

complaint

Mr L complained that AvantCredit of UK, Llc (trading as Avantcredit) acted irresponsibly when it agreed to lend to him.

background

Mr L took out a two loans with Avantcredit. This table shows loan details:

Loan	Date Taken	Date Repaid	Number of instalments	Amount	Monthly repayment* (approximate)
1	27/06/2016	05/01/2018	36	£3,300	£159
2	01/02/2019	22/03/2019	36	£5,500	£244

When Mr L complained to Avantcredit, it didn't uphold his complaint. So Mr L brought his complaint to us to investigate.

Mr L mainly said that Avantcredit didn't act responsibly when it agreed to lend to him – he told us he was struggling with rent, payday loans and a gambling addiction at the time so this lending was unaffordable. And he was unhappy with the way Avantcredit had treated him when he'd contacted it to discuss payment arrangements.

Our adjudicator didn't uphold Mr L's complaint. She felt that using these loans to pay off other debt, which is what Mr L told Avantcredit he planned to use them for, should've improved his financial situation as he would pay less for his debt overall.

Mr L didn't agree and he asked an ombudsman to make a decision.

The complaint came to me to decide. I issued a provisional decision.

What I said in my provisional decision

Here are some of the main things I said.

“Like the adjudicator, I'm not currently thinking about upholding Mr L's complaint about loan 1. But I am thinking about coming to a different decision on loan 2. As things stand, I'm planning to uphold Mr L's complaint about loan 2. I'll explain my reasons.

We've set out our approach to considering unaffordable and irresponsible lending complaints on our website - including the key relevant rules, guidance, good industry practice and law. And I've taken all this into account when I've been thinking about this complaint .

Avantcredit needed to take reasonable steps to ensure that it didn't lend irresponsibly. There are some key questions I need to think about when deciding what's fair and reasonable in the circumstances of Mr L's complaint:

- Did Avantcredit carry out reasonable and proportionate checks to satisfy itself that Mr L was in a position to repay the loan in a way that was sustainable for him?

- If this didn't happen, what would reasonable and proportionate checks have likely shown if they'd been done when they should've been?
- Was Avantcredit's lending decision fair?
- Did Avantcredit act in any other way that wasn't fair and reasonable?

Avantcredit should have carried out an "affordability check" with the focus on the borrower. This means that Avantcredit had to look into Mr L's particular financial situation and think about whether repaying the loan sustainably would lead to difficulties or result in adverse consequences for Mr L.

Avantcredit had to carry out reasonable and proportionate checks to satisfy itself that Mr L would be able 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 including the loan amount, the length of the loan term, the repayment amounts and the borrower's overall financial circumstances.

I think a reasonable and proportionate check ought generally be 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 a borrower has to make payments for an extended period).

Avantcredit was required to establish whether Mr L could sustainably repay any lending it provided - not just whether the loan payments were affordable on a strict pounds and pence calculation. The loan payments being 'affordable' on this basis might be an indication a borrower could sustainably make their repayments. But it doesn't automatically follow this is the case. This is because the relevant regulations define sustainable as being without undue difficulties and in particular the customer should be able to make repayments on time, while meeting other reasonable commitments, as well as without having to borrow to meet the repayments.

And it follows that a lender should realise, or it ought fairly and reasonably to realise, that a borrower won't be able to make repayments sustainably if they're unlikely to be able to make their repayments without borrowing further.

Keeping all this in mind, I've carefully considered all the information I've seen and been told and thought about what this means for Mr L's complaint.

I've looked at each loan in turn and thought about the key questions I need to address.

loan 1

I've seen the information it appears Avantcredit recorded about Mr L's income and expenditure when he applied for this loan.

As far as I can see, Avantcredit worked out that Mr L's available spending money after paying for his other main monthly expenses would be around £314. So it looked like loan

repayments of £159 should've been comfortably affordable - and still leave Mr L with enough spare cash for things like food and transport which I can't see mentioned anywhere.

Avantcredit also carried out a detailed credit search when Mr L applied for this loan and I've seen this. This showed Avantcredit that Mr L had been making use of credit, including expensive short term loans, for some time. But Mr L's total credit balance was shown as less than £5,000 when he took out loan 1 and the overall results of the credit search don't suggest to me that he was having any significant problems managing his money at that stage.

Avantcredit also asked to see a bank statement – and I think that was the right thing to do because this was likely to show information that would've formed part of what I'd expect reasonable and proportionate checks for this loan to show.

But although Mr L provided a bank statement, it wasn't taken into account as Avantcredit said it wasn't able to see illegible transactions.

So, given the lender had asked to see the bank statements, I think Avantcredit should've realised it was potentially missing important information it should've seen before agreeing this loan.

Mr L has mentioned to us he was spending on gambling, which is something a responsible lender should take into account when thinking about whether to lend.

Mr L sent us bank statements which show some gambling spending and give me an insight into his overall financial circumstances at the time.

This is information that I think Avantcredit would likely have found out through a proportionate check before agreeing to lend. But I don't think that, even if Avantcredit had seen this information, it would've been enough for it to decide not to lend. That's because I can see that although Mr L was regularly making payments that he hadn't told Avantcredit about, the amounts aren't enough on their own to suggest the loan was likely to be unaffordable.

On balance, I haven't seen enough overall to make me think that if Avantcredit had done reasonable and proportionate checks these would've shown that loan 1 wasn't likely to be sustainably affordable for Mr L.

I've taken into account that it seems Mr L had told Avantcredit that he intended to use this loan for 'debt consolidation' – in other words, to pay off other debt in order to help reduce his monthly outgoings.

