DRN-3585511

## The complaint

Mrs K has complained AvantCredit of UK, LLC (AvantCredit) didn't carry out affordability checks before it provided her with two loans.

## What happened

In total, Mrs K was granted three loans from AvantCredit, however, this decision only focuses on loans one and two. Loan three was subject to a separate complaint. A summary of her borrowing I am considering can be found below;

| loan number | loan amount | agreement date | repayment date | term (month) | monthly repayment |
|---|---|---|---|---|---|
| 1 | £2,200.00 | 04/05/2015 | 10/08/2015 | 24 | £152.63 |
| 2 | £2,200.00 | 04/10/2015 | 19/10/2015 | 24 | £158.44 |

AvantCredit issued its final response letter to Mrs K on 18 October 2021. Mrs K's complaint wasn't upheld because AvantCredit says it took details of her financial situation before the loans were approved and it also carried out a credit search. AvantCredit was satisfied that it had carried out proportionate checks and these checks showed it that Mrs K would be able to afford her loan repayments.

Unhappy with this response, Mrs K referred the complaint to the Financial Ombudsman.

Mrs K's complaint was considered by an adjudicator and she didn't think AvantCredit had made a fair lending decision for either loan. For loan one, AvantCredit had recorded the purpose of the loan as debt consolidation but it hasn't shown what debts, if any would be repaid. But with Mrs K's outstanding debt that it was aware of from the credit search results the adjudicator concluded for both loan one and two that Mrs K was committed to spending a too high a portion of her income on her credit commitments. So, she concluded neither of these loans should've been approved.

Mrs K acknowledged receipt of the adjudicator's assessment, but she didn't have anything further to add.

AvantCredit didn't agree with the adjudicator, in response and in summary it said;

- Mrs K had complained too late about these loans as Mrs K had complained more than six years after these loans had been approved. It considered the loans out of jurisdiction.
- AvantCredit says for loan one Mrs K told them she would consolidate her debts, and it was fair to assume she would.
- Although, AvantCredit couldn't say exactly which debts would be consolidated it has assumed – given the amount borrowed – that at least 4 of Mrs K's accounts could be settled in full plus part of another debt. In AvantCredit's view Mrs K's monthly credit commitments could reduce from £1,393 to £721.
- This would've left Mrs K with a sufficient amount of disposable income of around £610 per month.

- By the time of loan two, Mrs K had 18 active credit accounts and these credit commitments along with the AvantCredit loan meant Mrs K would've needed to have paid around £1,176 per month to credit commitment or 64% of her income.
- Loan two also looked affordable and Mrs K had sufficient amounts of disposable income left over to be able to afford her living costs.

The jurisdiction element of this complaint has already been considered and I previously issued a decision explaining why the Financial Ombudsman Service could consider both of Mrs K's loans.

No further response was received from AvantCredit about whether it agreed with the adjudicator's assessment and so the case has been passed to me to decide whether AvantCredit should (or should not) have provided loans one and two.

**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 of the relevant rules, guidance and good industry practice - on our website.

Taking into account the relevant rules, guidance and good industry practice, I think the overarching 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 Mrs K would be able to repay the loans in a sustainable way?
- If not, would those checks have shown that Mrs K would have been able to do so?
- Did AvantCredit act unfairly or unreasonably in some other way?

The rules and regulations in place required AvantCredit to carry out a reasonable and proportionate assessment of Mrs K's ability to make the repayments under the loan agreements. 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 the business had to ensure that making the repayments towards the loans wouldn't cause Mrs K 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 Mrs K. 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.

In light of this, 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 of time 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've carefully considered all of the arguments, evidence and information provided in this context and what this all means for Mrs K's complaint.

**Loan one**

For this loan, AvantCredit asked Mrs K for her monthly income, which she declared as being £1,832. AvantCredit said in the final response letter that this amount would've been checked with the credit reference agencies for its accuracy. Mrs K also declared she had monthly outgoings of £741 – this included other credit commitments, utilities and council tax.

Based on the above figures, AvantCredit would've likely been confident that Mrs K would be in a position to afford her loan repayments.

However, as part of the application process a credit search was also carried out and a copy of those results have been provided to the Financial Ombudsman Service. It is worth saying, that the amount Mrs K declared for credit commitments as part of her application was clearly incorrect and AvantCredit seemed to have realised this from the credit check results.

A summary of the results are as followed;

- Mrs K had eight active credit accounts – including two active payday loans.
- £11,835 of debt with an estimated monthly repayment towards those debts of £1,138.

With other repayments, AvantCredit calculated Mrs K's credit commitments per month as being £1,395. So, at the point the loan was approved, AvantCredit was already on notice that Mrs K was spending a significant portion of her income towards repaying other credit providers. An amount that I consider far too high, when considering Mrs K still had living costs that needed to be paid, such as council tax, petrol, food to name a few. So, to me based on the results of the credit check, the loan was clearly unsustainable for Mrs K.

