DRN-3318334

The complaint

Ms W complains through her representative that AvantCredit of UK, LLC lent her money on a high interest loan that she was unable to afford to repay.

What happened

AvantCredit provided Ms W with a short term loan on 14 November 2015. It was for £1,500, repayable at the rate of about £150 a month over 12 months.

Ms W's representative said that she was in financial difficulty at the time the loan was contracted. Throughout the life of the loan, she was struggling to meet the monthly payments to Avant Credit. I can see from the record of the instalment payments, that several of Ms W's payments were returned. The loan was settled by October 2016.

AvantCredit reviewed Ms W's application, verified her income independently, obtained one month's bank statement and carried out a credit check..

Our adjudicator said that the checks carried out were proportionate but that they showed Ms W was struggling financially. She pointed out that Ms W was overdrawn and that a substantial proportion of her income was committed to credit repayments. She thought that AvantCredit hadn't made a fair lending decision.

AvantCredit disagreed, pointing out that the loan was for debt consolidation, and if Ms W had paid off a number of her revolving credit accounts (credit that goes up or down each month like credit cards, shopping or mail order accounts)) and loans she would have had sufficient disposable income to pay the loan instalments.

The matter has been passed 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 Ms W would be able to repay the loan in a sustainable way?

- If not, would those checks have shown that Ms W would have been able to do so?

The rules and regulations in place required AvantCredit to carry out a reasonable and proportionate assessment of Ms W'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 loan wouldn't cause Ms W 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 Ms W**.** 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).

It is difficult to get a full picture from the credit summary provided by AvantCredit as it is only in summary form. But it does show that Ms W had seven credit accounts, two of which had been taken out in the three months prior to the loan application. It does show that Ms W had had problems with making her credit payments, as several accounts were shown to be in default.

I've seen Ms W's bank statement for the month before the loan was issued. This does show a number of payments to credit providers, particularly "payday" lenders, about £340 that month. But it' is difficult to pinpoint how much she was paying out each month partly because it's not possible to say how much was outstanding on the loans, and how much she would have had to pay in minimum payments towards her revolving credit. However on the basis of that statement it would have been clear that adding the loan instalment to her then current commitments would have made her credit commitments against her income to be very high.

Ms W declared her income to be £1,400 a month. AvantCredit verified this at £1,619, and there's a note on its file that it was prepared to offer increased credit because of this. Ms W didn't take up that offer. Her bank statement only shows an income of £1,400, so that is the income that AvantCredit should have used to calculate affordability. It's further clear from the statement that Ms W was overdrawn each month, and her salary appeared to be fully committed.

AvantCredit says that Ms W should have used the loan to pay off her credit commitments, bringing the ratio of income against commitments down to an affordable level. However it hasn't shown in its records that the loan was used for paying off specific loans/credit. It could have stipulated that in order to borrow the money, the loans/credit had to be paid off e.g. by paying the loan companies/credit providers out of the loan before providing any money to Ms W. It didn't do that and I think as a result the loan was unaffordable to Ms W. As I've noted above although Ms W paid the loan off within the twelve months, it's clear from the several returned payments that she struggled to do so.

I think AvantCredit carried out proportionate checks. But on the basis of those checks, without ensuring the loans/credit were paid off, I don't think it made a fair lending decision in respect of this loan.

Putting things right

I think it's fair that Ms W should repay the capital sum she's received as she's had the benefit of that. But I think AvantCredit should repay all the interest and other charges on the loan. It should:

- refund all interest and charges Ms W paid on the loan.
- pay interest of 8% simple a year on any refunded interest and charges from the date(s) they were paid (if they were) to the date of settlement.*
- remove any negative information if appropriate about the loans from Ms W's credit file.

*HM Revenue & Customs requires AvantCredit to take off tax from this interest. It must give Ms W a certificate showing how much tax it's taken off 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 Ms W to accept or reject my decision before 25 April 2022.

Ray Lawley
Ombudsman