DRN-3493347

The complaint

Mr L 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

AvantCredit provided Mr L with a loan of £5,600 on 19 May 2016 to be repaid over 60 months at the rate of £218.85 a month. He got into difficulties over the payments and several payments were returned by his bank. He then made some reduced payments under a payment plan and AvantCredit agreed to freeze the interest.

Mr L complained to AvantCredit that it didn't check the affordability of the loan enough and that his credit records would have shown he wasn't in a position to take on a large loan. He struggled to pay his bills and had to borrow from another lender to cover his essentials.

AvantCredit said that on his application, Mr L indicated that he received £1,500.00 monthly, which it then verified. This information was then compared to the monthly expenses he had listed on his application of £510.00 to help determine an affordable monthly repayment amount for him. Its records indicated that the purpose of the loan was debt consolidation, therefore his monthly credit commitments were expected to be reduced following funding. It considered his bank transactions for the month before the loan application and also examined Mr L's credit record to determine whether the loan was affordable. And it assessed that it was.

Our adjudicator thought that AvantCredit had acted reasonably and that its checks fairly found the loan to be affordable.

I issued a provisional decision. In it I said that I thought the loan was unaffordable without using it for further debt consolidation. So my view was that AvantCredit didn't make a fair lending decision.

Mr L accepted my provisional decision.

AvantCredit didn't accept my provisional decision. It said it had no further evidence to add apart from its view that had Mr L used the debt consolidation as it had outlined and as he should have done then his disposable income would have been higher than the figure that has been stated. And that the credit cards balances would have drastically reduced, also providing him with more access to emergency finance if needed.

It questioned why I said the loan was unaffordable based on Mr L missing payments on the loan. It has provided many cases on affordability where a customer has never missed a payment over a multiple year loan term with that future evidence not affecting the outcome by proving the customer could afford the loan repayments.

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 following were my provisional findings:

"*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 L would be able to repay the loan in a sustainable way?*
- *If not, would those checks have shown that Mr L 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 L'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 L 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 L. 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).*

AvantCredit's assessment of Mr L's credit record determined that Mr L's credit commitments at the time of taking out the loan were £826 a month out of an income of £1,500. However this figure included a final £408 payment to be made on a loan which he had taken out in April 2016. From his credit record and allowing for a minimum payment of 3% of the balance on his two credit cards, I've calculated that a figure of £903.50 is more realistic, again including the £408 payment.

AvantCredit has said the loan was for debt consolidation, though Mr L said he needed money, at least in part, for urgent repairs to his car. Looking at his bank statement at the time of receiving the money, it appears that he paid off three loans, including the £408 payment I mentioned. This would have brought his credit commitments down to around £321.50 per month. And with the new loan, it increased Mr L's monthly credit commitments to around £540, about 36% of his verified income, which was in my view still very high. I can see that he also made a payment of £1,150 to a car dealership.

Realistically, based on his bank statements Mr L's monthly expenses were about £650 which would have left him with a disposable monthly income of around £169 based on the checks AvantCredit did. This would have left him with little flexibility to meet any emergency payments.

My view is that the loan was unaffordable without using it for further debt consolidation. AvantCredit could have done this by paying off some outstanding debts before releasing any funds to Mr L. Another indication that the loan was likely to be unaffordable was the fact that he had two credit cards which were at or over their respective limits of £2,200 and £1,550. In April 2016 Mr S had had cash advances on those cards totalling £430 and £60. The fact that it was unaffordable is also borne out by the fact that Mr L soon got into problems of returned payments in respect of the loan.

So, my view is that AvantCredit didn't make a fair lending decision."

AvantCredit will be aware of our approach to debt consolidation. That is, if the loan was for debt consolidation, it was for it to ensure that this happened, otherwise Mr L's finances were such that the loan was likely to be unaffordable. I reiterate that it could have done this by paying off the outstanding debts it had identified, and it was within its power to do this. As I said Mr L understood that part of the loan was to be used for car repairs and he appears to have done this.

As regards Mr L's problems with repaying the loan, I noted that Mr L started having payments returned within two months of starting the loan, and AvantCredit was contacted by a Debt Advice Charity acting on Mr L's behalf in January 2017. I would agree that this doesn't indicate the loan was unaffordable in the first place. But it is an indication that Mr L was having further debt problems within seven months of receiving the loan monies which this loan was supposed to resolve.

I remain persuaded by my provisional findings that this loan was unaffordable. My provisional findings, as I've set out above are now final and form part of this final decision.

Putting things right

Mr L has had the capital sum for the loan and it's fair that he repays this. So I will require AvantCredit to do the following:

- Remove all interest, fees and charges applied to the loan.
- Treat any payments made by Mr L as payments towards the capital amount of £5,600.
- If Mr L has paid more than the capital, refund any overpayments to him with 8%* simple interest from the date they were paid to the date of settlement.
- But if there's still an outstanding balance, AvantCredit should come to a reasonable repayment plan with Mr L.
- Remove any adverse information about the loan from Mr L's credit file.

*HM Revenue & Customs requires AvantCredit to deduct tax from this interest. It should give Mr L a certificate showing how much tax it's deducted if he asks for one.

My final decision

I uphold the complaint in part and require AvantCredit of UK, LLC to provide the remedy set out under "Putting things right" above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 21 June 2022.

Ray Lawley
Ombudsman