

## **The complaint**

Miss D complains through her representative that AvantCredit of UK, LLC lent her money on a high cost loan she couldn't afford to repay.

## **What happened**

AvantCredit provided Miss D with a loan of £4,000 on 18 September 2015, repayable at the monthly rate of around £168. She said that she had a number of debts, including payday loans at the time. She was also making regular payments to debt collectors.

AvantCredit said that it carried out all the necessary verification checks, including reviewing an up to date bank statement, verifying Miss D's income and carrying out a credit check. It assessed that she was able to afford the loan repayments.

Our adjudicator said after factoring in her overall outgoings (her expenses and credit commitments including this loan), it didn't seem like Miss D had any positive disposable income left over. So, he didn't think this was going to lead to a sustainable pattern of lending. He said that AvantCredit hadn't made a fair lending decision.

AvantCredit disagreed. It pointed out that in her complaint to us that Miss D said she was going to consolidate various credit card debts and loans. So it said It was reasonable to assume that she would have done this, leaving her with a monthly disposable income of around £188. This is taking into account her various defaulted debts. It estimated a payment for these noting that several hadn't had any payments made over a number of years.

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 Miss D would be able to repay the loan in a sustainable way?
- If not, would those checks have shown that Miss D would have been able to do so?

The rules and regulations in place required AvantCredit to carry out a reasonable and proportionate assessment of Miss D'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 Miss D 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 Miss D. 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).

The loan represented a considerable financial commitment for Miss D, bearing in mind her assessed income of £1,400. It was also for a long period. So AvantCredit should’ve carried a thorough assessment of Miss D’s financial circumstances

AvantCredit says the loan was for consolidation of debts. Indeed this is what Miss D said in her complaint to us. Specifically a credit card and mail order debts. But I can find no record of this in the application made to AvantCredit. The application form noted that the loan purpose was “vacation”. I have to assume that at the time of the application, AvantCredit didn’t anticipate the loan would be used for consolidation of credit, and made its decision to lend accordingly.

There’s no credit check report with AvantCredit’s files. So I’ve used AvantCredit’s calculation of Miss D’s credit commitments and what those would be after the loan was issued. It said that Miss D had seven defaults on her credit file but could only trace that regular payments had been made on three of those, totalling £89 a month. I can see from Miss D’s bank statements that she was paying £25 a month to a financial institution specialising in debt collection. So I would think that probably accounts for the other defaulted debts.

AvantCredit assessed that with minimum payments on other accounts Miss D was spending around £733.40 in total per month, which is 52% of her stated income of £1,400. The only debt I can see that Miss D paid off was a mail order account which with a monthly payment of 5% would have saved her about £48 a month. But adding in the new loan payment, Miss D would have been spending 61% of her income on credit commitments. This was very high and a clear indication that Miss D wouldn’t have been able to afford the loan

repayments. Bearing in mind that this loan wasn't specified for debt consolidation, and that AvantCredit made no attempt to pay off any of the loans before releasing the loan advance to Miss D, I think that figure had to be taken as the correct post loan figure.

Turning to her disposable income, again apart from the mail order account I can't assume that Miss D paid or that it was reasonable for AvantCredit to have assumed she would pay off any other debts. Her post loan credit commitments would have amounted to £853.40 (£733.40 plus £168 loan payment, less £48 mail order payment). Then, adding her outgoings of £751, this would have left her with a negative disposable income of more than -£200.

So I think it's clear that without any debt consolidation this loan wasn't affordable to Miss D. I don't think that AvantCredit made a fair lending decision.

### **Putting things right**

Miss D 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 Miss D as payments towards the capital amount.
- If Miss D 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 Miss D's credit file.

\*HM Revenue & Customs requires AvantCredit to deduct tax from this interest. It should give Miss D 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 Miss D to accept or reject my decision before 2 August 2022.

Ray Lawley  
**Ombudsman**