The complaint

Mr A, through his representative, complains that AvantCredit of UK, LLC (Avant) lent to him irresponsibly. He said it should not have given him such a big loan.

What happened

In October 2015 Mr A was approved for a £5,000 loan repayable at just over £220 each month for 36 months. In July 2017 the loan was sold to a third party due to consistent failures to pay.

Information Avant has supplied to us indicates that Mr A wanted the loan to consolidate other debts. Recently it has sent us a document listing those other debts which it says Mr A wanted to consolidate.

Avant has information which states that Mr A had been self employed by a home-credit company as a salesman for seven months at the time he applied in October 2015. He had said he earned £1,600 a month. Later this figure seemed to alter to £2,371 a month and I will come back to this later in my decision.

Avant had information that Mr A's outgoings were £800 which included rent, car bills and some other items which did not seem to include credit commitments as it was not itemised as that on the information sent to us. And Avant had carried out a credit search which indicated in two different parts of that report at least that Mr A's '*total monthly payments on all accounts excluding mortgage currently active'* was £572.

After Mr A had complained, Avant sent its final response letter (FRL) and did not uphold his complaint. After it had been referred to the Financial Ombudsman Service, one of our adjudicators looked at the complaint and thought that the information Avant saw from the checks it had carried out was concerning. And our adjudicator thought Avant should have done more before deciding to lend.

Avant then wrote to us to say that it wished to defend the complaint further and asked for it to be referred to an ombudsman. Avant sent a document indicating that the consolidation of Mr A's other loans would have been beneficial to him: '*The loan for debt consolidation would remove all existing debt the customer had and provide a new monthly payment at £220, taking the customer's credit spending per month from 24% of their income to 9.3%.'*

The unresolved complaint was passed 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 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 Avant complete reasonable and proportionate checks to satisfy itself that Mr A would be able to repay the loan in a sustainable way?
- If not, would those checks have shown that Mr A would have been able to do so?

The rules and regulations in place required Avant to carry out a reasonable and proportionate assessment of Mr A'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 Avant 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 A 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 Avant to simply think about the likelihood of it getting its money back - it had to consider the impact of the loan repayments on Mr A. 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).

Mr A was applying for £5,000 repayable over 36 months and as such I think that proportionate checks ought to have included a full financial assessment of his circumstances before lending. It was a large loan sum and spread over a significant period. I note what Avant did obtain, but I do not think that it went far enough. Alternatively, having obtained the information it did not apply that knowledge appropriately.

The first item I reviewed is the income and expenditure information. Mr A's income was noted as £1,600. For a full financial review by Avant before lending, I'd expect Mr A's income to have been verified in some way.

Mr A had told Avant he was self-employed and had been so for a relatively short period – about seven months. My view is that a relatively new role self-employed individual usually requires a higher level of research to check that Mr A's drawings from his self-employment was a regular figure. And what it was he could draw. And account notes do not show that Avant was having much success. Some of these are duplicated here and I have removed Avant employee names where necessary.

> *'Unable to automatically detect a Yodlee employer match. Manual review is required. Oct 7, 2015 10:03 PM by System*
>
> *lvm for employer explanation cant not verify employer by yodlee Oct 8, 2015 12:51 PM by…'*

I understand that 'Yodlee' is an automated process.

One way to have verified this income would have been to ask to see Mr A's records on his self-employed status and the drawings for the previous few months. Another could have been to have reviewed his bank statements. I think the latter option was what Avant was planning to do as there is an account note which says:

> *Note: Loan processing ▸ IA ▸ In Progress - Unable to verify income \\customer needs to submit 30 day bs. Oct 8, 2015 4:51 PM by*

I think it's reasonable to interpret *'bs'* as *'bank statements'* as I know that is a verification route for lenders.

Another note for the next day suggests that Avant had not been able to get hold of Mr A and/or had not received those bank statements and had had to use another route:

> *VER: updated Yodlee to 'Verified Income amount from Income stated source' Oct 9, 2015 1:59 PM*

This suggests that Avant had approach the *'income stated source'* which I take to be the home credit business for which Mr A worked as a salesman. But I've no other information about this. And so its not conclusive for me. I mention it here to show the history of the verification process as revealed by the Avant account notes I've been sent.

Using additional information we have on our files from Mr A, I have seen that Mr A's home-credit employer was able to provide a list of payments made to him from early 2013 to early 2014 (52 weeks) and the total had been around £10,000 across the whole year.

From this I know two things: that Mr A could get that self-employed record of payments if Avant had asked him, and that in early 2014 he was earning around £10,000 a year. That does not translate to be £1,600 a month Avant had recorded as Mr A's income in October 2015. And I accept that its feasible Mr A's income had increased to £1,600.

But what it does indicate to me is that the £2,371 a month figure Avant appears to have proceeded with as Mr A's income seems less likely.

