DRN-3277801

Financial Ombudsman Service

The complaint

Mr H has complained that AvantCredit of UK, LLC was irresponsible in lending to him.

What happened

In September 2015 AvantCredit provided Mr H with a loan of £2,700. The loan was repayable over 48 months and the monthly repayments were £148.87. The APR was 79.57%.

The loan was repaid out of the proceeds of a further loan of £4,200 from AvantCredit in May 2016. The second loan was repayable over 60 months and the monthly repayments were £154.78. The APR was 45.4%.

Mr H said the purpose of both loans was to consolidate his debts.

Mr H complained that AvantCredit hadn't properly checked he could afford the loans.

AvantCredit looked into his complaint and didn't uphold it. It said its checks had been properly carried out and it thought the loans were sustainable. Mr H referred his complaint to us.

Our adjudicator upheld Mr H's complaint. She thought AvantCredit was wrong to have offered the loans to Mr H.

As AvantCredit didn't agree, 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 Mr H would be able to repay the loan in a sustainable way?
- If not, would those checks have shown that Mr H 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 Mr H'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 Mr H 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 H**.** 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 H’s complaint.

Loan 1
Before granting this loan, AvantCredit asked Mr H about his income and expenses. Mr H told it that his net monthly income was £1,120. It verified that figure using a standard industry tool. The check came back showing Mr H’s monthly income was a minimum of £1,054. Mr H also said his expenses (including his other credit commitments) were £400 a month. I note that although he said he was living in rented accommodation, his expenditure figures didn’t include an amount in respect of rent.

AvantCredit carried out a credit search. That showed Mr H had opened three new credit accounts in the last three months. His total monthly credit payments on his active credit accounts were £335. There is also evidence that he had a history of taking pay day lending. He was almost up to the limit on his overdraft and his credit card. There was one over-indebtedness indicator present.

I acknowledge that Mr H had applied for the loan to consolidate his existing debts. Assuming he’d done that, his credit commitments could have been reduced but this is all speculation because I haven’t seen any evidence that Mr H told AvantCredit which debts he intended to pay off with the proceeds of the new loan. Also AvantCredit could have paid off the debts directly rather than paying over the whole of the loan amount to Mr H but didn't do so.

In my opinion the credit search ought to have raised concerns to AvantCredit. The fact that he was already committed to spending almost a third of his monthly income on credit repayments could have been seen as an indication that Mr H had problems managing his finances. Also given Mr H'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 his credit file. I think overall based on what it had initially gathered, it should have looked to carry out a complete review of Mr H's finances to assure itself that he could repay the loan in a sustainable way, especially as the loan term was for 48 months.

Mr H 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 Mr H's financial situation around the time he applied for this loan.

They show that for the month of August 2015 he took out three payday/short term loans and spent more than his net income on gambling transactions. 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 Mr H. So I'm not persuaded that AvantCredit acted fairly in lending to Mr H.

Loan 2
At the time Mr H applied for the second loan, he said his monthly income was £1,120 and his credit commitments had grown to about half of his income. I also note AvantCredit was aware that Mr H had fallen into difficulties with repaying the first loan after a few months. It had had to contact him about a missed repayment. If Mr H was having trouble repaying the first loan, it seemed to me that AvantCredit should have known that it would be probably be even more difficult for him to repay the second loan with slightly higher repayments over an longer period.

In the light of this I think AvantCredit should have been aware that Mr H's financial position wasn't getting better and that further credit was likely to make his situation even worse. I don't think AvantCredit treated Mr H fairly in approving the second loan.

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 Mr H to repay the principal amount that he borrowed, because he's had the benefit of that lending. But as I have concluded AvantCredit shouldn't have provided the loans, it should look to remove the interest and fees from the amount due under the loan agreements. If AvantCredit has sold the outstanding debt, it should buy it back if it is able to do so and then take the following steps. If it is not able to buy the debt, it should liaise with the new debt owner to achieve the results outlined below.

AvantCredit should:

- refund all interest, fees and charges on the loans;
- 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 loans from Mr H's credit file.

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

My final decision

For the reasons given above, I uphold Mr H'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 Mr H to accept or reject my decision before 4 April 2022.

Elizabeth Grant
Ombudsman