Looking at the details shown on the credit reports Mr L obtained from Avantcredit, it appears that around the time Mr L took out this loan, two earlier loans he'd been repaying were repaid in full.

The combined monthly repayments on those loans had been around £285 per month. So, the monthly repayment of £159 on his new loan from Avantcredit meant Mr L was now potentially around £126 better off each month.

So, I don't think Avantcredit's lending decision was unfair in these circumstances.

And for these reasons, I'm not upholding Mr L's complaint about loan 1.

Did Avantcredit act in any other way that wasn't fair and reasonable?

Our adjudicator didn't think Avantcredit had acted unfairly or unreasonably when Mr L asked about setting up a repayment plan for Loan 1 in March 2017. And based on what I've seen so far, I agree.

There's no call recording available due to the time that's passed.

But the call notes suggest that Avantcredit dealt with Mr L's queries and gave him information on his options, following which there's a note that payment date changes were put in place in May 2017.

So I can't say the business acted unfairly or didn't respond sympathetically and positively.

And I think it's fair to say that a letter Avantcredit sent after Mr L had missed some payments on loan 1 was sent in accordance with the terms and conditions of the loan agreement. I would expect a business to notify a borrower when this happens so that there's an opportunity to look at options to bring the account up to date before the situation worsens and it becomes potentially more difficult for a borrower to sort things out.

I'm sorry that this was upsetting for Mr L. I can completely understand it was a stressful situation to be in.

But, from what I've seen, I can't fairly say that Avantcredit acted unreasonably.

So, I don't plan to ask Avantcredit to do anything further in relation to this aspect of Mr L's complaint.

loan 2

I've thought carefully about whether Avantcredit carried out proportionate checks before agreeing to lend again.

From what I can see, Avantcredit asked Mr L about his income and expenses and checked his credit file.

I think its checks should have gone further.

He applied for a substantial loan amount – bearing in mind that his declared income was £1,715. And Mr L was expecting to have to make the repayments for the next 3 years or so which I think is a lengthy period of time to commit to paying a loan – especially where finances might already be stretched.

It's not clear to me what expenses Avantcredit considered or verified when looking at affordability. So Avantcredit hasn't shown me that it did the reasonable and proportionate checks I think it should've done to satisfy itself that Mr L was in a position to sustainably repay another credit commitment of £244 per month for the next 36 months.

I've seen Mr L's bank statements from around this time. It looks to me like his financial position hadn't materially changed since he took out loan 1.

Essentially, Mr L was spending all the money going into his bank account.

So I don't think Mr L was in a position to pay loan 2 on top of his other credit obligations.

I've taken into account that Mr L told Avantcredit when he applied for loan 2 that the purpose of the loan was debt consolidation. Looking at the results of the credit report that Avantcredit obtained when it agreed to lend Mr L loan 2, this showed that his total balances already outstanding now came to more than £13,000.

So Avantcredit was aware that Mr L's overall indebtedness had gone up very significantly since he'd taken out loan 1. And it could see that he had opened 12 credit accounts (which look to me like unsecured loans) within the previous 6 months.

Given this information and what Avantcredit knew about Mr L's borrowing history, I think Avantcredit should've been alerted to the fact that Mr L's plans to use loan 1 for debt consolidation didn't appear to have been effective in terms of helping him manage his debt or improve his overall financial situation.

I think this should've prompted Avantcredit to make more detailed enquiries than it has shown me it did to try and gain a more comprehensive understanding of Mr L's financial situation so it could be satisfied that providing loan 2 would benefit Mr L's overall financial situation.

I can't see for instance that Avantcredit asked Mr L in any detail about which debts he intended to use loan 2 to repay.

Avantcredit hasn't shown me that it knew which ones were to be repaid.

And the loan was paid into Mr L's bank account rather than money being sent directly to other creditors.

So Avantcredit wasn't able to ensure that the money it loaned was used for the purpose of paying off other credit – and it hasn't shown me how it worked out to what extent doing this would've improved Mr L's overall financial situation or helped him manage the evident challenges he was facing managing his money problems.

All of this means that Avantcredit couldn't have been sure loan 2 wasn't putting Mr L in a worse position by increasing his overall debts.

I think that Avantcredit should have concluded that it hadn't seen enough information to be able to say it was appropriate to provide loan 2 to Mr L.

I don't think further checks would have provided any assurance that Mr L would have been able to repay this loan without difficulty.

I appreciate that he repaid it in full the next month but Mr L says he borrowed from elsewhere in order to do so and his credit report supports this.

And so, altogether, I can't say that it acted fairly when it provided loan 2 to Mr L. So I'm planning to uphold Mr L's complaint about loan 2."

what the parties said in response to my provisional decision

Mr L hasn't commented further.

Avantcredit has responded to confirm that it accepts what I've said in my provisional decision.

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 general approach to complaints about short-term lending - including all of the relevant rules, guidance and good industry practice - on our website.

For the reasons I've set out in my provisional decision I'm upholding this complaint. Avantcredit has confirmed it is willing to uphold this complaint so, if it hasn't already, it should now take the following steps to put things right.

putting things right

- A Remove all interest, fees and charges from loan 2 and treat all the payments Mr L made as payments towards the capital.
- B As Mr L has made payments above this capital amount then these should be refunded to him along with 8% simple interest per annum* from the date the overpayments were made to the date the complaint is settled.
- C Remove any adverse information Avantcredit recorded on Mr L's credit file for loan 2.

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

my final decision

I uphold this complaint and direct Avantcredit Of Uk, Llc to take the steps I've set out above to put things right for Mr L.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 22 May 2021.

Susan Webb
ombudsman