

The complaint

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

What happened

AvantCredit provided Mrs S with a loan of £2,000 on 21 September 2016 payable over 36 months at the monthly rate of around £97.

Mrs S got into difficulties over the payments and made an arrangement for lower payments as part of a debt repayment plan in January 2017. She advises that she lost her job in March 2018 and couldn't afford the repayments during the course of the loan. She believes the loan was sold on to a third party. She complained to AvantCredit that the loan was unaffordable.

AvantCredit said it accrued out the normal verification checks, including verifying Mrs S's income and carrying out a credit check. It also assessed her monthly living expenses which included her mortgage payment. It assessed the loan as being affordable.

On referral to the Financial Ombudsman our adjudicator said that the checks AvantCredit carried out showed that Mrs S's total monthly credit repayments represented a significant proportion of her income. In those circumstances, there was a significant risk that Mrs S wouldn't have been able to meet her existing commitments without having to borrow again. So, she thought it was unlikely Mrs S would've been able to sustainably meet her repayments for the loan.

AvantCredit disagreed, particularly concerning the remedy proposed which could have required it to write off part of the capital as well as refunding interest.

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

The rules and regulations in place required AvantCredit to carry out a reasonable and proportionate assessment of Mrs S'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 Mrs S 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 S. 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 was supposed to be for consolidation of existing loans. Mrs S had 13 such loans, two of which were in default and five delinquent (i.e. missing payments). I have no information as to which of the loans were being paid off, and Avant Credit doesn't appear to have paid off those loans before releasing any balance to Mrs S. So it took the risk that Mrs S wouldn't pay them off. However Mrs S has been unable to produce bank statements despite our adjudicator requesting them. So I think it fair to assume that Mrs S would be paying off the delinquent loans and a number of other small loans, since they had only one or two payments due to repay them.

Mrs S also had six credit cards two of which were defaulted, with total balances of £9,280. As the defaulted loans and credit cards would still be payable, realistically it's reasonable to assume that she would need to pay 5% every month of the then balances on defaulted loans and all her credit cards, and the normal instalments due on the other loans. She also had a bank overdraft of £2,000. As AvantCredit hasn't sent through copy of the credit report it obtained, I have had to rely on its figures in its responses to us and Mrs S. With the loans paid off she would still have had a liability of around £660 a month for her credit commitments. On an assessed income of £2,200, with the new loan instalment she would still be spending about 35% of her income on credit commitments – a high figure and an indication of problems with affordability.

Based on the figures given in her application, Mrs S's living expenses (including a mortgage)

were around £1,150 a month, leaving her with a possible disposable income of around £290 a month after paying the loan instalment. Whilst on the face of it this may look affordable it's not just the pounds and pence we look at, I think there were very clear indications that Mrs S was struggling. With the high number of active short term loans, and credit cards coupled with her overdraft and the high level of credit commitments I think it was likely that she would be unable to sustain the payments for this loan. So whilst I think AvantCredit carried out proportionate checks, the checks in my view showed the loan to be unaffordable for Mrs S.

So I don't think AvantCredit made a fair lending decision.

Putting things right

Mrs S 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 Mrs S as payments towards the capital amount.
- If Mrs S 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.
- But if there's still an outstanding balance, AvantCredit should come to a reasonable repayment plan with Mrs S
- If AvantCredit has sold the outstanding debt to a third-party it should do what it can to buy it back - if it can't, it can't deduct any outstanding balance from the redress and it then it needs to work with the third-party to bring about the steps above.
- Remove any adverse information where appropriate about the loan from Mrs S's credit file.

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

My final decision

I uphold the complaint and require AvantCredit Limited to provide the remedy set out under "Putting things right" above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 26 August 2022.

Ray Lawley
Ombudsman