Another concern which, in my view demonstrates that Avant knew there was a discrepancy between the £1,600 monthly income figure and the £2,731 is revealed in this account note duplicated here:

> *Email customer and inform them of new terms available, issue loan if customer does not respond by end of day. Cust claimed £1,600.00 of income on app, specialist verified £2,371.00 of income via Yodlee, which is £771.00 difference. Loan contract is valid: existing loan contract is for £5,000.00, 36 months, 39.8%, new terms available are £5,000.00, 36 months, approximately 40%. Oct 9, 2015 1:59 PM*

This note suggests that Avant was content to issue the loan even if Mr A did not respond. Avant had noticed the discrepancy of £771 between what appears to have been offered as an income of £1,600 for which earlier Avant had noted that it needed bank statements to verify, and the new figure from a system check. And yet Avant seemed content to proceed. I do not know whether Mr A responded '*by end of day'* on 9 October 2015.

Even if I am wrong on this interpretation of the account notes, the implications of not being sure on his income was significant. And I say this because Avant had calculated affordability on figures which were: income £2,371, regular expenditure £800, plus £572 for other credit commitments plus the Avant loan of £220 = £1,592 (not including food). So according to Avant that would have left him with £779 each month.

But using the same figures on a £1,600 monthly income (excluding food) does not indicate affordability at all. Mr A would have been left with £8 each month.

So, using Mr A's bank statements I have looked to see if his income from his self-employed salesman work amounted to £2,371 each month. And I do not think it did.

Additionally, when considering the verified monthly income and credit commitments showing on the credit file search, Mr A had to pay a significant portion of his monthly income towards the combined monthly consumer credit payments. And I say this having used the higher figure of £2,371 plus the known credit commitment spend of £572 plus the £220 a month Avant credit cost. So the total credit cost of £792 with a possible income of £2,371 would have been 33% of his overall income. As the commitments were potentially such a substantial portion of his income, I'm of the opinion that it's unlikely he would've been able to make his repayments in a sustainable manner.

Avant has, after our adjudicator's view had been received, relied on the consolidation of loans ultimately being beneficial to Mr A. Avant said that the £572 credit commitment liability would not have been paid and it would have been replaced with its £220 each month, therefore reducing *'…the customer's credit spending per month from 24% of their income to 9.3%.'*

Its theory may be correct but I can see from bank statements I've received from Mr A for the start of the lending period that the full £5,000 was paid to Mr A directly. So, Avant did not pay down any of Mr A's debts directly which I know can be done. Avant did not appear to have ensured that the money was going to be used for what Mr A said it was for: loan consolidation. And in fact, within a few days, Mr A appears to have made several small payments to several high cost instalment loans, taken cash, made betting and gaming transactions amounting to £960 and paid for a holiday costing over £2,000

Whilst I appreciate that Avant did not have control over what the money was used for after it was paid to Mr A, if it is seeking to use the defence that Mr A would have been in a better position after taking its loan than before, then I'd also expect to have seen evidence that Avant did control what the capital funds were used for. I have seen no evidence of this nature and so I reject Avant's argument.

And on Avant's own submissions, that reduction in credit commitment from 24% to 9.3% was clearly an important factor for it before approving the loan. On that part I agree. But it did not then go on to ensure that the outcome for Mr A was going to be the reduction to 9.3%. Instead Avant paid the full £5,000 to him.

Overall, I do not see satisfactory evidence that it carried out full check of verifying Mr A's self-employed drawings or income. Its unclear where and how the £2,371 income figure was arrived at. But it chose to proceed with that figure and so even if I accept that Avant was content it had verified that income figure satisfactorily, still there is the additional element of the level of indebtedness it knew Mr A was entering into by taking on its loans as well as his existing credit commitments of £572 a month.

Avant was very aware of Mr A's indebtedness to other lenders, and that Mr A's monthly commitment needed to reduce. Avant has said that by offering him its own loan it was assisting him to do that. But I do not think it achieved that aim. It lent to him without the necessary checks and safeguards a responsible lender would make. And I think that on Mr A's higher income figure of £2,371, that left him with a £792 a month credit commitment which I consider would have been too high for Mr A.

I think Avant ought not to have lent to Mr A.

Putting things right

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

I understand that Avant has sold the outstanding debt and so Avant should buy it back if it is able to do so and then take the following steps. If Avant is not able to buy the debt back then Avant should liaise with the new debt owner to achieve the results outlined below.

- Avant should remove all interest, fees and charges from the balance on the outstanding loan, and treat any repayments made by Mr A as though they had been repayments of the principal on this loan. If this results in Mr A having made overpayments then Avant should refund those overpayments with 8% simple interest* calculated on the overpayments, from the date the overpayments would have arisen, to the date the complaint is settled.

- However, if there is still an outstanding balance then Avant should try to agree an affordable repayment plan with Mr A.

- Avant should remove any adverse information recorded on Mr A's credit file in relation to the loan. Avant does not have to amend Mr A's credit file until it has been repaid.

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

My final decision

My final decision is that for all the reasons I have given, I uphold Mr A's complaint and I direct that AvantCredit of UK, LLC does as I have outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 14 April 2022.

Rachael Williams
Ombudsman