

## The complaint

Mrs O complained that AvantCredit of UK, LLC lent to her irresponsibly and provided her with unaffordable lending.

## What happened

AvantCredit provided a loan to Mrs O as follows:

Date taken	Loan amount	Term	Typical monthly repayment	Total repayment	Loan status
18/11/2015	£3,300	48 months	£175.64	£8,430.93	Outstanding

Mrs O mainly said that she doesn't feel her loan application was properly assessed and she had other debts when she took out this loan. Mrs O was also unhappy about the way AvantCredit treated her when she was struggling to make repayments.

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.

AvantCredit hasn't responded. 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 Mrs O'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.

When AvantCredit agreed to provide this loan, alongside considering what Mrs O's likely expenditure would be each month, AvantCredit also carried out its own credit checks to understand Mrs O's credit history and current credit commitments. It relied on the net monthly income figure it verified using information provided by a credit reference agency.

Like our adjudicator, I think AvantCredit should have been concerned to see that when Mrs O applied for this loan, the credit checks it obtained showed that she had defaulted on an account just 5 months earlier. Given that the default balance was £203, I think AvantCredit should've realised this suggested there was a real risk that Mrs O might struggle to afford the repayment for this loan - which would be only £27 or so less each month than the defaulted amount - bearing in mind also that she had signed up to pay this for the next four years. The credit report also showed that Mrs O was at or over the limit on both her credit cards, and her credit card balance limit ratio had increased significantly from 0.08 just 3 months ago to a ratio of 1. This reflected a big jump in her reliance on credit - and the total increase in all her credit balances was shown as £3,443 over this period.

AvantCredit also saw some bank statement information it asked Mrs O to provide as part of the loan application process. Our adjudicator mentioned that 4 days' worth of transactions had shown that Mrs O appeared to be actively engaged in gambling activity - 21 transactions were apparent over a single day for instance - totalling £470.50.

Given this evidence of Mrs O's credit history and spending, I think AvantCredit should have realised that there was a clear risk that Mrs O wouldn't be able to sustainably afford the repayments for this loan. I think that's further borne out by the fact that taking this loan meant that Mrs O would now have to pay around a third of her take home pay just on servicing debt. I think that this was such a significant proportion of Mrs O's monthly income AvantCredit couldn't reasonably say that it was likely she would be able to repay its loan in a sustainable way over the loan term.

Our adjudicator didn't think AvantCredit had carried out a proportionate check before lending - and I agree. But, I don't need to say more about this as it doesn't affect the outcome of this complaint because I don't think AvantCredit made a fair lending decision when it lent to Mrs O based on the information it had gathered. I think its own credit checks and the other information it saw in her bank statement painted a picture of someone struggling to manage money problems effectively and it included clear warning signs that Mrs O would likely struggle to manage the loan repayments in a way that was sustainable for her. And so I don't think AvantCredit made a fair lending decision on this occasion when it agreed to provide this loan to Mrs O based on the information it had in front of it.

I've taken into account that AvantCredit understood that the loan was intended for debt consolidation. But AvantCredit didn't have control over how Mrs O used the loan as it paid the loan balance to her. And even if Mrs O had used this loan to repay some existing debt, I don't think AvantCredit had sufficient reason to think this would've improved her overall position sufficiently to achieve a significant and sustainable improvement in her financial situation, given her outstanding indebtedness overall and reliance on using credit cards - which of course would make available more credit if she paid the balances down.

Having seen the extent of Mrs O's money problems, I think it should've been apparent that there was a real risk she would use the loan instead to meet her immediate financial demands or other spending priorities.

So all the indications were that she would most likely remain in serious financial trouble regardless. And I believe that if AvantCredit had done a proportionate check it ought reasonably to have been aware that this loan was likely to be detrimental to Mrs O and recognised that it shouldn't have provided it.

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

### **Putting things right**

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

And I think it is fair and reasonable for Mrs O 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 O shouldn't repay more than the capital amount she borrowed.

If AvantCredit has 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 Mrs O received as a result of having been given the loan. The repayments Mrs O made should be deducted from this amount
- if this results in Mrs O 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 there is a shortfall in repayments which leaves a capital amount outstanding, then AvantCredit should try and arrange an affordable payment plan with Mrs O bearing in mind its obligation to treat Mrs O sympathetically and fairly if she still needs further time to pay
- whilst it's fair that Mrs O'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 O's credit file regarding the loan.

\*HM Revenue & Customs requires AvantCredit to deduct tax from this interest. AvantCredit should give Mrs O 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 O.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs O to accept or reject my decision before 11 May 2022.

Susan Webb  
**Ombudsman**