

## The complaint

Ms A complained that AvantCredit of UK, LLC lent to her irresponsibly and provided her with unaffordable lending.

## What happened

AvantCredit provided a loan to Ms A as follows:

Date taken	Loan amount	Term	Typical monthly repayment	Total amount repayable	Loan Repaid
December 2016	£2,200	36 months	£107.82	£3,881.46	December 2019

When Ms A complained to AvantCredit it didn't uphold her complaint so she brought her complaint to us. One of our adjudicators looked at the complaint and thought that AvantCredit shouldn't have provided the loan. Our adjudicator explained why she was recommending that the complaint should be upheld and she set out directions indicating what AvantCredit should do to put things right.

AvantCredit disagreed. It mainly said that Ms A had around £325 disposable income left after paying its loan on top of all her other monthly outgoings and her spending on credit would be £394 after taking out this loan, which was around 26% of her income.

So, as the complaint hasn't been resolved, it comes to me to decide.

## 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 approach to unaffordable/irresponsible lending complaints on our website and I've kept this in mind while deciding this complaint. Having done so, I think our adjudicator reached a fair and reasonable outcome and I am upholding Ms A's complaint for broadly the same reasons. I'll explain why I say this.

The rules don't say what a lender should look at before agreeing to lend. But reasonable and proportionate checks should be carried out. Lenders must work out if a borrower can sustainably afford the loan repayments alongside other reasonable expenses the borrower also has to pay. This should include more than just checking that the loan payments look affordable on a strict pounds and pence calculation – a proportionate check might also require the lender to find out the borrower's credit history and/or take further steps to verify the borrower's overall financial situation.

If reasonable and proportionate checks weren't carried out, I need to consider if a loan would've been approved if the checks had been done. If proportionate checks were done

and a loan looks affordable, a lender still needs to think about whether there's any other reason why it would be irresponsible or unfair to lend. For example, if the lender should've realised that the loan was likely to lead to significant adverse consequences or more money problems for a borrower who is already struggling with debt that can't be repaid in a sustainable way.

I have reviewed the information AvantCredit gathered when it agreed to provide this loan. Alongside asking Ms A what her regular outgoings were each month, AvantCredit also carried out its own credit checks to understand Ms A's credit history and current credit commitments and it took steps to verify that her declared income was around £1,500 per month – which its credit checks also showed.

Like our adjudicator, I think AvantCredit should have been concerned to see that when Ms A applied for this loan the credit report it obtained for her showed that within the previous 12 months she had defaulted on an account that was now with a debt collection agency (her fourth default in three years).

She had a credit card with a balance of £2,448 which was substantially over the £1,850 account limit and which she had relied on for cash advances totalling £1,260 - which is a particularly expensive way to obtain spending money.

Her total debt balance had increased by around £200 over the previous 3 months and she had used all her available credit.

It looked like Ms A often wasn't making any more than the minimum monthly repayments on the card which effectively serves mainly to extend the debt and it adds very significantly to the long term cost of that credit – repayments at that level are insufficient to make any meaningful inroads into card balances.

AvantCredit calculated that Ms A was paying £339 in total each month towards her credit accounts (not including any mortgage). So it was evident that with her new AvantCredit loan, she would now need to spend at least £446 on her unsecured loans – which by my reckoning is almost 30% of her take home pay.

On top of this, she had a mortgage and two secured loans on her house which cost her a further £242 – meaning that Ms A would need to pay almost half her monthly income to service her credit commitments.

Whilst having other outstanding lending or even an impaired credit history wouldn't be unusual for a borrower applying for this type of expensive borrowing, and it wouldn't necessarily be a bar to lending, I don't think AvantCredit took properly into account what the information it had gathered showed about Ms A's overall financial situation and the likelihood of her being able to pay its loan in a sustainable manner.

I've thought carefully about what I think a responsible lender should have made of all this information and in particular whether it was enough for AvantCredit to make a fair decision to lend, particularly as it understood that Ms A intended to spend the money – so it would be adding to her overall indebtedness.

I think our adjudicator was right to say that the indications were that Ms A wasn't managing her money well and she was already struggling financially.

Despite its affordability assessment that suggested she had spare income, this was clearly contradicted by the signs AvantCredit saw that her finances were, in reality, under significant stress and her debt had become unmanageable.

I think it was clear that its affordability assessment couldn't safely be relied on and I don't think AvantCredit was reasonably able to be satisfied in these circumstances that Ms A would be able to make its loan repayments in a sustainable way.

Also, bearing in mind the repayment of this loan on top of the debt AvantCredit saw Ms A was already responsible for paying, I think it's fair to say that Ms A needed to pay a significant portion of her income towards credit. And in my opinion, as a responsible lender, AvantCredit should've realised that Ms A would likely struggle to repay this loan – especially bearing in mind the 36 month loan term.

So, thinking about all the information AvantCredit had gathered, I can't reasonably say that it made a fair lending decision based on the information in front of it. I don't think AvantCredit was able to safely conclude that its loan would be sustainably affordable for Ms A. So it shouldn't have provided it and AvantCredit needs to put things right.

Our adjudicator mentioned that Ms A had sent us further information about her financial situation. I don't need to say more about this as I think AvantCredit had enough in the information in front of it to have realised that adding to Ms A's debt was likely to be unsustainable for her and put her in the position of needing to borrow further in order to be able to repay her other debt.

I would just mention that the up to credit report she sent us shows, as I think was reasonably foreseeable, that she ran into further, serious financial difficulties, including arrears on one of her mortgage accounts which potentially put her home at risk.

So it isn't correct to suggest that the fact Ms A repaid her loan on time with no issues means that she was able to do so in a way that was sustainable – that's not borne out by the information I've seen which supports my view that AvantCredit's loan was detrimental to Ms A.

So, I am upholding Ms A's complaint that she should not have been given the loan.

### **Putting things right**

Our adjudicator didn't recommend that AvantCredit should pay any additional redress. Ms A hasn't commented on that and I haven't seen anything which makes me think AvantCredit acted unfairly towards Ms A in any other way.

So I'm not awarding any additional redress.

And I think it is fair and reasonable for Ms A to repay the capital amount that she borrowed, because she had the benefit of that lending.

But she has paid extra for lending that should not have been provided to her. In line with this Service's approach, Ms A shouldn't repay more than the capital amount she borrowed.

AvantCredit should do the following:

- add up the total amount of money Ms A received as a result of having been given the loan. The repayments Ms A made should be deducted from this amount

- if this results in Ms A having paid more than she received, then any overpayments should be refunded along with 8% simple interest\* (calculated from the date the overpayments were made until the date of settlement)
- whilst it's fair that Ms A's credit file is an accurate reflection of her financial history, it's unfair that she should be disadvantaged by any adverse information recorded about a loan that was unfairly provided. So AvantCredit should remove any negative information recorded on Ms A's credit file regarding the loan.

\*HM Revenue & Customs requires AvantCredit to deduct tax from this interest. AvantCredit should give Ms A a certificate showing how much tax has been deducted if she asks for one.

### **My final decision**

I uphold this complaint and direct AvantCredit of UK, LLC to take the steps I've set out above to put things right for Ms A.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms A to accept or reject my decision before 9 April 2022.

Susan Webb  
**Ombudsman**