DRN-3233610

The complaint

Mr C complains through his representative that AvantCredit of UK, LLC lent him money on a high interest loan which he couldn't afford to repay.

What happened

AvantCredit provided a loan to Mr C on 29 March 2016, for £19,800 payable over 60 months at the rate of £521 a month. Mr C paid the instalments on the loan up until August 2020, when he agreed payment holidays with AvantCredit. He resumed payments in March 2021.

He complained that the loan was unaffordable to him.

AvantCredit considered Mr C's application, carried an independent verification of his income and a detailed credit check, and obtained and verified a bank statement. It said it had assessed that the loan was affordable and sustainable.

Mr C's representative sent us his bank statements for the period from November 2015 up to and including July 2016, and his file which they had obtained from AvantCredit.

Based on Mr C's declared income, and outgoings and his credit commitments as disclosed by his credit report, our adjudicator said that the loan was likely to have been unaffordable. He noted that Mr C's disposable income wouldn't have been sufficient to meet the instalments required under the loan agreement.

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 C would be able to repay the loan in a sustainable way?

- If not, would those checks have shown that Mr C 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 C'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 AvantCredit had to ensure that making the repayments on the loan wouldn't cause Mr C 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 C**.** 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 such a 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).

Here Mr C was taking out a high interest loan, over 60 months, for a substantial amount. The instalments required a substantial commitment from him. So I think that AvantCredit needed to carry out a thorough assessment for the loan.

AvantCredit's assessment included considering a detailed credit report, and verifying Mr C's income. The said credit report revealed that Mr C had a very high level of indebtedness on credit cards, of over £15,300. He also had two mail order accounts of £1,955 and £8,625. The total repayments required were about £1,224. Mr C had declared a monthly income of around £4,100, which does show in his bank statements, and expenses of £3,300 a month. Adding the credit commitments to that figure, produces a disposable income figure of just under £176, insufficient to meet the instalments under the loan.

This might have been sufficient if Mr C was going to use the loan to pay off his credit commitments. But it's clear from his bank statements that he didn't do this, and AvantCredit doesn't appear to have enquired what he needed the loan for.

I can see from AvantCredit's notes that it verified Mr C's income at £11,169. Its note of 29 March 2016 said:

"*Email customer and inform them of new terms available, issue loan if customer does not respond by end of day. Cust claimed £4,400.00 of income on app, specialist verified £11,169.70 of income via Yodlee, which is £6,769.70 difference. Loan contract is valid: existing loan contract is for £19,800.00, 60 months, 21.9%, new terms available are £20,000.00, 60 months, approximately 22%.*"

The next note says the loan was approved, and Mr C signed the contract without the question of the discrepancy in income being resolved. Indeed AvantCredit appears to have been willing to issue the loan without resolving that query.

According to the nine months of bank statements Mr C provided, he did receive a regular salary of around £4,100. There is one payment of £11,169 which only appears on one month's statement, and appears to have been used mainly to make a one-off "bill payment". I think, bearing in mind the income Mr C himself declared as verified by his bank statements, the figure for income which AvantCredit should have used to assess the affordability was the lower one of £4,100.

I think that AvantCredit carried out proportionate checks. But I think those checks revealed that the loan payments were unsustainable. So I don't think it made a fair lending decision.

Putting things right

As to the appropriate remedy, Mr C has had the capital sum so he should repay that. But AvantCredit should refund the interest and any other charges on the loan. It should:

- Remove all interest, fees and charges applied to the loan.
- Treat any payments made by Mr C as payments towards the capital amount of £19,800.
- If Mr C has paid more than the capital, refund any overpayments to him with 8%* simple interest from the date they were paid to the date of settlement.
- But if there's still an outstanding balance, AvantCredit should come to a reasonable repayment plan with Mr C.
- Remove any adverse information about the loan from Mr C's credit file.

*HM Revenue & Customs requires AvantCredit to deduct tax from this interest. It should give Mr C a certificate showing how much tax it's deducted 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 C to accept or reject my decision before 12 April 2022.
Ray Lawley
Ombudsman