

The complaint

Mrs B, through her representative, complains that AvantCredit of UK, LLC ("AvantCredit") lent to her irresponsibly.

What happened

Mrs B took four loans with AvantCredit. The first two were approved for her in January 2016 and May 2017. These were considered to have been outside of our jurisdiction due to the date of Mrs B's complaint to it in September 2023. Both parties have accepted that outcome. I agree with it and so I do not address that again here.

AvantCredit in its final response letter addressed to Mrs B after she'd complained, did not think it needed to do anything to put things right for Mrs B in relation to loans 3 and 4 which were approved in October 2017 and January 2019. The complaint was referred to the Financial Ombudsman Service where one of our investigators did think that AvantCredit should put things right for both loans 3 and 4.

AvantCredit agreed with our investigator about Loan 3 but not about Loan 4. The unresolved part of the complaint was passed to me to decide. As the dispute surrounding Loan 3 has been resolved I need only review that about Loan 4.

On 20 September 2024 I issued a provisional decision in which I gave reasons why I did not think that Mrs B's complaint about loan 4 should be upheld. And as AvantCredit had agreed to the upholding of the complaint about loan 3 then I set out the redress for that loan.

Mrs B, through her representative, has agreed with my provisional decision. I have not heard from AvantCredit but I'd not expect to, considering my provisional decision outcome.

What follows is my provisional decision repeated with the same findings as before and issued as my final decision on the complaint.

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 Mrs B would be able to repay in a sustainable way? And, if not, would those checks have shown that Mrs B would've been able to do so?

If I determine that Avant did not act fairly and reasonably in its dealings with Mrs B and that

he has lost out as a result, I will go on to consider what is fair compensation.

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 Mrs B's complaint.

As already indicated, loan 4 is in dispute and so I have reviewed that lending decision. Loan 4 was taken on 21 January 2018, a year after Mrs B had repaid Loan 3 early on 5 January 2018. It was for £1,900 plus £100 fee, repayable over 36 months at just over £93 a month. The total to pay was £3,348.58. Mrs B repaid it early on 2 September 2019.

Placing it in the context of the other three loans, as there was a significant gap between Mrs B paying off loan 3 and applying for loan 4 then I consider it fair and reasonable for AvantCredit to have approached her application as if she were a new customer. Even if it did review her loan history with itself it would have seen that she repaid Loan 3 early and without issue. I note that Mrs B has said she had to borrow to repay it but AvantCredit would not have known that. There were a series of loan applications which were refused the most recent one being May 2018 which was 8 months before this January 2019 application.

Mrs B gave AvantCredit details of her income which was £2,050 each month after tax. Mrs B declared her expenses were £1,500 a month of which rent, council tax, utilities and car costs were included. Plus, a £700 amount a month for 'other' which may well have included Mrs B's credit commitments.

By an email dated 21 January 2019, a copy of which has been sent to me, AvantCredit asked Mrs B to send it copy bank account statements showing 30 days of transactions. These together with other details were to verify her salary. Likely AvantCredit also asked for these due to the loan refusals. It represented another layer of checks. Included in the documents sent to us from AvantCredit are the copies of those statements which covered 6 December 2018 to 4 January 2019.

Reviewing them I note they showed Mrs B's salary crediting the account on 28 December 2018 for £2,089 and payments into the joint account from her partner, a payment to pay down a credit card, household transactions and bills. There were no other signs in those documents which indicated any financial hardship or payments likely to cause AvantCredit concern.

AvantCredit carried out a credit search and apart from showing that Mrs B had one loan with

an outstanding balance on it of £19,454 costing £270 a month, and an overdraft debt of £154 on a £2,200 overdraft limit, then there were no other accounts with balances on them.

The credit search showed no adverse entries, apart from two historic defaults in 2013 and 2014 (settled) which I do not consider likely to have led AvantCredit to refuse the loan or carry out further checks.

Even if the £700 'other' category Mrs B had indicated in her application form did not include the £270 loan cost as revealed by the credit search, still AvantCredit would have calculated that Mrs B could have afforded all her expenses, plus the £270 loan plus the new Loan 4.

I do not consider that any further checks were required. AvantCredit carried out proportionate checks. It was for a fairly modest loan over a relatively modest loan term at £93 a month.

I do not uphold the complaint about loan 4.

I've also considered whether AvantCredit acted unfairly or unreasonably in any other way and I have considered whether the relationship might have been unfair under s.140A of the Consumer Credit Act 1974.

However, for the reasons I've already given, I don't think it lent irresponsibly to Mrs B or otherwise treated her unfairly in relation to Loan 4. I haven't seen anything to suggest that Section 140A would, given the facts of this complaint, lead to a different outcome here.

Putting things right

As for loan 3, AvantCredit has agreed to the investigator's outcome on that and so what follows is the redress I direct AvantCredit must carry out in respect of loan 3.

In respect of loan 3 Mrs B has had the benefit of the loan and she has repaid it. AvantCredit should refund the interest and any charges:

- remove all interest, fees and charges applied to Loan 3.
- treat any payments made by Mrs B as payments towards the capital amount.
- if Mrs 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.
- remove any adverse information about loan 3 from Mrs B's credit file.

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

I've considered whether the relationship between Mrs B and AvantCredit might have been unfair under s.140A of the Consumer Credit Act 1974.

However, I'm satisfied the redress I have directed should be carried out for Mrs B results in fair compensation for her in the circumstances of this part of her complaint. I'm satisfied, based on what I've seen, that no additional award would be appropriate in this case.

My final decision

My final decision is that I uphold the complaint in part and I direct that AvantCredit of UK, LLC does as I have directed in the 'putting things right' part of my decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 1 November 2024.

Rachael Williams
Ombudsman