DRN-3775067

The complaint

Miss B complains that AvantCredit of UK, LLC irresponsibly lent her money on high cost loans that she couldn't afford to repay.

What happened

AvantCredit provided Miss B with the following loans:

	Date of loan	Amount	Repayment period	Monthly instalments	Date repaid
Loan 1	19/9/2016	£3,000	24 months	£163	22/9/17
Loan 2	30/11/2017	£4,085	36 months	£198	live

Miss B paid off the first loan early. But she got into difficulties over the repayments for the second loan and she fell behind with the payments, in part due to being furloughed during the Covid lockdown. She complained to AvantCredit that the loans were unaffordable.

AvantCredit in response said that it carried out a creditworthiness assessment for both loans which took into account the information required by the CONC (Consumer Credit) rules, her income, any previous dealing it may have had with her, her credit score and information from credit reference agencies and information provided by her in the application. It assessed that both loans were affordable.

On referral to the Financial Ombudsman, our adjudicator said that for both loans AvantCredit's checks showed that Miss B's total monthly credit repayments for the loans were a significant proportion of her income, so the loans were unaffordable.

AvantCredit pointed out that this was a broad statement without any breakdown of figures. It set out in its response the breakdown of its assessment of both loans and maintained that they were affordable.

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 B would be able to repay the loans in a sustainable way?

- If not, would those checks have shown that Miss B 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 B's ability to make the repayments under the 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 loans would be sustainable. In practice this meant that AvantCredit had to ensure that making the repayments on the loans wouldn't cause Miss B 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 B**.** 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).

AvantCredit hasn't shown us a copy of the credit report it obtained for either loan, so I've been unable to independently verify its figures. Nevertheless I've considered the information contained in its files, listing all Miss B's credit commitments and I've got no reason to believe they were not accurate (save as I've set out below).

loan 1

AvantCredit's credit check showed that Miss B had two credit cards, both of which were over their respective limits of £750 and £1500. She also had a mail order account which was also over its limit of £1,800. Her total monthly credit commitments, plus the repayment amount for the new loan amounted to, according to AvantCredit's calculations, around £609. As the new loan was for home improvements and didn't include paying off any existing debt this would have been around 30% of her verified income of £1,984.

But I've noted that, for loan 2 in AvantCredit's list, an HP loan is identified with £3,440 outstanding and a monthly payment of £257. The HP loan started in December 2013 so should have been included in the calculations for this loan. As I've pointed out AvantCredit hasn't provided us with Miss B's credit reports, but I think it fair to assume this information would have been in the first credit report. This would make her credit commitments 44% of her income. That figure is in my view quite high and is an indicator that this loan was unaffordable.

AvantCredit assessed that Miss B had sufficient disposable monthly income left of around £800 after paying the new loan instalment. It says, without any evidence, that her declared expenses probably included some or all of her credit commitments. She declared £575 for living expenses so I think it most unlikely that she included her credit commitments in this Also the £257 HP loan payment should be deducted. Further AvantCredit said in its final response letter that, to assess expenses that "*we used information from data analysis to make a reasoned estimate of your likely expenditure.*" So I don't think Miss B's figure should be relied on. Based on the standard figure from ONS (Office for National statistics) data, of 35% of income this would mean living expenses of about £695. Leaving a possible disposable monthly income figure of £423.

But it's not just pounds and pence affordability we look at. Bearing in mind the very high proportion of Miss B's income spent on credit commitments, and the fact that she had two credit cards and a mail order account all over the limit and not to be paid off, I think this loan was unaffordable and that AvantCredit didn't make a fair lending decision.

loan 2

Miss B's situation did not appear to have improved when she came back for a second loan. She still had the mail order account which was over its limit. The credit card which previously had a limit of £1,500, now had a limit of £2,500 and Miss B was over that limit now. The card with a £750 limit was still over its limit. Additionally she now had a new credit card on which she had a balance of £3,196 with limit of £3,500. She had two new loans for which she was paying respectively monthly £37 (on a balance of £555) and £308 (on a balance of £7,099. She had paid off loan 1 but I would think she probably used the new loan to do this.

I've noted that this loan was intended to consolidate previous loans, but AvantCredit took no details of the loans she was proposing to consolidate. Based on the fact that her credit commitments would now be around 49% of her income, I think that without consolidating a substantial proportion of her debt the loan would be unaffordable. Since AvantCredit didn't arrange to pay off any loans before releasing any funds to Miss B, it took the risk that she wouldn't use it to pay off any loans.

AvantCredit has set out the loans she could have paid off but even if she had done that her credit commitments would still have been 44% of her income, only releasing £96 a month, and extending her HP loan (which was due to finish in October 2018) by a further two years.. And based on her credit record at the time of this loan compared with the previous credit record it's entirely possible that she felt unable to pay off any previous loans.

Whilst AvantCredit assessed that Miss B would have had a disposable income left this still doesn't address the point I made above – that Miss B still had credit cards and mail order over the limit. And she had new loans and a new credit card. Taking that into account with the credit commitments being such high proportion of her income, I think this loan was also unaffordable and that AvantCredit didn't make a fair lending decision.

Putting things right

Miss B has had the capital payment in respect of the loans, so it's fair that she should repay this. So far as the loans are concerned, I think AvantCredit should refund all interest and charges as follows:

- Remove all interest, fees and charges applied to the loans.

- Treat any payments made by Miss B as payments towards the capital amount.

- If Miss B 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 Miss B

- 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 needs to work with the third-party to bring about the steps above.

- Remove any adverse information about the loans from Miss B's credit file.

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

My final decision

I uphold the complaint and require Avant Credit 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 B to accept or reject my decision before 24 November 2022.

Ray Lawley
Ombudsman