

The complaint

Ms Y complains about a loan provided to her by AvantCredit of UK, LLC trading as “AvantCredit”, which she says was unaffordable.

What happened

AvantCredit provided Ms Y with a loan for £1000 in February 2016. It was due to be repaid over 2 years in monthly instalments of £60.63. There is still a balance to repay on the loan.

Ms Y says she feels that AvantCredit has irresponsibly lent the money to her. She says at the time, she was receiving disability benefits. This was, she says, because she had mental health conditions that AvantCredit would have been aware of, if it had asked her about them. She says it was irresponsible to lend to her at the time as she was in debt and wouldn't have been able to pay it back.

I issued a provisional decision on this complaint in February 2022. Both parties have received a copy of that provisional decision, but for completeness I include an extract from the decision below. I said;

“Did AvantCredit carry out proportionate checks?”

I can see that AvantCredit asked Ms Y about her income and some of her expenditure. It recorded her income down initially at around £1230 and it says it then verified her income as £1100 using an online verification tool. It says its decision to lend was risk based and it used indicators of affordability again by an online tool along with basic credit report information.

I've carefully considered what AvantCredit has said about the checks it carried out before it agreed to lend. I can see that it verified Ms Y's income as £1100. It then recorded down declared expenditure from Ms Y of £800. This has been broken down as £300 for rent, £40 for council tax, £100 for an automobile, £100 for utilities bills and £260 for other.

In addition, I can see it carried out a credit search. But I cannot see how or if it used this or if it analysed Ms Y's existing credit commitments at that time. I can see on the credit search it carried out that Ms Y's active credit commitments was £5706 from 4 credit card accounts and 4 loans. It also states that Ms Y's monthly credit payment were £130 and there is credit impairment although there is not a lot of detail here. The summary says that an account is in default, 2 are delinquent, 2 on repayment plans and 1 account is over its agreed credit limit. I think all this ought to have raised concerns to AvantCredit that Ms Y had problems managing her finances, when it was working out if she could afford the loan. It is not clear from the information that it gathered whether it did take into consideration her credit commitments here either. So, I think on seeing this, I think it should have caused AvantCredit concerns that Ms Y could afford the loan. And it ought to have wanted to at this stage carry out further checks to look into what this was all for. I think overall based on what it had initially gathered, it should have looked to carry out a complete review of Ms Y's finances to assure itself that she could repay the loan in a sustainable way, especially as the loan term was for 2 years.

What would further checks had shown AvantCredit?

I've concluded the checks AvantCredit carried out weren't proportionate and that it needed to do more. I now need to consider what it more likely than not would have seen if it had carried out further checks.

Ms Y has recently provided our service with information relating to her mental health conditions that she says were evident at that time. She has provided an assessment form relating to her disability benefits that states she needs support for making financial budgeting decisions. I can see the date on this form is from several months after this loan was agreed by AvantCredit. But I can also see that AvantCredit recorded on its system that Ms Y was in receipt of benefit at the time it agreed the loan, as her income. And Ms Y says this benefit was for her disabilities. I think with this in mind, I can place some weight on what this assessment form is stating as to the support Ms Y needed at the time she applied for this loan. And I think in doing this, it's more likely than not AvantCredit would have found out about Ms Y's needs if it had carried out further checks.

In addition, AvantCredit gathered basic credit information about Ms Y. As I have already mentioned within this was some credit impairment including that 2 accounts held by Ms Y were delinquent, 2 had repayment plans, 1 had defaulted and 1 with a balance over its credit limit. I think on balance, further checks would have uncovered more about these accounts and shown that Ms Y was having problems managing her finances. I also can see that Ms Y was paying at least £130 a month already in existing credit commitments. When I add this to the loan repayment for this loan, I think this would have represented a significant sum of money for Ms Y considering the amount of income she was receiving at that time.

I am currently minded to conclude that if AvantCredit had made further checks it would have seen that Ms Y needed support making decisions managing her finances and that she was having problems with the accounts that she held. On seeing this, I think it would have concluded that it would have been irresponsible to lend to Ms Y and that it would have been unlikely that she would be able to repay the loan in a sustainable way.

