

The complaint

Miss C complains that AvantCredit of UK, LLC lent her money on high interest loans she was unable to afford to repay.

What happened

Miss C was provided with the following loans by AvantCredit:

		Amount of loan	Term	Monthly repayment	Amount repayable	Date repaid
Loan 1	03/01/2016	£5,400	36 months	£288.56	£10,383	14/06/2016
Loan 2	14/06/2016	£11,500	48 months	£445.17	£21,368	Outstanding loan sold on

Miss C says the loans were unaffordable to her, and she had to borrow money in order to pay them. She paid off the first loan by borrowing. She fell into arrears with the second loan and has been struggling to keep up with the repayments ever since. She was unable to pay most of the payments on the loan from about July 2017. The debt has since been sold on.

For both loans, AvantCredit carried out affordability checks, including obtaining a credit report and details from Miss C's application form, and, for the first loan obtaining a recent bank statement. AvantCredit says it verified her income for both applications.

Our adjudicator said that AvantCredit didn't make a fair lending decision in respect of either loan. For loan 1, she pointed out that Miss C's credit commitments already exceeded her income so it was unaffordable. For loan 2 she said it would have been clear that Miss C was having problems managing her money. As well as having a number of loans and credit card debts, she had borrowed money from her partner and other family members. She thought that in respect of both loans AvantCredit hadn't made fair lending decisions.

AvantCredit disagreed, it said that both loans were for debt consolidation, so after repaying various debts the loans would have been affordable.

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 Miss C would be able to repay the loans in a sustainable way?
- If not, would those checks have shown that Miss 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 Miss C's ability to make the repayments under the agreements. 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 loans would be sustainable. In practice this meant that AvantCredit had to ensure that making the repayments on the loans wouldn't cause Miss C 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 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).

Miss C had a low income, and the loans were for a high amount and required a considerable commitment from Miss C. So AvantCredit should have carried out a thorough assessment of Miss C's financial circumstances at the time of the application.

loan 1

In respect of this loan Miss C's income was assessed at around £2,000 a month. Her credit commitments, as set out in AvantCredit's records were around £2,404 and this didn't take account of some credit card debts. The loan was plainly unaffordable.

AvantCredit says the loan was intended to be a consolidation loan, designed to pay off a number of Miss C's debts. I think in light of the fact that her income was less than her credit commitments it would have been essential to make sure the loans were paid off. But AvantCredit hasn't shown in its records that the loan was used for paying off specific loans. It

could have stipulated that in order to borrow the money, the loans had to be paid off e.g. by paying the loan companies out of the loan before providing any money to Miss C. It didn't do that and I think as a result the loan was unaffordable to Miss C.

Even if the existing loans AvantCredit mentioned to us had been paid off it estimated that Miss C would still have been paying about 45% of her income on credit commitments, a very high figure, which would have made any further credit unsustainable..

I think AvantCredit made proportionate checks for this loan but on the basis of those checks it didn't make a fair lending decision.

loan 2

Miss C had paid off the first loan by taking out a loan with another company. AvantCredit said it did the same checks as before, although as far as I can see this time it didn't obtain a bank statement from Miss C. It said it had verified her income at over £3,500 a month. After paying off loans it said that it assessed that this loan was affordable.

I don't think AvantCredit carried out proportionate checks here. Whilst I can't say what further checks it should have carried out, it's clear to me that here it was presented with a customer who had been very seriously in debt before taking out the first loan. It should have carried out a thorough assessment particularly to see why she still had a large number of loans and credit card debts outstanding.

Miss C has shown us her bank statements for the period around this loan. They show that she was paying around £1,089 a month to loan/credit card companies. But she was also borrowing money from her then partner (who had taken out an £11,000 loan for her) and borrowed from other family members. Whilst AvantCredit asserts that her income was around £3,300 a month, I calculate that her maximum income, which did fluctuate, was around £2,600. I don't think the loan was affordable.

Again if AvantCredit expected Miss C to pay off loans, it should have ensured she did so, and I've seen no evidence that it did.

As AvantCredit didn't carry out proportionate checks I don't think it made a fair lending decision.

Putting things right

Miss C has had the capital payment in respect of both loans, so it's fair that she should repay this. So far as the loans are concerned I think AvantCredit should refund all interest and charges as follows:

- Remove all interest, fees and charges applied to both loans.
- Treat any payments made by Miss C as payments towards the capital amounts of respectively £5,400 and £11,500.
- If Miss C has paid more than the capital, refund any overpayments to her 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 Miss C.
- Remove any adverse information about the loans from Miss C's credit file.

- As AvantCredit sold the outstanding debt on loan 2 to a third-party it should do what it can to buy it back - if it can't then it can't deduct any outstanding balance from the redress and it needs to work with the third-party to bring about the steps above.

*HM Revenue & Customs requires AvantCredit to deduct tax from this interest. It should give Miss C a certificate showing how much tax it's deducted if she 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 Miss C to accept or reject my decision before 25 April 2022.

Ray Lawley
Ombudsman