

The complaint

Ms G complains through her representative that AvantCredit of UK, LLC lent her money on a high cost loan which she was unable to afford to repay.

What happened

AvantCredit provided Ms G with a loan for £5,000 on 27 April 2016, repayable at the rate of £198 (rounded up) over 48 months. She complained that at the time of applying for the loan her outgoings exceeded her income so she couldn't afford to take on the loan payments. She already had a poor credit record with loans and a bank debt in default. She had difficulty finding the payments for the loan each month and took out a loan with another company to pay it off in June 2018.

AvantCredit said it reviewed her application and that it independently verified Ms G's income and carried out a credit search. It also considered two months' bank statements from Ms G. Following its creditworthiness and affordability assessment it concluded that the amount offered was affordable and sustainable based on her financial circumstances.

Our adjudicator said that Ms G had a low disposable income and high credit commitments so didn't think the loan was affordable to her.

AvantCredit disagreed, pointing out that the loan was for consolidation of existing loans. It calculated that Ms G would be able to reduce her credit commitments to just the cost of the loan and a monthly payment of £2 towards the bank debt (based on her average payments towards that debt in the previous years). It said that this would amount to 10% of her income. It also said that she would be left with a disposable income of over £393 a month. It believes that Ms G included her credit commitments in her declared monthly outgoings, so this figure was probably higher.

It also pointed out that Ms G kept up the loan payments for two years before a life event changed her circumstances and no checks could have predicted that situation. She was given the breathing space to arrange a consolidation loan from another supplier to clear this and other debts.

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 G would be able to repay the loan in a sustainable way?
- If not, would those checks have shown that Ms G 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 G'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 G 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 G. 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).

Considering Ms G's income, the loan required a considerable commitment from her. So AvantCredit should have carried out a thorough assessment of Ms G's financial circumstances at the time of the application.

I haven't seen the full credit report on Ms G from the time that the loan was issued to Ms G, although I have seen AvantCredit's list of her credit commitments and bank statements for February and March 2016. As AvantCredit has verified Ms G's income from her application, I think it reasonable to accept that figure, since it was the amount on which AvantCredit based its assessment of affordability. That figure was £1,844.

However I do think AvantCredit underestimated Ms G's credit commitments. It would have seen the two bank statements before issuing the loan. The mail order (£40), two loans (£15 and £198), a minimum (3%) payment on her credit card (£28) and £10 towards a current account debt, add up to £291. However the defaulted accounts can't be ignored, and I observe from her bank statements that she was paying a £20 monthly payment to a debt collection/bailiff service. She was also paying £24 a month overdraft usage fee. The

statements also show a further loan with a monthly payment of £200. So a more realistic figure for her credit commitments was £535. This amounted to about 29% of her monthly income. This was high but if her loans were consolidated it might have been affordable depending on her disposable income.

Ms G said her general outgoings, not including credit commitments, were around £1,350 a month and looking at the bank statements I think this was a realistic figure. But prior to the loan this would have left her with a negative disposable income. AvantCredit said that Mrs G had *“has not specified what debts that will consolidate, but as they have confirmed this is the reason for the loan, we make a logical assumption of how the loan will be used based on the credit file information.”*

I do think that if AvantCredit had expected the loan to be used for debt consolidation, it could have ensured those debts were paid off directly before releasing the loan monies to Ms G. But even assuming she did pay off the four debts specified by AvantCredit, this would have released £281 a month. But Ms G would still have had to pay the new loan instalment of £198, leaving a disposable income of about £42. That means in my view that the loan was unlikely to be affordable. So I don't think that AvantCredit made a fair lending decision

Putting things right

Ms G 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 this loan.
- Treat any payments made by Ms G as payments towards the capital amount of £5,000.
- If Ms G 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 G's credit file.

*HM Revenue & Customs requires AvantCredit to deduct tax from this interest. It should give Ms G 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 G to accept or reject my decision before 14 June 2022.

Ray Lawley
Ombudsman