

The complaint

Mrs G, through her representative, complains that AvantCredit of UK, LLC, lent to her irresponsibly.

What happened

Mrs G applied for one loan in July 2015. It was approved for £1,300 with a total charge for credit of £584.66 which made a total to pay of £1,884.66 over 36 payments of just over £52 each. Mrs G repaid the bulk of it in August 2018 and the final £12 in October 2018.

Mrs G complained and AvantCredit issued its final response letter in June 2022 – it did not uphold Mrs G's complaint. So, she referred it to the Financial Ombudsman and one of our adjudicators looked at the complaint.

He had sight of the information AvantCredit had at the time she applied and that included a credit search it had carried out plus copies of about one month of a recent bank statement – screenshots only.

Our adjudicator considered that she had too much recent debt plus two historic defaults all of which indicated, in his view, that she was already in a position where she was struggling to pay her existing debts. And so, he thought there was a significant risk that Mrs G would not be able to make her repayments to AvantCredit without borrowing again.

AvantCredit disagreed and it said that it knew Mrs G had two defaults which had occurred some time before she had applied to AvantCredit. From reviewing her bank statements Avant Credit said that it thought it likely that two payments adding up to around £130 a month were probably to cover those. It challenged our adjudicator's view that obtaining a credit card just before Mrs G applied to AvantCredit for the loan was unfair. It did not think that showed a sign of debt struggles.

AvantCredit listed the 16 active credit accounts Mrs G had, and about which it knew, at the time of her application. I'll come back to this in the main part of the decision.

Avant Credit asked for an ombudsman to review the complaint so it 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.

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.

Taking into account the relevant rules, guidance and good industry practice, what I need to consider in deciding what's fair and reasonable in the circumstances of this complaint are whether Avant completed reasonable and proportionate checks to satisfy itself that Mrs G would be able to repay in a sustainable way? And, if not, would those checks have shown

that Mrs G would've been able to do so?

If I determine that Avant did not act fairly and reasonably in its dealings with Mrs G and that she has lost out as a result, I will go on to consider what is fair compensation.

The rules and regulations in place required Avant to carry out a reasonable and proportionate assessment of Mrs 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 Avant had to think about whether repaying the loan would be sustainable and/or cause significant adverse consequences for Mrs G. In practice this meant that Avant had to ensure that making the payments to the loan wouldn't cause Mrs G undue difficulty or significant adverse consequences.

In other words, it wasn't enough for Avant to simply think about the likelihood of it getting its money back, it had to consider the impact of the loan repayments on Mrs 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 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 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 Mrs G's complaint, and I have decided to uphold Mrs G's complaint.

The checks AvantCredit carried out were proportionate as it obtained a credit search, it spoke to her and obtained details of her financial situation and it looked at some bank account statements for the period leading up to 29 July 2015. And as this was a loan of £1,300 over 36 months (three years) then anything less would likely not have been enough.

Our adjudicator picked up on Mrs G's recent credit history which had included two defaults and her bank statements do show she was paying some debt collectors money each month. Our adjudicator had identified two home credit loans taken relatively recently by Mrs G plus a payday loan, also commenced just before this loan application to AvantCredit. In response to that, AvantCredit set out some of its own calculations and I have reviewed them.

Mrs G earned around £1,708 each month and I do note from the loan account customer notes that AvantCredit had reduced her declared income of around £1,900 a month due to its own research. AvantCredit has demonstrated that it knew Mrs G had 16 active credit accounts at the time and explained:

'After taking the AvantCredit loan the customer would have a [sic] new monthly unsecured credit commitments at an estimated £821.70 (£391.35 of regular payment and £430.35 to make above minimum payments) which is 48% of the customer's stated income.'

AvantCredit had calculated that Mrs G's general living expenses was about £859 (rounded) and so when added to the figures above (after taking into account the AvantCredit loan) then Mrs G would have been left with about £27 or £28 a month.

I consider this too low a figure. For a loan spread over three years I think that this calculation is tight and leaves absolutely no scope for any slight change in any of her loan or general living expenses. I uphold Mrs G's complaint.

Putting things right

AvantCredit needs to do the following:

- add up the total amount of money Mrs G received as a result of having been given her loan. The repayments Mrs G made should be deducted from this amount.
- If this results in Mrs G having paid more than they received, any overpayments should be refunded along with 8% simple interest (calculated from the date the overpayments were made until the date of settlement). *
- remove any negative payment information recorded on Mrs G's credit file relating to the loan. Although as the final payment was around October 2018 it may be removed from her credit file soon due to the six years having passed.

*HM Revenue and Customs requires AvantCredit to take off tax from this interest. It must give Mrs G 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 Mrs G's complaint and I direct that AvantCredit of UK, LLC does as I have set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs G to accept or reject my decision before 2 December 2022.

Rachael Williams
Ombudsman