DRN-3277895

The complaint

Ms S complains that AvantCredit of UK, LLC lent her money on a high interest loan she was unable to afford to repay.

What happened

AvantCredit provided a loan to Ms S on 10 April 2017, of £2,000 repayable over 36 months at the rate of £88 a month. She paid off the loan in December 2018.

She complained that the loan was unaffordable to her, as she was lent the money when she was in a lot of debt.

AvantCredit said that following its creditworthiness and affordability assessment, it concluded that this amount was affordable and sustainable based on Ms S's financial circumstances and offered her a loan for that value. It said that at no time did it offer Ms S a loan for an amount higher than it considered she could afford.

Before offering the loan, Avant Credit carried out a review of Ms S's circumstances from her application, verified her income and carried out a credit report.

Our adjudicator said that the repayment for the loan and her credit commitments combined represented a significant proportion of Ms S's income. So she said there was a significant risk she wouldn't have been able to meet her existing commitments without having to borrow again. And she thought it was unlikely Ms S would've been able to sustainably meet her repayments for this loan so she didn't think AvantCredit should've lent to her.

AvantCredit didn't agree. It pointed out that the loan was for debt consolidation and that if Ms S had paid off a number of debts it had identified she would've reduced her credit commitments down to a manageable level.

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 Ms S would be able to repay the loan in a sustainable way?

- If not, would those checks have shown that Ms S would have been able to do so?

The rules and regulations in place required AvantCredit to carry out a reasonable and proportionate assessment of Ms S's ability to make the repayments under the agreement. 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 loan would be sustainable. In practice this meant that AvantCredit had to ensure that making the repayments on the loan wouldn't cause Ms S 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 Ms S**.** 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).

Ms S had a low income, of around £1400 a month, so AvantCredit needed to carry out a thorough assessment of her finances to establish whether she was able to afford the loan.

Avant has said that the loan was for debt consolidation, and that Ms S should have used the loan monies to pay off several loans and credit debts. It says this would have reduced her credit commitments from about 18% to 13.8% of her income, and would have left her with £174 to pay off another loan.

On the face of it that would seem reasonable. But, having gone through all the figures, using AvantCredit's own list, and the credit report, those figures just don't add up.

Ms S had one loan with £75 outstanding in which she was due to make the final payment. I think it reasonable to take into account that she would have made that payment, as part of her normal monthly payments. But she had two credit cards with balances on them totalling £750, five home shopping accounts with a total balance of around £2,250 and two loans with balances outstanding totalling £2,490.Her monthly payments for these (again using AvantCredit's figures) were around £350 a month, 25% of her income. Adding in the new loan instalment of £88, this would be around 31% of her income.

AvantCredit argues that the loan was for debt consolidation. It didn't raise this point in its final response to Ms S and only did so in response to the adjudicator's view. I think in light of the high ratio of credit commitments to income, it would have been important to pay off the debts. But AvantCredit hasn't shown in its records that the loan was used (or intended to be used) for paying off specific loans. It could have stipulated that in order to borrow the money, the loans had to be paid off e.g. by paying the loan companies out of the loan before providing any money to Ms S. It didn't do that and I think as a result the loan was unaffordable to Ms S.

In light of that I don't think that providing the loan to Ms S was a fair lending decision.

Putting things right

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

- Remove all interest, fees and charges applied to the loan.
- Treat any payments made by Ms S as payments towards the capital amount of £2,000.
- If Ms S 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 the loan from Ms S's credit file.

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

My final decision

I uphold the complaint and require AvantCredit 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 Ms S to accept or reject my decision before 3 May 2022.

Ray Lawley
Ombudsman