

The complaint

Ms H, through a representative, says AvantCredit of UK, LLC irresponsibly lent to her.

What happened

Ms H took out a 36-month instalment loan for £3,100 from Avant Credit on 11 April 2017. The monthly repayments were £145.47 and the total repayable was £5,392.37.

Ms H says Avant Credit did not complete a good enough affordability assessment. It also failed to fully explain the terms of the loan to allow her to make an informed decision.

Our investigator upheld Ms H's complaint. She said Avant Credit's checks showed it was likely Ms H would be unable to sustainably repay the loan.

Avant Credit disagreed and asked for an ombudsman's review. It said, in summary, this loan was for debt consolidation and would allow Ms H to reduce the amount she needed to spend each month on her credit commitments and would still leave her with monthly disposable income of £123.18. She repaid the loan on time and never missed a payment as it would expect given its loan should have placed Ms H in a much-improved financial position.

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.

Our approach to unaffordable/irresponsible lending complaints is set out on our website and I've followed it here.

The Financial Conduct Authority (FCA) was the regulator when AvantCredit lent to Ms H. Its rules and guidance, set out in its Consumer Credit Sourcebook (CONC), obliged AvantCredit to lend responsibly. Amongst other things, AvantCredit was required to carry out a reasonable and proportionate assessment of whether Ms H could afford to repay what he owed in a sustainable manner. This is sometimes referred to as an affordability assessment or an affordability check.

The checks also had to be borrower-focused. So AvantCredit had to think about whether repaying the credit sustainably would cause any difficulties or adverse consequences for Ms H. 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 Ms H. Checks also had to be proportionate to the specific circumstances of each loan application. In general, what makes up 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 and cost of credit they have applied for.

In light of this, I think that a reasonable and proportionate check ought generally to have

been *more* thorough:

- the *lower* a customer's income (reflecting that it could be more difficult to make any repayments to credit from a lower level of income);
- the *higher* the amount due to be repaid (reflecting that it could be more difficult to meet higher repayments from a particular level of income);
- the *longer* the period of time a borrower will be indebted for (reflecting the fact that the total cost of the credit is likely to be greater and the customer is required to make repayments for an extended period).

There may also be other factors which could influence how detailed a proportionate check should've been for a given application – including (but not limited to) any indications of borrower vulnerability and any foreseeable changes in future circumstances. I've kept all of this in mind when thinking about whether AvantCredit did what it needed to before agreeing to lend to Ms H, and have considered the following questions:

- did AvantCredit complete reasonable and proportionate checks when assessing Ms H's loan application to satisfy itself that she would be able to repay the loan in a sustainable way?
- if not, what would reasonable and proportionate checks have shown?
- did AvantCredit make a fair lending decision?
- did AvantCredit act unfairly or unreasonably in some other way?

AvantCredit asked for some information from Ms H before it approved the loan. It asked for details of her income and her employment status. It checked her declared income using a third-party income verification tool. It asked about her residential status and non-discretionary costs, and it checked her credit file to understand her existing credit commitments and her credit history. It also asked about the purpose of the loan which was debt consolidation. From these checks combined AvantCredit concluded Ms H would be able to sustainably repay the loan.

I think these checks were proportionate, but I am not persuaded AvantCredit made a fair lending decision based on the information it gathered. I'll explain why.

AvantCredit could see that Ms H had £10,956 of unsecured debt when she applied and was spending over 60% of her income each month on credit. She had four defaulted accounts, and though not very recent they not been settled yet and totaled nearly £3,500. She was also in arrears on a utility account, using over 80% of her overdraft limit on her current account and 90% of her four credit card limits. She had opened four new accounts in the last three months. So there were clear signs Ms H's finances were under significant pressure and in these circumstances, I think it was wrong for AvantCredit to further extend Ms H's overall indebtedness.

I have thought carefully about AvantCredit's argument that as the loan was to settle some of Ms H's debts it was financially beneficial for her. But I have several concerns about this: AvantCredit did not know, but has assumed, which debts Ms H might clear; she would still need to spend a high portion of her income on credit which we know to be an indicator of future financial difficulties; it may have provided short-term financial relief assuming she did clear short-term high-cost loans but AvantCredit did not know with any certainty this was the case - and it was increasing her long-term indebtedness.

In addition, Ms H was already reliant on an overdraft and AvantCredit did not assume its loan would allow her to repay this so it is reasonable to assume she would need to use this facility to repay its loan. This means she would in essence be borrowing to repay –

something which does not meet the definition of sustainable borrowing that AvantCredit was obliged to consider.

In the round, I am not satisfied that AvantCredit got the assurances it needed from its checks that Ms H would not suffer some kind of financial harm by taking on this loan. The lender argues as Ms H repaid the loan as per her contractual obligations it was it helped her – but it does not know how she did this.

It follows I think AvantCredit was wrong to lend to Ms H.

I can't see any evidence that AvantCredit acted unfairly or unreasonably in some other way towards Ms H. She says she wasn't given complete information about the terms of the loan, but I find the key information was set out in both the pre-contract credit information and the loan agreement that Ms H signed electronically.

Putting things right

It's reasonable for Ms H to have repaid the capital amount that she borrowed as she had the benefit of that money. But she has paid interest and charges on a loan that shouldn't have been given to her. So she has lost out and AvantCredit needs to put things right.

It should:

- Refund all the interest and charges on the loan – so add up the total Ms H repaid and deduct the sum from the capital amount.
- As reworking Ms H's loan account will result in her having effectively made payments above the original capital borrowed, then AvantCredit should refund these overpayments with 8% simple interest calculated on the overpayments, from the date the overpayments would have arisen, to the date of settlement*.
- Remove any adverse information recorded on Ms H's credit file in relation to the loan.

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

My final decision

I am upholding Ms H's complaint. AvantCredit of UK, LLC must put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms H to accept or reject my decision before 10 July 2023.

Rebecca Connelley
Ombudsman