

Complaint

Mr C complains that AvantCredit Of UK, LLC ("AvantCredit") acted irresponsibly by lending him money in March 2016.

Background

The background to this complaint and my provisional findings are set out in my provisional decision dated 21 February 2020 – a copy of which is attached and forms part of my final decision.

In my provisional decision I explained why I thought AvantCredit was irresponsible when it approved Mr C's loan.

I asked everyone to send me any further comments and information before I reached a final decision.

Both Mr C and AvantCredit accepted my provisional findings.

My findings

I've re-considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

As both parties have accepted my provisional decision and I haven't received any new evidence, I've reached the same conclusions I reached in my provisional decision for the same reasons.

My final decision

For the reasons explained above and in my provisional decision, I uphold Mr C's complaint.

To put things right, AvantCredit Of UK, LLC should:

- a) add together the total of the repayments made by Mr C towards interest, fees and charges on the loan.
- b) calculate 8% simple interest on the individual payments made by Mr C which were considered as part of a), calculated from the date Mr C originally made the payments, to the date the complaint is settled.

then refund the amounts calculated in a) and b)

- c) remove any adverse information recorded on Mr C's credit file in relation to the loan.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 10 April 2020.

Margaux Stride-Noble
ombudsman

Copy of provisional decision

Complaint

Mr C complains that AvantCredit Of UK, LLC ("AvantCredit") acted irresponsibly by lending him money in March 2016.

Background

In March 2016, Mr C applied for a loan. AvantCredit lent him £5,500 to be repaid over three years at £237.27 a month. The total amount repayable over the full term of the loan was £8,541.70.

Mr C thinks AvantCredit shouldn't have lent him the money.

Our adjudicator looked at the complaint, and thought Mr C's complaint about the loan he took out in March 2016 should be upheld. She didn't think AvantCredit had carried out sufficient checks before deciding to lend Mr C the money. And she thought that had AvantCredit done more, it would have realised the loan repayments weren't sustainable. So, she recommended that AvantCredit refund Mr C any charges and interest he paid on the capital sum he borrowed. She also recommended AvantCredit remove any negative information about the loan from Mr C's credit file.

AvantCredit didn't agree with our adjudicator's assessment of Mr C's complaint. So, the complaint has passed to me to decide.

My provisional findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I'm currently minded to uphold Mr C's complaint. I'll explain why.

When bringing his complaint to our service, Mr C explained that he was unable to afford the loan repayments alongside his other credit commitments, which included a large overdraft, credit cards and a number of short-term loans. He also explained to us that he had a gambling addiction.

As AvantCredit was entering a regulated credit agreement, it needed to assess Mr C's creditworthiness. This included the potential for the commitments under the agreement to adversely impact Mr C's financial situation, and the ability for Mr C to make repayments as they fell due over the term of the loan.

In particular, the regulator's rules that applied to AvantCredit at the time said it needed to make reasonable and proportionate checks when assessing Mr C's ability to meet the monthly repayments in a sustainable manner without Mr C incurring financial difficulties or experiencing significant adverse consequences. This included Mr C being able to make the payments on time while meeting his other reasonable commitments and without having to borrow to meet the monthly loan repayments.

The checks AvantCredit did had to be proportionate to the specific circumstances of the loan. And what is proportionate will depend on a number of factors including things like the customer's financial history, their financial situation at the time of the loan application, along with other factors such as the amount borrowed, type of loan and the cost of the credit being sought.

In light of this, I think that reasonable and proportionate checks should 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 the customer is required to make payments for an extended period).

I've carefully considered what reasonable and proportionate checks should have looked like when AvantCredit was in the process of approving the loan for Mr C. And I've thought carefully about what checks AvantCredit says it did and whether those were proportionate in the circumstances.

Having considered the available information, I'm not satisfied the checks carried out by AvantCredit were reasonable and proportionate when assessing Mr C's ability to repay the loan in a sustainable manner. I'll explain why.

AvantCredit believes the affordability checks it carried out when Mr C applied for the loan, were sufficient. It says this is evidenced by the fact that Mr C was able to make his contractual repayments for the majority of the loan term. It also says it doesn't think it did anything wrong by approving Mr C's loan application, as the funds would have enabled him to consolidate some of his existing debt and reduce his overall repayments to creditors.

