DRN-3546343

The complaint

Ms R complains through her representative that AvantCredit lent her money on a high cost loan which she was unable to afford to repay.

What happened

AvantCredit provided Ms R with a loan for £500 on 15 July 2015, repayable at the rate of around £21 a month over 60 months.

She complained through her representative that she couldn't afford the loan and that it had affected her mental health. The loan has been fully repaid.

AvantCredit said it had carried all the necessary verification checks of Ms R's income and credit and assessed that she could afford the loan repayments.

Our adjudicator said that taking into account her credit commitments and outgoings, with the new loan instalment Ms R would have had a negative disposable income.

AvantCredit disagreed, pointing out that Ms R put a figure in her application for utility payments, so the figures in the credit check in relation to those utilities should be discounted, which would have left her with a monthly disposable income of around £116. It also asserted that it would expect that Ms R included some if not all her credit expenses in the total expense figure, so it believes she would have much more income available to her. She also paid back the loan on time, the only delayed payments being due to her debit card being stolen and the late payment of wages.

Our adjudicator pointed out that the arrears in utility payments were included as credit commitments, so would be payable on top of her normal payments.

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 Ms R would be able to repay the loan in a sustainable way?

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

The rules and regulations in place required AvantCredit to carry out a reasonable and proportionate assessment of Ms R's ability to make the repayments under the 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 AvantCredit had to ensure that making the repayments on the loan wouldn't cause Ms R undue difficulty or significant adverse consequences. That means she 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 she had a contractual or statutory obligation to make and without the repayments having a significant adverse impact on her 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 Ms R. 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 such a 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).

Here the loan was for a modest amount with a small monthly payment albeit over a long period. Ms R did have quite a low income of about £1,094 a month. So AvantCredit's assessment should have taken those matters into account.

There is limited information available concerning what AvantCredit said at the time of the application. In particular no full credit check was available, but I have seen AvantCredit's list of Ms R's credit commitments, which includes monthly payments of £63 and £56 respectively for electricity and gas. Ms R's application also lists a payment of £150 for utilities. AvantCredit argues that that figure includes the amount listed in the credit commitments, so the figure of £119 should be added back in to calculate her disposable income.

As I've said, the information on this is limited. But payments for utilities don't usually appear as part of a consumer's credit commitments, so it appears to me to be likely that they appear there as Ms R was in arrears with her utility payments, In those circumstances, without any other information available, I have to conclude that the arrears payments were in addition to the figure for utilities set out in her application. So taking away £119 from the assessed disposable income of around £116 leaves a negative figure. So the loan was unlikely to be affordable.

In respect of AvantCredit's argument that Ms R included her credit commitments in her outgoings, looking at the figures I doubt that. Her outgoings, apart from credit commitments were listed as £780, broken down as to £300 Housing Costs, £80 Council Tax, £150 utilities and £250 "other". No figure was listed for food which would have presumably taken up the bulk of that "other" payment. I'm not persuaded that Ms R had any income available to pay the loan, despite its low monthly instalment figure.

So I don't think that AvantCredit made affair lending decision.

Putting things right

Ms R has had the capital payment in respect of the loan, so it's fair that she should repay this. So far as the loan is concerned, I think AvantCredit should refund all interest and charges as follows:

- Remove all interest, fees and charges applied to the loan.
- Treat any payments made by Ms R as payments towards the capital amount of £500.
- If Ms R has paid more than the capital, refund any overpayments to her with 8% simple interest* from the date they were paid to the date of settlement.
- Remove any adverse information where appropriate about the loan from Ms R's credit file.

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

My final decision

I uphold the complaint 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 Ms R to accept or reject my decision before 20 July 2022.

Ray Lawley
Ombudsman