Financial Ombudsman Service

The complaint

Mr T complains through his representative that AvantCredit of UK, LLC lent him money on a high cost loan which he was unable to afford to repay.

What happened

On or about 16 October 2015 AvantCredit provided a loan to Mr T of £1,000, repayable at the rate of £110 a month over 18 months. AvantCredit's records are a bit sketchy, but it appears that Mr T made full payments on the loan for four months, then some reduced payments on a payment plan. The loan was sold to a third party in August 2017. I'm not aware of what payments Mr T has made since then.

Mr T complained through his representative to AvantCredit that he couldn't afford the loan, and that he had mental health issues.

AvantCredit said it considered all the information Mr T provided and verified his income and carried out a credit search. It assessed that he was able to afford the loan.

Our adjudicator said AvantCredit's checks before it decided to lend to Mr T didn't appear to have thrown up any signs that he was likely to find the lending unsustainable and unaffordable. He thought AvantCredit had treated him fairly.

Mr T disagreed, he said he was already in debt when AvantCredit gave him the loan. And he had gambling addictions which AvantCredit didn't take into account.

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

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

The rules and regulations in place required AvantCredit to carry out a reasonable and proportionate assessment of Mr T's ability to make the repayments under this agreement. 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 loan would be sustainable. In practice this meant that it had to ensure that making the repayments on the loan wouldn't cause Mr T undue difficulty or significant adverse consequences. That means he 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 he had a contractual or statutory obligation to make and without the repayments having a significant adverse impact on his 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 Mr T. 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 a reasonable and proportionate 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).

I should preface my findings by saying that I've taken into account that Mr T is professionally represented in making his complaint so he would have had access to advice about what evidence he might have needed to present his case.

Mr T did have a number of debts at the time of applying for the loan. He had several loans and at least four credit cards, one of which was just over its limit (by £1). From the record of the credit report, it appears that Mr T had two loans with respective balances of £53 and £54 which were due to be paid off. He also had a loan with a balance of £236, which was noted as needing £200 monthly payments, so due to be paid off in the ensuing two months. And he had another loan with a balance of £279, again due for full repayment in the ensuing two months.

The loan was said to be for "emergency expenses", so I assume no debt consolidation was involved. Having looked at the history of Mr T's payments, I think it would be fair to discount the £54 which appeared to be frozen, as no payments had been made by Mr T for several months. However Mr T could have opted to pay it off. For the £53, £236 and £279 balances, I think it would be reasonable to look at the previous payments he had made and allow respectively monthly payments of £11, £23 and £21.Then allowing for 3% payments on his credit cards, and his other regular payments Mr T was paying about £308 a month towards his credit commitments. Adding the loan payment to this, Mr T would have been paying around 27% of his income towards his credit commitments. This was a little high, so it depended on whether he had adequate disposable income to meet his payments.

Mr T’’s income was assessed at £1,540 a month, and his expenses outside of his credit commitments were assessed at £800. With his credit commitments, including the loan this would have left him with £322 disposable income which would have been enough to pay off the smaller loans. I think that AvantCredit acted reasonably in assessing that the loan was affordable.

Mr T asks why AvantCredit didn’t take account of his gambling addiction, and that he had mental health problems. I should explain, as I’ve set out above that AvantCredit had to carry out proportionate checks, which I think it did in this case. Those checks might have included looking at Mr T’s bank statements which might or might not have shown payments going to betting companies. But I haven’t seen anything in the credit report which might have alerted AvantCredit to carry out more extensive checks e.g. it didn’t show whether he had an overdraft.

Put simply, if Mr T had a gambling addiction, unless he told AvantCredit about this (and I appreciate why he might not have done) there wasn’t any way, within the checks it did, it could have found this out. I should add also that Mr T’s representative hasn’t sent us any evidence apart from that disclosed by AvantCredit’s checks of Mr T’s financial circumstances at the time.

I’m sorry if Mr T has been suffering problems with his mental health. If AvantCredit had known about this it would have had a duty to take account of it. But again I’ve seen no evidence that it was aware or ought to have been aware. So I think it treated Mr T fairly and made a fair lending decision.

My final decision

I don’t uphold the complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr T to accept or reject my decision before 24 June 2022.

Ray Lawley
Ombudsman