In support of what it's said, AvantCredit has provided us with some information about the checks it carried out when Mr C applied for the loan. This included a copy of the income and expenditure form, which Mr C completed during the loan application process. It's also sent us a copy of the affordability report it used when deciding to loan Mr C the money.

Mr C's income and expenditure form shows he declared a monthly income of £1,650 and monthly expenses of £600. This seems to suggest that Mr C had around £1,050 as disposable income each month.

AvantCredit's affordability report, however, shows Mr C had taken out at least six short-term loans in the months prior to this loan application. The report also shows that Mr C had paid around £1,027 towards short-term loans in the month before he applied for this loan and owed around £7,789 to his creditors. This suggests that Mr C was relying on credit to meet his monthly expenses, despite his declared monthly expenses of £600 a month.

So, I've gone on to consider what other information was available to help establish a clear picture of Mr C's financial situation around the time of the loan.

Mr C has provided us with copies of his bank statements for the period of February and March 2016. As the loan application took place on 8 March 2016, I've had a look at his statements for the month of February and the first week of March. These statements show Mr C had a total of 31 separate transactions relating to short-term loans, 9 of which were credits to his account. I can also see that Mr C had five credit cards, which he was making small regular payments towards.

In addition to this, the bank statements show significant amounts of gambling transactions. During the period 1 February to 8 March 2016, Mr C had spent over five times his monthly salary on gambling websites.

The statements also show he was heavily reliant on his large overdraft facility. At the point at which Mr C applied for this loan, his account was overdrawn by around £2,800, despite being paid his salary one week earlier. His bank statements also show that the day after he received the loan payment of £5,500, his account reverted back to into its overdraft, leaving his account overdrawn by around £2,800.

While I can see that Mr C settled some of his existing loans using the funds from this loan, there were still other loans which he wasn't able to settle. The statements show that within a week of receiving the funds for this loan, Mr C applied for two further short-term loans to help him meet his financial commitments.

While I accept that Mr C was able to meet the majority of his contractual loan repayments, I don't think this shows that the repayments were sustainable. I'm satisfied that Mr C's bank statements show that he was relying on additional lending and credit facilities to help meet his financial obligations. And while this loan was used to help consolidate some of Mr C's existing loans, the time over which Mr C would need to make his loan repayments sustainably, had increased significantly.

Based on everything I've seen, I think AvantCredit ought to have known that their assessment of Mr C's financial situation wasn't a true reflection of his actual financial situation and spending habits, and that the loan repayments weren't sustainable in the circumstances.

So I've gone on to consider what would have happened had AvantCredit carried out further checks. In the circumstances of this complaint, I think that had AvantCredit carried out further affordability checks using the available information, I think it's unlikely that it would have thought the lending to Mr C was sustainable.

Taking everything I've said into account, I think the information I've seen gives a strong impression that Mr C was struggling to fund his spending habits and day-to-day expenses – despite his monthly salary.

Based on what I've seen of Mr C's actual financial situation, I think it's more likely than not that he would have had to borrow again during the lifetime of this loan in order to meet his monthly repayments.

For these reasons, I don't think Mr C was going to be able to repay this loan in a sustainable manner. I think that if AvantCredit had made proportionate checks it would have realised this. And I think Mr C has lost out because of what AvantCredit did wrong.

putting things right

I'm satisfied that AvantCredit was irresponsible when it approved Mr C's loan,

- d) AvantCredit should add together the total of the repayments made by Mr C towards interest, fees and charges on the loan.
- e) It should calculate 8% simple interest* on the individual payments made by Mr C which were considered as part of a), calculated from the date Mr C originally made the payments, to the date the complaint is settled.

AvantCredit should then refund the amounts calculated in a) and b)

- f) AvantCredit should 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. It should give Mr C a certificate showing how much tax it has deducted, if Mr C asks for one.

My provisional decision

I currently intend to uphold Mr C's complaint. And I intend to require AvantCredit Of UK, LLC to put things right as outlined above.

Margaux Stride-Noble
ombudsman