

The complaint

Mr B says AvantCredit of UK, LLC irresponsibly lent to him. He says that it didn't make proper affordability checks, and if had done it wouldn't have lent to him.

What happened

This complaint is about one loan Avant provided to Mr B. On 6 January 2015 he borrowed £1,600. He was due to make 48 repayments of £87.56 making a total repayment of £4,202.86. I understand Mr B had problems repaying the loan and it was sold to a third party.

Our adjudicator upheld Mr B's complaint. She thought that Mr B shouldn't have been given the loan. This was because the information that Avant had showed that Mr B would have very little left over after the loan repayments. And Avant was aware of some other financial problems that Mr B had recently had.

Avant disagreed. It didn't comment on the merits of the what the adjudicator said, it talked about the jurisdiction of this complaint. I've looked at this separately and found that we can consider this complaint.

As no agreement has been reached the complaint was passed to me, an ombudsman, to issue a decision.

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 and irresponsible lending - including all of the relevant rules, guidance and good industry practice - on our website.

Having carefully thought about everything, I think that there are two overarching questions that I need to answer in order to fairly and reasonably decide Mr B's complaint. These two questions are:

1. Did Avant complete reasonable and proportionate checks to satisfy itself that Mr B would be able to repay the loan in a sustainable way.
 - If so, did it make a fair lending decision?
 - If it didn't, would a proportionate check have shown that Mr B would've been able to repay the loan in a sustainable way?
2. Did Avant act unfairly or unreasonably in some other way?

The rules and regulations in place required Avant to carry out a reasonable and proportionate assessment of Mr B'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 B. In practice this meant that business had to ensure that making the payments to the loan wouldn't cause Mr B 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 B. 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 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/cost of credit they are seeking. Even for the same customer, a proportionate check could look different for different applications.

In light of this, 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 of time 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 of the arguments, evidence and information provided in this context and what this all means for Mr B's complaint.

Avant has provided evidence to show that before lending it asked Mr B for information about his income and expenditure. It also looked at some information it received from a credit reference agency. Based on those checks Avant thought it was fair to lend.

Our adjudicator thought proportionate checks for this loan would've shown that Mr B was unlikely to have been able to repay it in a sustainable manner. I have independently reviewed the evidence of Mr B's income and expenditure and have come to the same conclusions as the adjudicator for broadly the same reasons. I've explained why below.

As Avant didn't add anything about this in response to the adjudicator's opinion I won't go into a lot of detail here. But Avant found out that Mr B's income at the time of the loans was £800 a month. He had general expenditure of £552 a month. And he already had credit repayments of about £112 a month. So, adding the Avant repayment to this, would leave him less than £50 a month for any unforeseen expenditure. I think this is much too low an amount over the two-year term of the loan.

Added to this, there was evidence of Mr B using other, similar high cost, and short term, lenders before taking this loan, and he'd had some problems repaying these in the recent past.

Taking all of this together. I think Avant should've seen Mr B wouldn't have been able repay this loan in a sustainable way, as did happen. I think that Avant shouldn't have given this loan to Mr B and I think he's lost out as a result of this. So, I'm upholding Mr B's complaint and Avant needs to put things right.

I've also thought about whether Avant acted unfairly in some other way and I haven't seen any evidence that it did.

Putting things right

- Remove all interest, fees and charges applied to the loan.
- Treat any payments made by Mr B as payments towards the capital amount of £1,600.
- If Mr B has paid more than the capital then any overpayments should be refunded with 8%* simple interest from the date they were paid to the date of settlement.
- But if there's still an outstanding balance, Avant should try and come to a reasonable repayment plan with Mr B.
- Remove any adverse information about the loan from Mr B's credit file.

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

My final decision

For the reasons given above, I'm partially upholding Mr B's complaint. AvantCredit of UK, LLC should put things right for Mr B 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 4 May 2022.

Andy Burlinson
Ombudsman