

The complaint

Mrs K complained that AvantCredit of UK, LLC lent to her irresponsibly and provided her with an unaffordable loan.

What happened

AvantCredit provided a loan to Mrs K as follows:

Date taken	Loan amount	Term	Typical monthly repayment	Total amount repayable	Loan Status
May 2015	£1,000	24 months	£63.60	£1526.34	Charged off

When Mrs K complained to AvantCredit it didn't uphold her complaint so she brought her complaint to us. One of our investigators looked at the complaint and thought that AvantCredit shouldn't have provided the loan. Our investigator 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.

AvantCredit disagreed. It mainly said that Mrs K's spending on credit would be around £827 per month after taking out this loan, which was around 56% of her income and she would still have around £318 left after paying its loan on top of her other monthly outgoings.

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 complaints like this on our website and I've followed that approach when deciding this complaint. Having done so, I think our investigator reached a fair and reasonable outcome and I am upholding Mrs K's complaint for broadly the same reasons. I'll explain why I say this.

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 looked affordable, a lender still needed to think about whether there was 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 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. Alongside asking Mrs K what her regular outgoings were each month, AvantCredit also carried out its own credit checks to understand Mrs K's credit history and current credit commitments and it took steps to verify that her declared income was around £1,456 per month.

I've thought carefully about what AvantCredit has said, including the comments it has made in response to our investigator's view, but I don't think that AvantCredit made a fair lending decision when it provided this loan.

It isn't unusual for applicants for this type of loan to have a credit history showing other lending or even an impaired credit record – and I wouldn't expect these things would necessarily be enough to prompt a responsible lender to decline a loan application.

But AvantCredit told us it saw from its credit checks that Mrs K already needed to pay around £764 just on servicing her existing credit commitments – equivalent to more than half her take home pay. I think that this was such a significant proportion of Mrs K's monthly income it was a clear warning sign that she was already over-reliant on credit and potentially an indication that she was having serious money problems.

That was borne out by other information AvantCredit saw in its credit checks showing that within the last 3 years, Mrs K had incurred six defaulted accounts- including one that had gone into default just 21 months earlier.

Nevertheless, she had opened other new credit accounts – five in total over the last 12 months, including one within the previous 3 months. The outstanding balances on three of her accounts had increased during the same 3 months' period and she had closed no accounts during this time. All in all, Mrs K had borrowed a further £987 in the 6 months' period running up to her applying for this loan – despite already having outstanding defaulted accounts reflecting debt she couldn't afford to maintain in line with her contractual obligations.

This information looked to be clearly at odds with AvantCredit's affordability assessment suggesting Mrs K had more than £300 spare cash each month and I think AvantCredit should've realised it couldn't fairly rely on the figures it had worked out.

Given that AvantCredit understood that Mrs K's monthly take home pay was on average around £1,456, this meant that after she had taken out this loan with AvantCredit, Mrs K would be paying more than 56% of her net pay to creditors. I agree with our investigator that this was such a significant proportion of Mrs K's monthly income AvantCredit couldn't reasonably say it was likely that she would be able to repay the loan in a sustainable way over the loan term.

To sum up, I think that AvantCredit should've realised that Mrs K's credit file showed that managing her credit had got beyond her control, she already had debt she had been unable to repay and AvantCredit should have realised that this loan was likely to add to her overall indebtedness and financial difficulty. I think that's borne out by the payment problems Mrs K ultimately ran into with the loan which, in my view, were reasonably foreseeable.

So, I am upholding Mrs K's complaint that she should not have been given the loan.

This means that as Mrs K has been further indebted with a high amount of interest on a loan that she shouldn't have been provided with she has lost out as a result of what AvantCredit did wrong. I think AvantCredit needs to take the following steps to put things right.

Putting things right

Our investigator didn't recommend that AvantCredit should pay any additional redress. Mrs K hasn't commented on that and I haven't seen anything which makes me think AvantCredit acted unfairly towards Mrs K in any other way.

So I'm not awarding any additional redress.

And I think it is fair and reasonable for Mrs K to repay the capital amount that she borrowed, because she had the benefit of that lending. But she has paid extra for lending that should not have been provided to her.

In line with this Service's approach, Mrs K shouldn't repay more than the capital amount she borrowed.

AvantCredit should buy back outstanding debt it sold before doing what I have outlined below. If AvantCredit isn't able to buy the debt back then it should liaise with the new debt owner to achieve the following:

- add up the total amount of money Mrs K received as a result of having been given the loan. The repayments Mrs K made should be deducted from this amount.
- If this results in Mrs K having paid more than she 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 any capital balance remains outstanding, then AvantCredit should attempt to arrange an affordable/suitable payment plan with Mrs K.
- Whilst it's fair that Mrs K's credit file is an accurate reflection of her financial history, it's unfair that she should be disadvantaged by any adverse information recorded about a loan that was unfairly provided. So AvantCredit should remove any negative information recorded on Mrs K's credit file regarding the loan.

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs K to accept or reject my decision before 20 June 2022.

Susan Webb
Ombudsman