However, AvantCredit has recorded the purpose of the loan as debt consolidation and had Mrs K done this, then in AvantCredit's view this would've reduced her monthly credit commitment.

Although it appears to have made no attempt to establish what debts would be repaid with this loan. So, I do have very real concerns with AvantCredit's arguments here as it had no way of knowing that the accounts it has highlighted would be repaid. AvantCredit has also suggested that given the amount Mrs K borrowed she could've repaid four of her accounts as well as repaying 42% of another credit card account. In AvantCredit's view this made its loan sustainable for Mrs K.

But, as AvantCredit took no details of what debts Mrs K was intending to consolidate, I can't be confident that Mrs K was going to use the loan not just for debt consolidate but would actually repay the debts that AvantCredit has suggested. Mrs K may have decided to repay a different combination of loans / credit cards which may have had a greater or lesser impact on her monthly credit commitments.

It is also not clear, how this loan would've been helping Mrs K when the accounts that AvantCredit have suggested that Mrs K may have repaid were likely attracting a lower rate of interest than this loan.

It is also suggested that one or two of the loan accounts were likely to be payday loans (that were due to be repaid). But I don't understand why AvantCredit would think it would be reasonable to move her from a product that provided a cost cap to a longer-term loan / product where there was no such cost cap.

Also, even if I accept that Mrs K would repay the credit commitments AvantCredit has suggested it would've, according to them reduced her monthly credit commitments from £1,395 to around £721. But, even if Mrs K did this (and to be clear I have no evidence this would've happened), I still think, Mrs K repaying nearly 40% of her income to credit commitments was too high.

So, like, the adjudicator, I do think this loan wasn't sustainable because she'd be committing to spend a significant amount of her monthly income in repaying her credit commitments. In addition to this, Mrs K would've had living costs. This has led me to conclude that I don't think AvantCredit should've approved this loan as it was, in my view unsustainable for her.

I appreciate this loan was repaid within three months, but at the time the loan was approved AvantCredit expected this loan to be repaid over 24 months, and it was on that basis the affordability check needed to have been conducted. I don't think, in this case, the loan being repaid early is a sign the loan was affordable or sustainable for Mrs K.

For the reasons set out above, I don't think AvantCredit should have provided Mrs K with this loan.

**Loan two**

When this loan was approved, it seems that AvantCredit check carried out the same sort of checks for this loan as it did for loan one. This time, Mrs K told AvantCredit this loan was for a holiday.

AvantCredit used a monthly income of £1,732 and Mrs K declared she had monthly outgoings of £741. So, like loan one, AvantCredit may have thought the loan repayments were affordable for her.

A credit search was also carried out and like loan one I've summarised some of the headline results;

- AvantCredit says there were now 18 credit accounts.
- Mrs K's debt had increased to £16,223 with an estimated monthly repayment of £1,461.

However, in response to the adjudicator, AvantCredit says that Mrs K's monthly credit commitments would've been around £1,017. It isn't clear how AvantCredit has arrived at this figure considering the amount that is outlined in the credit report.

From the credit report and AvantCredit's own summary it is clear that either Mrs K didn't use loan one to consolidate some credit accounts or she did and she'd then taken a significant amount of new credit between May and October 2015.

So, with the AvantCredit loan, Mrs K would've either have had monthly credit commitments of £1,619 (based on the amount from the credit file) or, on AvantCredit's calculations, of £1,175. Plus, on top of this there also would've been her other living costs like council tax.

In my view, whether I use AvantCredit's calculations or the ones from the credit file, in my mind makes no difference to the outcome that I'm reaching. In my view, paying at least 64% of your monthly income towards credit commitments is in my view unsustainable and shows that Mrs K ought to not have advanced any more credit or loans because there was a significant risk that Mrs K couldn't repay this loan in a sustainable manner.

Therefore, like loan one I think AvantCredit shouldn't have advanced this loan either.

**Putting things right**

I think it is fair and reasonable for Mrs K to repay the principal amount that she borrowed in respect of loans one and two, because she's had the benefit of that lending. But as I have concluded AvantCredit shouldn't have provided these loans, it should look to remove the interest and fees from the amounts due under the loan agreement.

AvantCredit should:

- remove all interest, fees and charges applied to loans one and two;
- treat any payments made by Mrs K as payments towards the capital amount;
- If and when Mrs K has paid more than the capital then any overpayments should be refunded to her with 8%* simple interest from the date the overpayments arose to the date of settlement; and
- remove any negative information recorded about loans one and two from Mrs K's credit file.

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

**My final decision**

For the reasons given above, I uphold Mrs K's complaint.

AvantCredit of UK, LLC should put things right for Mrs K as directed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs K to accept or reject my decision before 18 August 2022.

Robert Walker
**Ombudsman**