As Ms Y has been indebted with a high amount of interest and charges on the loan that she shouldn't have been provided with, I'm satisfied that she has lost out as a result of what AvantCredit did wrong.

So, I think AvantCredit needs to put things right for the reasons given above."

I asked both parties to let me have any comments, or additional evidence, in response to my provisional decision.

Ms Y responded and accepted the decision. She has no further comments to make.

AvantCredit has provided a detailed response and although I have not included every point that it has made below, I have considered everything it has said carefully. I will summarise what I believe the most relevant points that it has made:

- At the time of funding this loan, the customer had 17 active credit accounts. It says spending from the credit file was £130 a month, along with an estimated £147 from other accounts. This, it says, meant that Ms Y was spending 22% of her income on credit. When added to the repayment of this loan, Ms Y was spending 27% of her income on credit commitments.
- It says it verified Ms Y's income to be a higher amount of £1230 and not the lower

amount of £1100 that Ms Y declared it to be.

- It says after Ms Y's declared expenses of £800 are taken off and her credit commitments, she would have around £93 disposable income. It then made a comment about how other commitments could well be credit commitments, that would leave Ms Y with more disposable income.

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.

The submission from AvantCredit hasn't persuaded me that I should change my provisional decision.

I have already explained this in my provisional decision, but I think it is worth reiterating again that the lender was required to establish whether the borrowers could *sustainably* meet their loan repayments –not just whether the loan payments were technically affordable on a strict pounds and pence calculation. So, although I acknowledge AvantCredit's comments about Ms Y's disposable income, I do think its checks needed to be borrower focussed. And I don't think they were.

AvantCredit mentioned in its recent submission that Ms Y had a default recorded against her name, but this was largely historical. This being the case, Ms Y still had an outstanding amount to repay on this account. In addition, according to its search results she had 2 delinquent accounts, 2 on repayment plans and 1 account over its agreed limit. I think it ought to have gone beyond the checks it did carry out after seeing this, and consider conducting a full review of Ms Y's finances to find out more about all of this and whether she could afford the repayments in a sustainable way. The loan was due to be repaid over 2 years so I think it would have been fair for it to do so.

And as I said in my provisional decision, if it had carried out further checks it would have, more likely than not, found out about Ms Y's circumstances. It would have found out about her mental health conditions, and also found out more about her credit history. And alongside this would have seen that Ms Y was due to repay 27% of her income on credit commitments. A significant amount when taken into consideration alongside Ms Y's circumstances at the time.

Taking matters as a whole, I think on balance AvantCredit should have carried out further checks for the reasons given above and in my provisional decision. And if it had done so it would have seen it was irresponsible to lend to Ms Y as it was unlikely that she would be able to repay her loan in a sustainable way.

As I am upholding Ms Y's complaint, I need to think about what AvantCredit would need to do to put Ms Y in a position she would have been in if it hadn't agreed to lend to her. She would still need to pay back the money that she had use of, but I would need consider amongst other things that interest and charges be taken off.

I have considered all of the points AvantCredit has made in its submission, and I do thank it for engaging with and responding to the findings of my provisional decision. But my findings and decision hasn't changed. So, it now needs to put things right.

Putting things right

In line with this Service's approach, Ms Y shouldn't repay more than the capital amount she borrowed for the loan. As I've already mentioned Ms Y has an amount left to repay on the loan. With this in mind, AvantCredit should:

- add up the total amount of money Ms Y received as a result of being given the loan. The payments Ms Y made should be deducted from this amount. Any payments made after the total repaid exceeds the amount Ms Y was given should be treated as overpayments and refunded to her;
- add interest at 8% per year simple on any overpayments from the date they were paid by Ms Y to the date of settlement†;
- If there is still a balance that needs to be repaid, AvantCredit should treat Ms Y fairly and arrange a payment plan that is affordable for her.
- remove any adverse information placed on Ms Y's credit file because of the loan;

*HM Revenue & Customs requires AvantCredit to take off tax from this interest. AvantCredit must give Ms Y a certificate showing how much tax it's taken off if she asks for one.

My final decision

My final decision is that I uphold Ms Y's complaint and direct AvantCredit of UK LLC to pay compensation as described above.

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

Mark Richardson
Ombudsman