

The complaint

Ms A, through her representative, complains that AvantCredit of UK, LLC, lent to her before carrying out the proper checks and so it lent to her irresponsibly.

What happened

Ms A was approved for one loan in June 2016. The loan was to be for debt consolidation and she borrowed £5,600 plus the interest which was £4,841 over 48 months which meant a total to repay of £10,441. Her repayments were scheduled to be just over £217 each month.

Ms A entered a debt management plan through a third party in August 2017. The account was paid off and closed in November 2019.

Ms A, through her representative, complained to AvantCredit in October 2022 and received its final response letter (FRL) dated 13 October 2022. AvantCredit did not uphold her complaint. So, Ms A's representative referred it to the Financial Ombudsman Service in November 2022.

Our adjudicator considered the complaint. She thought that the combination of Ms A's credit file, which AvantCredit had obtained before lending, plus the defaulted and delinquent accounts to which payments were likely being made, plus her existing credit commitments led her to think that Ms A was not able to afford this AvantCredit loan as well for 48 months. So, she thought that AvantCredit should put things right for Ms A.

AvantCredit disagreed and sent additional information and submissions as to why it thought that an ombudsman should review the complaint. I have summarised here the points it has made. Those in italics are quotes from AvantCredit:

- *'The customer took this loan for debt consolidation, with the goal for the customer to consolidate debt into a lower and affordable monthly payment.'*
- It assumed Ms A was truthful saying that she was consolidating debts
- It did not know which of the debts Ms A planned to use the AvantCredit funds to consolidate.
- *'By consolidating their debts, the customer would reduce their unsecured credit commitment post loan to an estimated £383.52 (£318.52 of regular payments and £65 to make above minimum payments) which is 15% of the customer's stated income.'*
- *'The customer has a joint mortgages on their account, which totals £1,267 per month, we would normally apportion this at 50% of that amount to this customer, however the customer has told us in the application they pay the larger mortgage at £778 wo [sic] we have removed that value from the expenses stated of £2000, as well as the utilities expense of £76 as this is covered in the credit commitments.'*
- AvantCredit had done some calculations using this estimated set of figures to demonstrate that it considered Ms A would have had about £217 of disposable income (after the expenses and credits had been paid) and possibly more.

- It had accessed her bank account to view transactions leading up to the loan approval and it sent us those records (which it had not sent to our adjudicator)

Ms A's representative acknowledged receipt of the view.

The unresolved complaint was passed to me to decide.

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, what I need to think about 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 Ms A would be able to repay in a sustainable way? And, if not, would those checks have shown that Ms A would've been able to do so?

If I determine that Avant did not act fairly and reasonably in its dealings with Ms A and that he 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 Ms A'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 Ms A. In practice this meant that Avant had to ensure that making the payments to the loan wouldn't cause Ms A 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 Ms A. 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 Ms A's complaint. And I've decided to uphold it and I give my reasons here.

AvantCredit has sent us many submissions after our adjudicator's view was received by it about the debt consolidation part. In fact, its recent submissions have been helpful to point out that a further account had defaulted over and above the ones it had marked on its credit search summary as being defaulted. And I thank AvantCredit for that. To be clear it said to us:

'We would also highlight the £749 Advance against income loan is being paid down at £3 per month, not the £772 value in the credit report and the lender should be notifying the bureau this account is in default officially as it is an inaccurate representation.'

Avant Credit has sent to us its own views and an estimated set of figures based on its theory and, I think, guesswork as to what Ms A planned to use the loan capital for in 2016. And I say that because there's no evidence that AvantCredit had asked Ms A what she was planning to do with the money – or that it had made a note of the debts being consolidated. And the language it has used gives the clear impression these are all assumed, for example it said:

'The customer has communicated that they intended to consolidate and whilst they have not specified what debts that will consolidate, we believe it is reasonable to assume that the customer was truthful in their purpose given the other appropriate checks that were done. We then make a logical assumption of how the loan will be used based on the credit file information.'

Using the AvantCredit loan the customer would be able to clear 4 of their credit accounts (detailed below), their current unsecured spending from the credit file is £1,218 and with an estimated £68 to make above minimum payments on other accounts, the customer would be spending around £1,286 in total per month, which is 51% of the customer's stated income of £2,525.'

And the table it provided which is what it refers to as the part '*detailed below*' showed me that it had 'chosen' four loans which it had 'assumed' Ms A would most likely have used its funds to consolidate. And I am not convinced and hence I am not persuaded by its assumed consolidation plan by Ms A. I explain here.

Those four chosen were a mail order account with a £60 balance, the Advance Against Income loan it has earlier told us was only costing Ms A £3 a month, and a loan which had a balance of only £280 on it. And the fourth loan it chose to include in its assumed list was an unsecured loan which had commenced in September 2014 and had a balance of £4,459 on it where its original term had been 60 months. So, by June 2016 Ms A would likely have been some way into paying down that loan – about 22 months into a 60 month term. None of these assumed choices by AvantCredit are ones I'd consider to have been the likely choices to consolidate into an expensive 48 month term loan.

