DRN-3579142

The complaint

Mr U complains through his representative that AvantCredit of UK, LLC (Avant) lent money to him irresponsibly on a high cost loan, such that he couldn't afford the repayments.

What happened

Avant provided Mr U with a loan for £6,000 on 5 June 2018. The loan was repayable over 36 months at a rate of about £266 a month. Mr U complained that he had difficulty making the repayments but eventually paid off the loan in full within 5 months.

Avant said it carried out all the necessary verification checks, including carrying out a credit check, and obtaining a recent bank statement and payslip. It assessed that the loan was affordable.

On referral to the Financial Ombudsman Service, our adjudicator said that Mr U was heavily reliant on borrowings and was unlikely to be able to sustainably afford the loan.

Avant disagreed, pointing out that the loan was partly for consolidation of existing loans and it was reasonable of it to expect Mr U to pay off certain borrowings. It also pointed out that the mortgage was a joint one so it could discount half of that in assessing his disposable income. It maintained that Mr U could afford the loan, also pointing out that he had no problems paying the loan instalments and managed to pay off the loan within five months.

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 Avant complete reasonable and proportionate checks to satisfy itself that Mr U would be able to repay the loan in a sustainable way?

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

The rules and regulations in place required Avant to carry out a reasonable and proportionate assessment of Mr U'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 Avant 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 U 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 Avant to simply think about the likelihood of it getting its money back - it had to consider the impact of the loan repayments on Mr U**.** 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).

There is a big difference between the investigator's and Avant's calculations of Mr U's credit commitments and his outgoings. This decision is based on Avant's calculations.

To take Avant's point about debt consolidation, it says it doesn't know what debts Mr U was going to pay off but has made assumptions. I would have thought that that would have been looked at more closely if debts were to be paid off. Indeed Avant could have paid off some of the debts before releasing any balance to Mr U, something quite within its power to do. Nevertheless, the debts that Avant suggests Mr U could have paid off by its calculations reduced his credit commitments by about £34 a month (taking into account the new loan payment). When considering this brought those commitments down to about £1,303, any debt consolidation had no appreciable saving for Mr U on his credit commitments. Assuming two debts were consolidated these still amounted to around 31% of Mr U's stated monthly income of £4,224. This was high, and a possible indicator of lack of affordability, depending on Mr U's disposable income left after paying the new loan.

Avant calculated that Mr U would have had a monthly disposable income of around £722. But it accounts for this by removing half of his mortgage payment from his declared expenses, on the basis that this was a joint loan with his partner. The total monthly mortgage payment was £1,849. It also says that it would expect Mr U included some if not all of his credit expenses in the total expense figure, so it believes he would have much more income available to him. I should emphasise that I am considering the affordability assessment at the time of taking out the loan, not a subsequent justification for lending the money. Mr U produced a bank statement at the time of the application. From this, it's clear that the total mortgage was paid from his bank account. No details of his partner's income or contribution to any expenses have been produced, so I take it that the possibility of a contribution to the mortgage was assumed by Avant after the fact.

I think the full mortgage payment has to be taken into account, as firstly this is what appears on Mr U's application, secondly it was paid from his bank account and thirdly there's no indication that his partner was paying towards this. As for whether credit commitments were included in his normal outgoings again this is an assumption by Avant, not backed up by his bank account statement. Based on that, rather than having a disposable income of £722, Mr U would have had a *negative* disposable income of over £200. On that basis I don't think the loan was affordable, and Avant didn't make a fair lending decision.

In respect of Avant's argument that the loan was repaid within 5 months is an indication of its affordability, I don't think that's the case. The affordability assessment at the time was based on the loan being for 36 months. I have no information as to how Mr U repaid the loan so quickly but on the evidence I have seen, it wasn't because he was able to put together sufficient income to do this.

Putting things right

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

- Remove all interest, fees and charges applied to the loan.
- Treat any payments made by Mr U as payments towards the capital amount.
- If Mr U 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.
- Remove any adverse information, if appropriate, about the loan from Mr U's credit file.

*HM Revenue & Customs requires Avant to deduct tax from this interest. It should give Mr U a certificate showing how much tax it's deducted if he 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 Mr U to accept or reject my decision before 17 August 2022.

Ray Lawley
Ombudsman