

The complaint

Ms G complains that AvantCredit of UK LLC lent to her when she could not afford it.

What happened

Ms G's application to AvantCredit did state that she needed the £6,000 loan in 2016 for debt consolidation. Recently AvantCredit has made submissions on that and I will address them later in this decision.

The loan approved was for £6,000 on 31 January 2016 and was to be repaid over 60 months at just over £217 each month. Ms G made few repayments and it was sold to a third party in August 2017. Then a County Court Judgment (CCJ) was entered in relation to the debt in 2018 and Ms G has said she has been paying £80 a month to pay that Judgment debt off.

Ms G wants a refund of all interest and charges and the CCJ to be set aside.

After the complaint had been referred to the Financial Ombudsman Service, one of our adjudicators wrote her first view in which she said that AvantCredit should have done more before lending the £6,000 to Ms G but as she had no information about Ms G's finances around January 2016 then she could not take it much further.

Ms G sent a series of bank account statements which revealed gambling transactions. Our adjudicator revised her opinion and thought that had AvantCredit done further checks which likely would have included reviewing her bank account statements then it would have seen that Ms G had a gambling spend of about £1,000 a month and so our adjudicator's opinion was that AvantCredit ought not to have lent.

Ms G agreed with that outcome. AvantCredit did not. It sent to us additional submissions relating to the original reason for Ms G saying she wanted the loan, which was to consolidate debt. It sent us a debt table it had created and made suppositions about what Ms G's finances would have been like if she had paid down some aspects of her existing debt. It made some percentage calculations which I refer to later in this decision. It suggested that after the presumed debt consolidation then it calculated Ms G would have been in a better position. It did not address the gambling point.

The unresolved complaint was passed 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.

The CCJ

Ms G has said that she did not defend the proceedings. Her explanation in the complaint form is:

'I didn't even defend myself when I was taken to court for the debt and it went

through by default. I have, since receiving the CCJ in 2018, been paying £80 to [third party named here] monthly and this is still ongoing.'

So, it does seem likely that the court proceedings went through undefended and as such no hearing took place in which these issues surrounding irresponsible lending were aired. And so, I do consider we can proceed with the complaint in the way that we have. I say this for completeness.

And as for Ms G's request that the CCJ is set aside – that is a matter on which Ms G will have to take independent legal advice and apply to the court for the judgment to be set aside if she establishes grounds.

Irresponsible lending

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. I think the overarching 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?
- did AvantCredit act unfairly or unreasonably in some other way?

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 this 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 the business had to ensure that making the repayments on the loan wouldn't cause Ms G undue difficulty or significant adverse consequences. That means he 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 he had a contractual or statutory obligation to make and without the repayments having a significant adverse impact on his 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.

Considering this, 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 Ms G's complaint.

My first point is that this was a large loan and was due to be spread over a five year term. Ms G was not a particularly high earner at £1,550 a month. Looking at the information AvantCredit obtained before lending I do not think it did enough. I would have expected a full financial review to have taken place and I'd consider that to have been proportionate considering the size of the loan and the loan term.

And the fact that AvantCredit ought to have done more in 2016 is borne out by its recent submissions to us where its own calculations placed Ms G in a position where she was, in 2016, spending a high percentage of her income on debt – it said:

'...the customer would be spending around £ 635.25 in total per month, which is 41% of the customer's stated income of £1,550 which was verified by TAC.'

And I agree with this. Ms G was clearly approaching AvantCredit to borrow to pay off other loans. The term 'debt consolidation' can in some circumstances be a euphemism for 'borrowing to pay off other borrowing'. When a professional lender carries out a creditworthiness assessment as the regulations require, identifying that a person in debt and with no available cash wishes to borrow to pay off borrowing, then that has to be a relevant factor in that assessment.

And as well as that, the information AvantCredit had obtained included that she was over her limit on two credit cards and very close to her limit on a third credit card plus she had other loans outstanding. So, I would have expected additional checks to have been made before deciding on whether to lend to her responsibly.

But before I come to that, there's no evidence that has been produced to me to demonstrate that AvantCredit either arranged for the other debts to be paid down or had verified in some way that Ms G was going to do that. And its recent submissions are couched in terms which tell me that it was relying on Ms G's own truthfulness and expression of an intention to pay down other debt. And for a £6,000 loan I don't think that was good enough.

Often I see records from lenders to show me that it had paid down the other debt owners directly. But AvantCredit has not sent me any such records. It seems that the £6,000 was paid directly to Ms G.

AvantCredit's recent submissions, on its own calculations and on its own assumptions as to which debt Ms G was intending to pay down, produces a percentage calculation it came to as to what Ms G would have been spending each month including its own loan. That percentage figure was almost 29% of her salary. And still I consider that too high. It has said to us recently:

'By consolidating their debts, the customer would reduce their unsecured credit commitment post loan to an estimated £447.66 (£393.51 of regular payments and £54.15 to make above minimum payments) which is 28.9% of the customer's stated income.'

Additional checks which may have included the review of bank statements. Even if it had not done that, still I consider that the almost 29% a month AvantCredit says Ms G would have been paying out on all her credit commitments would have been too high a percentage to be sustainable over a five year period.

So whether AvantCredit saw the gambling or was likely to have seen the gambling still I think that the £6,000 loan ought not to have been approved because as AvantCredit has demonstrated, even 29% of her salary on all credit (after the presumed debt consolidation and taken place) still was too high for a 60 month loan.

And if it did carry out additional checks, as I think it ought to have done, then I do consider it highly likely it would have seen the gambling and betting transactions which did work out to be about £1,000 a month. In which case AvantCredit would not have lent due to unaffordability.

So that would have been a second reason not to have lent to Ms G the money.

I uphold Ms G's complaint.

Putting things right

My understanding is that the loan was sold, was the subject of a CCJ and Ms G is paying a third party money each week to pay the judgment debt down.

I cannot make any directions as to what I think a third party should or should not do. My directions are aimed at AvantCredit. If it can bring that debt back in-house or buy the debt back it ought to do that. If it can't 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 from the balance on the loan before it was sold in 2017, and treat any repayments made by Ms G as though they had been repayments of the principal.

If there is still an outstanding balance then the amounts calculated should be used to repay any balance remaining.

In relation to the sum outstanding then AvantCredit should try to agree an affordable repayment plan with Ms G. But I'd remind AvantCredit of its obligation to treat her fairly and with forbearance – if needed.

AvantCredit should remove any adverse information recorded on Ms G's credit file in relation to the loan.

As I think it's very unlikely from what I have been told that there'd be any refund due to Ms G then the HMRC interest tax deduction stipulation may be academic. But if there is such a refund due then for any 8% paid on top of any refund, 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

My final decision is that I uphold Ms G's complaint in relation to the irresponsible lending. I direct that, so far as it is able, AvantCredit of UK, LLC does as I have directed above.

I make no decision in relation to the County Court Judgment.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms G to accept or reject my decision before 27 October 2022.

Rachael Williams
Ombudsman