I've thought about all it has said carefully but I have decided that I do not accept its suppositions as to what Ms A may or may not have done with the £5,600 capital almost seven years ago.

What I have done is evaluated the information it obtained from Ms A and from its own searches at the time and whether those checks were proportionate. And, whether the information it obtained fully furnished it with all it needed to carry out the required creditworthiness assessment.

The amount of £5,600 plus the term of 48 months was a long commitment for Ms A to make and so I would have expected AvantCredit to have carried out a full financial review of Ms A's circumstances.

Here, as AvantCredit had verified her income by checking her bank account transactions and had obtained a credit search then I consider it had the full picture.

But having obtained all that information I think it had to consider what it had carefully before lending and I do not think it did that. Sending submissions now on assumptions and on estimates does not persuade me that it did what it ought to have done in 2016.

Ms A's application indicated that she earned around £2,525 as take home pay each month and her monthly expenses were £500. AvantCredit must have seen what I have observed from the bank account transaction checks that she did receive £2,529 from her employer on 26 May 2016, on 26 April 2016 and £2,514 in March 2016. So AvantCredit was confident as to Ms A's income and that it was a stable income. But Ms A's own application made it clear that with a £525 difference between her expenses (as declared) and her income then the repayments for the £5,600 loan were going to take a fair portion of what was left - £217 from £525 each month.

AvantCredit has pointed out that she received a further £82 a month as child benefit and I have factored that in.

Its own documentation demonstrates to me that Ms A had a history of bad debts and although the defaults were a few years before the June 2016 application to AvantCredit, still it would have been aware of the extent of those defaulted accounts. Added to which it has pointed out a further one. Plus, it had noted that Ms A had a delinquent account.

So, using the information it has supplied I have summarised the information AvantCredit had before lending to Ms A as follows:

- four defaulted accounts from 2012 and 2013.
- One delinquent credit card account from July 2015 with a balance of £6,044 and clearly in arrears. So Ms A would have had to have been paying more than the minimum amount. 5% as a minimum repayment percentage is around £302 a month and so likely she was having to repay more than that.
- A further defaulted account described as a 'loan against income' which had commenced in 2012 but it was unclear when that had defaulted.
- Ms A had two unsecured loans costing her £197 and £148 each month, the second one had a relatively low balance as was likely to be paid off within a couple of months.
- Her two residential mortgages combined cost was £1,267 and AvantCredit has said that these were joint accounts and Ms A had informed it she paid the larger figure of £778 each month. I have not seen any evidence of that from the information I have but I have proceeded with AvantCredit's approach.
- Ms A had a mail order account with a low balance of £60
- She paid around £76 per month for electricity

From the bank transactions list, sent to us recently, I have been able to cross-reference many of these payments but I've also identified the following about which AvantCredit was aware as it has sent us the information:

- A payday loan with a well-known high-cost lender costing £18 a month
- Ms A was being charged for overdraft fees and although that overdraft may not have been high, she was using it
- Ms A had at least one unpaid transaction fee (20 May 2016) and returns of payments are an indication she had been exceeding her overdraft and so not managing her money well

- She'd obtained a high-cost credit loan from another lender (£2,000 credited her account on 26 May 2016) days before she applied for this loan with AvantCredit which in my view demonstrates that this was a person in need of a lot of credit in a short space of time. And this was not likely on the credit search summary tables AvantCredit has sent us as it was such a new loan, and so was an additional and new commitment to service going forward
- Ms A was regularly repaying two sets of debt collection agencies – these look to have been £30 and £25 a month
- Ms A was regularly paying a firm of solicitors around £500 a month
- And although I can see credits from another account, I can also track the debits back to that other account and they are pretty much even out and so I do not consider that this likely was an alternative source of funds.

Overall, I have utilised the information AvantCredit has provided to us and which it had in 2016 and my view is that it lent to Ms A when she was in a difficult situation financially.

If it had wanted to check and verify that she was going to utilise the £5,600 to reduce her debt burden in some way then it ought to have done that at the time. I've looked at the account notes and I've seen nothing which suggests to me that was done. And that indicates that it lent to her knowing there was a risk she did not pay down other debt but in fact may have ended up with a further credit commitment to service of over £217 a month.

And I think that likely was what happened as relatively quickly after it had lent to her Ms A was contacting it to inform AvantCredit she was entering into a debt management plan – August 2017.

I uphold Ms A's complaint.

Putting things right

Avant Credit needs to do as follows:

- refund all interest and charges Ms A paid on this loan;
- pay interest of 8% simple interest* a year on any refunded interest and charges from the date they were paid (if they were) to the date of settlement;
- remove any negative information about the loan from Ms A's credit file;

*HM Revenue & Customs requires AvantCredit to take off tax from this interest. It must give Ms A 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 the complaint and I direct that Avant Credit of UK, LLC does as I have outlined in the 'putting things right' part of my decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms A to accept or reject my decision before 11 April 2023.

Rachael Williams
Ombudsman