DRN-3314944

The complaint

Mr C complained that AvantCredit of UK, LLC lent to him irresponsibly and provided him with unaffordable lending.

What happened

AvantCredit provided a loan to Mr C as follows:

Date taken	Loan amount	Term	Typical monthly repayment	Total amount repayable	Loan status
7.2.2016	£2,200	24 months	£139.91	£3357.87	Charged off on 19/07/2017

When Mr C complained to AvantCredit it didn't uphold his complaint so he brought his 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.

Mr C was happy to accept our adjudicator's recommendations. AvantCredit disagreed. It mainly said that using the loan for debt consolidation – in other words, to repay other debt – could've benefitted Mr C and improved his financial situation.

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 am upholding Mr C's complaint for broadly the same reasons as our adjudicator. I'll explain my reasons.

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. AvantCredit took steps to verify Mr C's declared income and recorded that his pay was around £1,815 per month. Alongside asking Mr C about his monthly expenses, AvantCredit also carried out its own credit checks to understand his credit history and current credit commitments.

After allowing for all his monthly outgoings, AvantCredit's affordability assessment suggested that Mr C should still have some disposable income left after paying for everything.

But, like our adjudicator, I think AvantCredit should have been concerned to see that when Mr C applied for this loan the credit report it obtained for him showed that he had already opened five new accounts – including three short-term loans - within the previous three months and the balances on four of his accounts had also increased during this period. His total debt balance had gone up by £2,644 over the previous year and now stood at £5,793 (not including any mortgage) and cost him £508 per month. This meant that Mr C was paying more than a quarter of his income towards servicing his existing 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 Mr C's overall financial situation and the likelihood of him being able to pay its loan in a sustainable manner.

I think our adjudicator was right to say that the indications were that Mr C wasn't managing his money well and he was already struggling financially. His use of short-term loans in particular suggested he was reliant on expensive credit to fill the gap left in his finances after making repayments he owed to other creditors – effectively, he was borrowing from one lender to pay another. I don't think AvantCredit was reasonably able to be satisfied in these circumstances that Mr C 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 Mr C was already responsible for paying, I think it's fair to say that Mr C needed to pay such a significant portion of his income towards credit AvantCredit should've realised that Mr C would likely struggle to repay this loan – especially bearing in mind the 24 month loan term.

I've taken into account everything that AvantCredit has said in response to our adjudicator's view and its suggestion that using the loan for debt consolidation could've been helpful to Mr C. But AvantCredit didn't have control over how Mr C used the loan as it paid the loan balance to him. Having seen the extent of his evident reliance on taking out expensive credit, I think it was apparent that there was a real risk Mr C would use the loan to meet his immediate financial demands.

And even if Mr C had used this loan to repay some existing debt, I don't think AvantCredit had sufficient reason to think this would've improved his overall position sufficiently to achieve a significant and sustainable improvement in his financial situation, given his outstanding indebtedness overall. I think it's fair to say that it was reasonably foreseeable that Mr C would most likely remain in serious financial trouble regardless.

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 Mr C.

So it shouldn't have provided it and AvantCredit needs to put things right.

Putting things right

I think it is fair and reasonable for Mr C to repay the capital amount that he borrowed, because he had the benefit of that lending. But he has paid extra for lending that should not have been provided to him.

In line with this Service's approach, Mr C shouldn't repay more than the capital amount he borrowed.

If AvantCredit sold any outstanding debt it should buy this back if able to do so and then take the following steps. Otherwise, AvantCredit should liaise with the new debt owner to achieve the results outlined below and do the following:

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

- if this results in Mr C having paid more than he 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)

- if there is a shortfall in repayments which leaves a capital amount outstanding, then AvantCredit should try and arrange an affordable payment plan with Mr C bearing in mind its obligation to treat Mr C sympathetically and fairly if he still needs further time to pay

- whilst it's fair that Mr C's credit file is an accurate reflection of his financial history, it's unfair that he should be disadvantaged by any adverse information recorded about a loan that was unfairly provided. So AvantCredit should remove any negative information recorded on Mr C's credit file regarding the loan.

*HM Revenue & Customs requires AvantCredit to deduct tax from this interest. AvantCredit should give Mr C a certificate showing how much tax has been deducted if he 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 Mr C.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 22 April 2022.

Susan Webb
Ombudsman