

The complaint

Ms G complained that AvantCredit of UK, LLC lent to her irresponsibly and provided her with unaffordable lending.

What happened

AvantCredit provided a loan to Ms G as follows:

Date taken	Loan amount	Term	Typical monthly repayment	Total amount repayable	Loan status
3/10/2016	£2,000	36 months	£94.79	£3,412.37.	Outstanding

When Ms G complained to AvantCredit it didn't uphold her complaint so she brought her complaint to us. One of our adjudicators looked at the complaint and thought that AvantCredit shouldn't have provided the loan. Our adjudicator explained why she was recommending that the complaint should be upheld and she set out directions indicating what AvantCredit should do to put things right.

AvantCredit disagreed. It mainly said that Ms G had around £362 disposable income left after paying its loan on top of all her other monthly outgoings and she had no defaulted accounts or any repayment plan to indicate financial difficulty at the time of the loan application.

So, as the complaint hasn't been resolved, it comes 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 approach to unaffordable/irresponsible lending complaints on our website and I've kept this in mind while deciding this complaint. Having done so, I am upholding Ms G's complaint for broadly the same reasons as our adjudicator. I'll explain my reasons.

The rules don't say what a lender should look at before agreeing to lend. But reasonable and proportionate checks should be carried out. Lenders must work out if a borrower can sustainably afford the loan repayments alongside other reasonable expenses the borrower also has to pay. This should include more than just checking that the loan payments look affordable on a strict pounds and pence calculation – a proportionate check might also require the lender to find out the borrower's credit history and/or take further steps to verify the borrower's overall financial situation.

If reasonable and proportionate checks weren't carried out, I need to consider if a loan would've been approved if the checks had been done. If proportionate checks were done and a loan looks affordable, a lender still needs to think about whether there's any other reason why it would be irresponsible or unfair to lend. For example, if the lender should've realised that the loan was likely to lead to significant adverse consequences or more money problems for a borrower who is already struggling with debt that can't be repaid in a sustainable way.

I have reviewed the information AvantCredit gathered when it agreed to provide this loan. Alongside asking Ms G what her regular outgoings were each month, AvantCredit also carried out its own credit checks to understand Ms G's credit history and current credit commitments and it relied on the net monthly income figure it saw in its credit checks.

Like our adjudicator, I think AvantCredit should have been concerned to see that when Ms G applied for this loan the credit checks it obtained showed that that she already had a substantial amount of debt (over £16,000) and she was spending around £600 each month on her existing credit commitments. She had opened 3 new credit accounts during the previous 3 months and the balances had increased on 8 of her accounts during that period. She had used practically all of her available credit.

This seems to be significantly at odds with the information AvantCredit had gathered suggesting that Ms G had ample spare cash each month. And I think AvantCredit needed to do more to ensure it had a proper understanding of Ms G's overall financial situation to be satisfied she could afford the loan

So, I've looked at what I think proportionate checks would likely have shown.

Bank statements provided by Ms G are a useful guide to understanding her overall financial situation at the time. I think it's fair to say these show that, despite boosting the funds in her account with multiple other loans, a proportionate check would likely have revealed to AvantCredit that Ms G was making no inroads into her £5,000 overdraft and reliant on new borrowing to meet her spending needs. I think that's borne out by the fact that on the date her first repayment was due, this took Ms G over her agreed overdraft limit. And whilst she was still paying multiple other loans, she continued to take out other new lending, even after taking this loan.

This loan meant that Ms G was now paying more than a quarter of her take home pay just on servicing debt. I think that this was such a significant proportion of Ms G's monthly income AvantCredit couldn't reasonably say that it was likely she would be able to repay its loan in a sustainable way – especially bearing in mind the 36 months loan term.

I think this all shows that Ms G was over-reliant on credit she couldn't afford and she needed to keep on borrowing in order to be able to meet her existing credit commitments. And I believe that if AvantCredit had done a proportionate check it ought reasonably to have been aware that taking further, costly lending was unlikely to be sustainably affordable for Ms G and recognised that it shouldn't have provided this loan.

So, I am upholding Ms G's complaint that she should not have been given the loan.

Putting things right

Our adjudicator didn't recommend that AvantCredit should pay any additional redress. Ms G hasn't commented on that and I haven't seen anything which makes me think AvantCredit acted unfairly towards Ms G in any other way. So I'm not awarding any additional redress.

And I think it is fair and reasonable for Ms G to repay the capital amount that she borrowed, because she had the benefit of that lending. But she has paid extra for lending that should not have been provided to her. In line with this Service's approach, Ms G shouldn't repay more than the capital amount she borrowed.

I understand AvantCredit sold this outstanding debt, so it should buy this back if able to do so and then take the following steps. Otherwise, AvantCredit should liaise with the new debt owner to achieve the results outlined below and do the following:

- add up the total amount of money Ms G received as a result of having been given the loan. The repayments Ms G made should be deducted from this amount
- if this results in Ms G having paid more than she received, then any overpayments should be refunded along with 8% simple interest* (calculated from the date the overpayments were made until the date of settlement)
- if there is a shortfall in repayments which leaves a capital amount outstanding, then AvantCredit should try and arrange an affordable payment plan with Ms G bearing in mind its obligation to treat Ms G sympathetically and fairly if she still needs further time to pay
- whilst it's fair that Ms G's credit file is an accurate reflection of her financial history, it's unfair that she should be disadvantaged by any adverse information recorded about a loan that was unfairly provided. So AvantCredit should remove any negative information recorded on Ms G's credit file regarding the loan.

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

My final decision

I uphold this complaint and direct AvantCredit of UK, LLC to take the steps I've set out above to put things right for Ms G.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms G to accept or reject my decision before 4 April 2022.

Susan Webb
Ombudsman