

The complaint

Miss J has complained that AvantCredit of UK, LLC was irresponsible in lending to her.

What happened

In October 2015 AvantCredit provided Miss J with a loan of £3,000. The loan was repayable over 36 months and the monthly repayments were £138.23. The APR was 42.52%. The loan was repaid in April 2021.

Miss J complained that AvantCredit hadn't properly checked she could afford the loan.

AvantCredit looked into her complaint and didn't uphold it. It said its checks had been properly carried out and it thought the loan was sustainable. Miss J referred her complaint to us.

Our adjudicator upheld Miss J's complaint. She thought AvantCredit was wrong to have offered the loan to Miss J.

As AvantCredit disagreed, the complaint has been passed to me.

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 of the relevant rules, guidance and good industry practice - on our website.

Taking into account the relevant rules, guidance and good industry practice, I think the overarching 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 Miss J would be able to repay the loan in a sustainable way?
- If not, would those checks have shown that Miss J would have been able to do so?
- Did AvantCredit act unfairly or unreasonably in some other way?

The rules and regulations in place required AvantCredit to carry out a reasonable and proportionate assessment of Miss J's ability to make the repayments under the loan 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 Miss J undue difficulty or significant adverse consequences. That means she 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 she had a contractual or statutory obligation to make and without the repayments having a significant adverse impact on her 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 Miss J. 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 Miss J's complaint.

Before granting this loan, AvantCredit verified Miss J's income using a standard industry tool. The check came back showing Miss J's monthly income was a minimum of £1,185.64. Miss J also said her expenses (including her other credit commitments) were £450 a month.

AvantCredit carried out a credit search. That showed Miss J had opened 15 credit accounts in the last 12 months. Her total monthly credit payments on her active credit accounts were £1,050. There is also evidence that she had a history of taking pay day lending.

I acknowledge AvantCredit's point that Miss J had applied for the loan to consolidate her existing debts. She had four loans of £2,440, £735, £123 and £92 with repayments of £152, £734, £50 and £114 respectively. She owed £1,037 on her credit card and had an overdraft of £1,600. The loan of £734 would probably have been a priority to repay together with the smaller loans of £123 and £92. She wouldn't have had enough to repay all the loan of £2,440 but could have settled her credit card debt and reduced her overdraft. Assuming she'd done that, her credit commitments could have been reduced but this is all speculation because I haven't seen any evidence that Miss J told AvantCredit what she intended to do with the proceeds of the new loan.

In my opinion the credit search ought to have raised concerns to AvantCredit that Miss J had problems managing her finances. I think AvantCredit should have been concerned about whether Miss J could afford the loan. Also given Miss J's credit file showed a clear history of using short-term loans, I think it would have been advisable to try to find out whether any recent loans weren't yet on her credit file. I think overall based on what it had initially gathered, it should have looked to carry out a complete review of Miss J's finances to assure itself that she could repay the loan in a sustainable way, especially as the loan term was for 36 months.

Miss J has provided us with some bank statements for the period just before taking out this loan. I'm not suggesting here that these are the checks that AvantCredit should necessarily have done. But I think looking at these might have given a good indication of Miss J's financial situation around the time she applied for this loan.

They show that for the month of August she took out three payday/short term loans of over £800 and was paying over £600 in respect of her existing credit commitments. She was near the limit of her arranged overdraft. This suggests to me that Miss J was at that time struggling financially and was applying for short-term credit to repay her other credit commitments. That can be one of the hallmarks of someone in financial difficulty. If AvantCredit had carried out proportionate checks, I think it is more likely than not that it would have uncovered this and then not lent to Miss J. So I'm not persuaded that AvantCredit acted fairly in lending to Miss J.

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

Putting things right

I think it is fair and reasonable for Miss J to repay the principal amount that she borrowed, because she's had the benefit of that lending. But as I have concluded AvantCredit shouldn't have provided the loan, it should look to remove the interest and any fees and charges from the amount due under the loan agreement.

AvantCredit should:

- refund all interest, fees and charges on the loan;
- pay interest* of 8% simple a year on any refunded interest, fees and charges from the date they were paid (if they were) to the date of settlement; and
- remove any negative information about the loan from Miss J's credit file.

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

My final decision

For the reasons given above, I uphold Miss J's complaint and require AvantCredit of UK, LLC to put things right as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss J to accept or reject my decision before 28 March 2022.

Elizabeth Grant
Ombudsman