result of his gambling – and would also most likely need to borrow elsewhere to repay his loan from AvantCredit. I would have expected AvantCredit to realise that it was unlikely that Mr C would be able to sustainably

repay his loan over the full loan term. So it ought reasonably to have concluded that it was not appropriate to lend to him.

Did AvantCredit treat Mr C unfairly in any other way?

I've not seen anything which makes me think that AvantCredit treated Mr C unfairly in some other way. But I don't think it should have agreed to provide the loan to him. So AvantCredit needs to put things right.

Putting things right

I think it's fair and reasonable for Mr C to have repaid the principal amount that he borrowed, because he's had the benefit of that lending. But he has paid interest and charges on a loan that shouldn't have been provided to him. So I think Mr C has lost out and AvantCredit should put things right for him.

So AvantCredit should:

- Remove all interest, fees and charges on the loan and treat all the payments Mr C made as payments towards the capital.
- If reworking Mr C'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 the account still leaves an outstanding amount of capital to be paid, then AvantCredit should agree an affordable repayment plan with Mr C, bearing in mind its obligation to treat him positively and sympathetically in these discussions.
- Remove any adverse information recorded on Mr C's credit file in relation to the loan.

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

my final decision

My final decision is that I uphold Mr C's complaint and direct AvantCredit of UK LLC to put things right 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 11 December 2020.

Sharon Parr
ombudsman