DRN-3233604

The complaint

Mr P complains that AvantCredit of UK, LLC provided her with a loan she couldn't afford to repay.

What happened

AvantCredit provided Mr P with two loans. The first, on 25 August 2015 was for £11,100, repayable over 60 months at the monthly rate of £432.50, paid off by May 2016. The second, on 24 May 2016 was for £5,000 repayable over 24 months at the rate of £275.72, paid off in November 2016.

Mr P says he struggled to pay the loans and had to borrow more money to pay off each loan. He was self-employed and on a variable income but says he wasn't asked for proof of income or bank statements.

AvantCredit said Mr P provided it with details of his financial circumstances in his loan applications. It considered this information and verified the income amounts you provided against information available to it from the Credit Reference Agencies. It obtained a recent bank statement for both loans. It assessed that the loans were affordable in both cases.

Mr P has provided a recent credit report and bank statements covering the period of both loans, from May 2015 to July 2016.

Our adjudicator said that for both loans it was unlikely Mr P would've been able to sustainably repay either of them. He said it was irresponsible for AvantCredit to have approved the loans based on what it knew of Mr P's circumstances when he made his application. He said Avant Credit should repay all the interest and charges for both loans.

The matter has been passed to me for further consideration.

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

Considering the relevant rules, guidance, and good industry practice, I think the questions I need to consider in deciding what's fair and reasonable in the circumstances of this complaint are:

- Did AvantCredit complete reasonable and proportionate checks to satisfy itself that Mr P would be able to repay the loan in a sustainable way?

- If not, would those checks have shown that Mr P would have been able to do so?

The rules and regulations in place required AvantCredit to carry out a reasonable and proportionate assessment of Mr P'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 AvantCredit had to think about whether repaying the loan would be sustainable. In practice this meant that the business had to ensure that making the repayments on the loan wouldn't cause Mr P undue difficulty or significant adverse consequences. That means he should have been able to meet repayments out of normal income without having to borrow to meet the repayments, without failing to make any other payment he had a contractual or statutory obligation to make and without the repayments having a significant adverse impact on his financial situation.

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 P**.** 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.

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 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).

The first loan was for 60 months, the second for 36 months and the instalments required a substantial commitment from Mr P. So I think AvantCredit needed to carry out thorough assessments.

loan1

AvantCredit obtained recent bank statements for both loans. And I can see that those statements showed a regular income from Mr P's occupation. I think that his income was sufficiently verified. However the statements at the time of the loan application showed Mr P to be consistently running a high overdraft and not managing to reduce it. The credit check showed that Mr P at the time had six accounts in default. The statements show a consistent pattern of borrowing from finance companies and other sources. I think that AvantCredit did do proportionate checks, but those checks should have alerted it to carry out more detailed financial checks, especially in light of the amount of the loan and the time period over which it was to be repaid. So I don't think that AvantCredit made a fair lending decision.

loan 2

From Mr P's bank statements it appears that the £11,100 from the first loan was used up and the account went back into overdraft. It appears that the loan was used to pay off a personal debt. And the account shows that Mr P paid off loan 1 in two tranches, in March and May 2016. He paid that off by further borrowing – AvantCredit should have been able to see this from his statements. Having paid off one substantial loan, he then set about obtaining another loan, this time for £5,000 from AvantCredit. It's not clear what the purpose of this loan was, but it is clear that Mr P's account went back into overdraft, which again he wasn't repaying. I think that taking into account that Mr P's financial situation hadn't improved since the first loan (he still had six accounts in default), on the face of it the loan was unlikely to be sustainable. And I think AvantCredit's checks should have alerted it to carry out more detailed financial checks. I don't think that AvantCredit made a fair lending decision.

Putting things right

It's fair and reasonable that Mr P should pay the capital sum of the loan back, as he has had the benefit of it. But I think AvantCredit should repay all interest and charges from the amount paid under the loan agreement.

AvantCredit should:

- refund all interest and charges Mr P paid on both loans.
- pay interest of 8% simple a year on any refunded interest and charges from the date(s) they were paid (if they were) to the date of settlement.*
- remove any negative information if appropriate about the loans from Mr P's credit file.

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

My final decision

I uphold the complaint and require AvantCredit of UK, LLC to provide the remedy set out under "Putting things right" above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 7 April 2022.

Ray Lawley
Ombudsman