

The complaint

Miss J complains that AvantCredit of UK, LLC lent to her when she could not afford it.

What happened

AvantCredit approved one loan for Miss J in April 2015. It was for £3,000 plus interest repayable at £193.48 a month for 30 months. The total charge for credit was £2,804.48.

Miss J did not keep up with repayments, the debt was sold to a third party debt collection agency in August 2017. A County Court Judgment (CCJ) for this debt was obtained in September 2018 and Miss J settled it in October 2020.

One of our adjudicators considered the complaint and thought that AvantCredit should put things right for Miss J in relation to the loan. Our adjudicator thought that the repayment for this loan, alongside Miss J's existing regular monthly credit repayments, represented a significant proportion of Miss J's monthly income – more than half.

And our adjudicator had information which showed that Miss J's first scheduled repayment for this AvantCredit loan coincided with a repayment of around £850 towards a payday loan and so that meant that Miss J would have had no money at all.

Miss J agrees with this outcome. However, in addition Miss J wants the CCJ set aside as well.

AvantCredit has not responded to our adjudicator's view.

The unresolved complaint was passed to me to resolve.

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.

Taking into account the relevant rules, guidance and good industry practice, what I need to consider in deciding what's fair and reasonable in the circumstances of this complaint are whether Avant completed reasonable and proportionate checks to satisfy itself that Miss J would be able to repay in a sustainable way? And, if not, would those checks have shown that Miss J would've been able to do so?

If I determine that Avant did not act fairly and reasonably in its dealings with Miss J and that she has lost out as a result, I will go on to consider what is fair compensation.

The rules and regulations in place required Avant to carry out a reasonable and proportionate assessment of Miss J'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 and/or cause significant adverse consequences for Miss J. In practice this meant that Avant had to ensure that making the payments to the loan wouldn’t cause Miss J undue difficulty or significant adverse consequences.

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 Miss J. 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 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).

I’ve carefully considered all the arguments, evidence and information provided in this context and what this all means for Miss J’s complaint.

I’ve decided to uphold Miss J’s complaint for the same reasons used by our adjudicator. I explain here.

AvantCredit ought to have carried out a thorough review of Miss J’s financial circumstances as this was a relatively large loan of £3,000 with a thirty month term. AvantCredit was told that Miss J’s income was £1,700 a month and it carried out a credit reference agency (CRA) check to verify that income and to search for additional debt she may have had.

So, AvantCredit was satisfied that her income was what she had told them it was. And it knew she had an overdraft facility on her bank account of £1,500 of which £1,046 had been used up.

AvantCredit knew Miss J had an ‘advance against income’ loan (a payday loan) which was an £850 repayment and she had a hire purchase agreement which cost her £328 a month. Plus, AvantCredit knew she had three other loans which were costing her £394 a month in total. AvantCredit has demonstrated it knew of these as it created a ‘summarised credit lines’ table and those three loans were combined into one debt amounting to £1,397 with the combined monthly repayment of £394.

My view is that AvantCredit had enough information from its own research to know that Miss J was regularly repaying £722 a month, and with its own loan that would have

increased her monthly regular commitments to £915. That would have been 53% of her net income on those three sets of outgoings alone.

Add to this the £850 which Miss J was due to pay in the same month as her first repayment to AvantCredit then it would have realised she was not going to have enough to do that plus pay her usual living expenses for that month.

If AvantCredit had any information which alerted it to do additional checks then it could, and in my view should, have asked to check on other aspects of Miss J's finances. One convenient (but not the only) way to do this would have been to have asked to review some recent bank account statements.

Miss J has sent to us copies of those bank statements for the relevant period leading up to the approval of this loan and I have looked at them.

They confirm to me that her income was just over £1,700 each month. They show me that Miss J was often hovering just under her overdraft limit of £1,500 before her salary credited the account. The statements show evidence of other high cost short term and instalment loans being utilised by her. So, they dovetail with the information AvantCredit had already obtained.

A large part of the £3,000 credited to her account on 1 April 2015 from AvantCredit was used to repay the overdraft and several of the high cost loans. One in particular which was one payment due of £736 on 7 April 2015.

So even if AvantCredit had been prompted, or had decided to carry out, further checks on Miss J's financial position I think the information it likely would have obtained would have endorsed the information about which it was already aware.

Miss J was not able to afford these repayments for the £3,000 loan over 30 months.

I uphold Miss J's complaint.

In relation to the CCJ, that looks as though it may have been initiated by a third party and not AvantCredit. And so, Miss J will have to seek independent legal advice in relation to her options there.

Putting things right

AvantCredit needs to do as follows – so far as it is able and then liaise with the third party debt owner (now settled) as to some of the additional fees and charges Miss J may have incurred.

- refund all interest, fees and charges Miss J paid on the loan;
- pay interest of 8% simple a year on any refunded interest and charges from the date they were paid (if they were) to the date of settlement*
- Any fees paid either to the third party or because of any court judgment need to be reimbursed and whether that means by AvantCredit reimbursing Miss J after that third party has informed it of the additional fees, or by AvantCredit asking the third party to reimburse Miss J, is a matter for AvantCredit and the third party.
- The April 2015 loan from AvantCredit appeared on Miss J's credit file (May 2022) and if it is still on Miss J's credit file it needs to be amended to remove adverse payment

information.

Miss J has sent to us a recent copy of her credit file (May 2022) and the CCJ appears on there. As I said in the body of my decision, this is a matter on which Miss J needs to take separate advice. I make no direction in relation to the CCJ other than the additional fees part. And until that CCJ has been set aside (if at all) it's likely it will have to remain on the credit file.

*HM Revenue & Customs requires AvantCredit to take off tax from this interest. It must give Miss J a certificate showing how much tax it's taken off if she asks for one.

My final decision

My final decision is that I uphold Miss J's complaint and I direct that AvantCredit of UK LLC does as I have indicated above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss J to accept or reject my decision before 8 November 2022.

Rachael Williams
Ombudsman