

## **complaint**

Miss P complains that AvantCredit of UK, LLC lent to her irresponsibly.

## **background**

Miss P was given a loan of £7,000 by AvantCredit in January 2016. The loan was due to be repaid in 36 monthly instalments of about £313. The total amount to be repaid including interest was just over £11,293.

Miss P says that AvantCredit should have carried out better checks before agreeing to lend to her, and had it done so, it would have realised that she couldn't afford the loan.

One of our adjudicators has looked into Miss P's complaint. She thought AvantCredit had been wrong to provide Miss P with the loan and asked it to put things right. AvantCredit didn't agree with the adjudicator's assessment, and so the complaint has been passed to me to make a final decision about the matter.

## **my findings**

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 short-term lending - including all of the relevant rules, guidance and good industry practice - on our website.

AvantCredit needed to take reasonable steps to ensure that it didn't lend irresponsibly. This means that it should have carried out proportionate checks to satisfy itself that Miss P could repay the loan in a sustainable way. AvantCredit's checks could take into account a number of different things, such as how much was being lent, the repayment amounts and the consumer's income and expenditure. But there was no set list of checks that AvantCredit had to do.

In the early stages of a lending relationship, I think less thorough checks might be reasonable and proportionate. But I've also considered if there were any other factors that might indicate that AvantCredit should fairly and reasonably have done more to establish whether the lending was sustainable for Miss P.

Such factors include:

- the *lower* a customer'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 of time 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 evidence, arguments and information I've seen about this matter and what it means for Miss P.

AvantCredit carried out some checks before lending to Miss P. This included asking for details of her income and expenditure and carrying out some credit checks. AvantCredit says it thinks the checks it carried out before agreeing to lend to Miss P were proportionate and that the loan was affordable. And in some cases these checks may have been a reasonable course of action to take.

But AvantCredit was required to establish whether Miss P could sustainably repay her loan – not just whether the loan payments were affordable on a strict pounds and pence calculation. The loan payments being 'affordable' on this basis might be an indication a consumer could sustainably make their repayments. But it doesn't automatically follow this is the case. This is because the relevant regulations define sustainable as being without undue difficulties and in particular the customer should be able to make repayments on time, while meeting other reasonable commitments; as well as without having to borrow to meet the repayments. And it follows that a lender should realise, or it ought fairly and reasonably to realise, that a borrower won't be able to make their repayments sustainably if they're unlikely to be able to make their repayments without borrowing further.

I don't think AvantCredit's checks went far enough on this occasion and I don't think the lender did enough to check that the lending was sustainable before lending to Miss P.

I say this because Miss P's credit report shows that her total indebtedness was already over £19,000 and she had also opened seven accounts with other creditors in the previous six months, with a pattern of borrowing and rapidly repaying quite large sums. I accept that there were no recent delinquent or defaulted accounts showing, but I think the information gathered should reasonably have caused some concerns for AvantCredit because it indicated that Miss P might be having difficulties managing her money. Having seen the information in the credit report, I think AvantCredit should have then carried out more in depth checks to reasonably satisfy itself that Miss P could repay the loan sustainably.

AvantCredit has told us that the purpose of Miss P's loan was to consolidate existing debts which would have reduced her credit commitments by 35%. And so it didn't think more in-depth checks were required. AvantCredit says had the lending been for another purpose it would have meant that its loan would have been an additional monthly expense, and it would then have felt it necessary to request a bank statement from Miss P.

I've thought about this carefully. But Miss P was applying to AvantCredit for an expensive loan, repayable over a long period. Whilst she might have said she intended to use the loan to consolidate some of her existing debt, she was taking an expensive loan to do so. And it seems to me that AvantCredit ought reasonably to have realised that if Miss P was not able to repay as much of her debt as she intended, there was a substantial risk that her loan would increase the level of her debt unsustainably. I appreciate that AvantCredit had

acquired a credit report and had asked Miss P about her income and expenditure. But I think that it relied heavily on information she provided about her circumstances and her apparent intentions for the loan. The rules and regulations say that where a lender takes income or expenditure into account, it is not generally sufficient for it to rely solely on a statement of those matters made by the customer. In the circumstances I would expect AvantCredit to have wanted to gather and independently check more detailed information about Miss P's financial situation in order to assess whether she'd be able to sustainably repay her loan over the extended loan term.

So as well as asking Miss P about her income and expenditure, I think AvantCredit should have carried out more detailed and independent checks into Miss P's financial circumstances – for example by asking to see her bank statements.

Miss P has provided us with copies of her bank statements leading up to her application to AvantCredit, so I can determine what better checks might have shown AvantCredit at that time. And I have considered this information in light of what I've set out above. Of course, different checks might show different things. But I think if AvantCredit had carried out what I consider to be proportionate checks, I think it's likely it would have discovered more about Miss P's financial position. In particular I think it more likely than not AvantCredit would have realised that Miss P had been borrowing from a number of other short-term lenders and that she was regularly gambling.

AvantCredit says that Miss P did not disclose her gambling issues and it accepted what she'd told it about her income and expenditure in good faith. But as I've already explained, AvantCredit was required to establish whether Miss P could *sustainably* make her loan repayments.

Overall, given the size and cost of this loan and the information that AvantCredit had already gathered from Miss P's credit report, I think AvantCredit ought reasonably to have carried out more in depth checks to satisfy itself that Miss P could repay the loan sustainably. And if AvantCredit had carried out more detailed, independent checks on Miss P's finances, I think it ought reasonably to have realised that she was having serious difficulties managing her finances and that she was potentially borrowing as a result of her gambling – and would also most likely need to borrow elsewhere to repay her loan from AvantCredit. I would have expected AvantCredit to realise that it was unlikely that Miss P would be able to sustainably repay her loan. So it ought reasonably to have concluded that it was not appropriate to lend to her.

So I don't think AvantCredit was right to provide the loan to Miss P.

### **Putting things right**

I think it is fair and reasonable for Miss P to repay the principal amount that she borrowed, because she's had the benefit of that lending. But she's paid interest and charges on a loan that shouldn't have been provided to her. So I think Miss P has lost out and AvantCredit should put things right for her.

I can see that AvantCredit agreed a repayment plan with Miss P. If the loan is still outstanding AvantCredit should try to agree an affordable repayment arrangement with Miss P in respect of any outstanding balance - bearing in mind the need to treat her positively and sympathetically in those discussions. If AvantCredit has sold the outstanding debt it should buy it back, if it's able to do so, and then take the following steps. If AvantCredit isn't able to

buy the debt back then it should liaise with the new debt owner to achieve the results outlined below.

AvantCredit should:

- Remove all interest, fees and charges on the loan and treat all the payments Miss P made as payments towards the capital.
- If reworking Miss P's loan account results 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\*.
- If reworking the account leaves an amount of capital still to be paid, then AvantCredit should try to agree an affordable repayment plan with Miss P.
- Remove any adverse information recorded on Miss P's credit file in relation to the loan.

\*HM Revenue & Customs requires AvantCredit to take off tax from this interest. AvantCredit must give Miss P 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 P's complaint and direct AvantCredit of UK, LLC to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss P to accept or reject my decision before 2 December 2020.

Sharon Parr  
**ombudsman**