

## **The complaint**

Ms H says AvantCredit of UK, LLC lent to her irresponsibly.

## **What happened**

Ms H took out a 48-month instalment loan for £3,000 from AvantCredit on 10 June 2015. The monthly repayments were £154.01 and the total repayable was £7,392.36.

Ms H says she gave AvantCredit access to her bank account so it should not have lent to her. It could see she was reliant on payday loans and was gambling frequently.

Our investigator said Ms H's complaint should be upheld. He said the lender's checks were not proportionate and better checks would have most likely shown the loan was not affordable for Ms H.

Ms H replied reiterating this loan application was different to any other as AvantCredit had access to her bank account, it didn't have to rely on her declarations on a form. AvantCredit did not respond to the investigator's assessment.

As an agreement wasn't reached informally the complaint was passed to me to make a final decision.

## **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.

Our approach to unaffordable/irresponsible lending complaints is set out on our website and I've followed it here.

The Financial Conduct Authority (FCA) was the regulator when AvantCredit lent to Ms H. Its rules and guidance, set out in its Consumer Credit Sourcebook (CONC), obliged AvantCredit to lend responsibly. Amongst other things, AvantCredit was required to carry out a reasonable and proportionate assessment of whether Ms H could afford to repay what she owed in a sustainable manner. This is sometimes referred to as an affordability assessment or an affordability check.

The checks also had to be borrower-focused. So AvantCredit had to think about whether repaying the credit sustainably would cause any difficulties or adverse consequences for Ms H. 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 H.

Checks also had to be proportionate to the specific circumstances of each loan application. In general, what makes up 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 and cost of credit they have applied

for.

In light of this, I think that a reasonable and proportionate check ought generally to have been *more* thorough:

- the *lower* a customer's income (reflecting that it could be more difficult to make any repayments to credit from a lower level of income);
- the *higher* the amount due to be repaid (reflecting that it could be more difficult to meet higher repayments from a particular level of income);
- the *longer* the period of time a borrower will be indebted for (reflecting the fact that the total cost of the credit is likely to be greater and the customer is required to make repayments for an extended period).

There may also be other factors which could influence how detailed a proportionate check should've been for a given application – including (but not limited to) any indications of borrower vulnerability and any foreseeable changes in future circumstances. I've kept all of this in mind when thinking about whether AvantCredit did what it needed to before agreeing to lend to Ms H, and have considered the following questions:

- did AvantCredit complete reasonable and proportionate checks when assessing Ms H's loan application to satisfy itself that she would be able to repay the loan in a sustainable way?
- if not, what would reasonable and proportionate checks have shown?
- did AvantCredit make a fair lending decision?
- did AvantCredit act unfairly or unreasonably in some other way?

AvantCredit asked for some information from Ms H before it approved the loan. It asked for details of her income and expenses. It checked her declared income with a third-party verification service. It checked her credit file to understand her existing credit commitments and her credit history. It also asked about the purpose of the loan which was debt consolidation. From these checks combined AvantCredit concluded Ms H would be able to sustainably repay the loan.

I don't think these checks were proportionate based on the results of the credit check. This showed, amongst other things, that Ms H was frequently using payday loans and had four open at the time of this application. As Ms H had been reliant on this kind of short-term high-cost credit for some time (borrowing over £17,000 in total) I think AvantCredit needed to do a fuller financial review to better understand Ms H's current financial situation, before deciding to lend.

In order to get a view of what better checks would most likely have shown AvantCredit I have reviewed Ms H's bank statements from the month prior to this loan application. I am not saying AvantCredit had to do this (I note Ms H recalls the lender had access to her bank account), but it is a way for me to understand what better checks would have shown.

These show Ms H's monthly income was £1518, but she had credit commitments of around £960 and was spending over £1,200 on gambling transactions. She was persistently reliant on her overdraft facility and was using payday loans. So even without taking into account Ms H's essential living costs it was clear she was having problems managing her money and would be unable to sustainably repay this loan – that is, without borrowing to repay or suffering some other adverse financial consequence.

It follows I think AvantCredit was wrong to give the loan to Ms H. I haven't found any evidence AvantCredit acted unfairly or unreasonably in some other way towards Ms H.

## **Putting things right**

It's reasonable for Ms H to have repaid the capital amount that she borrowed as she had the benefit of that money. But she has paid interest and charges on a loan that shouldn't have been given to her. So she has lost out and AvantCredit needs to put things right.

It should:

- Remove all interest, fees and charges on the loan and treat all the payments Ms H made as payments towards the capital.
- If reworking Ms H's loan account results in her having effectively made payments above the original capital borrowed, then AvantCredit should refund these overpayments with 8% simple interest calculated on the overpayments, from the date the overpayments would have arisen, to the date of settlement\*.
- Remove any adverse information recorded on Ms H's credit file in relation to the loan.

\*HM Revenue & Customs requires AvantCredit to deduct tax from this interest. AvantCredit should give Ms H a certificate showing how much tax it's deducted, if she asks for one.

## **My final decision**

I am upholding Ms H's complaint. AvantCredit of UK, LLC must put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms H to accept or reject my decision before 19 May 2022.

Rebecca Connelley  
**Ombudsman**