

## Complaint

Miss C has complained that AvantCredit of UK, LLC ("Avant Credit") provided her with unaffordable loans.

## Background

Avant Credit provided Miss C with a first loan for £1,000.00 in February 2015. This loan was due to be repaid in 18 monthly instalments of around £83 but was settled in full the following month. Avant Credit then provided loan 2 in July 2015. This time the amount advanced was £2,500.00 and this loan was due to be repaid in 24 monthly instalments of around £158.

One of our adjudicators looked at this complaint and thought that while it hadn't done anything wrong when providing loan 1, Avant Credit unfairly provided loan 2 as proportionate checks would have shown it was unaffordable. Miss C didn't disagree with our adjudicator but Avant Credit did and asked for an ombudsman to review the complaint.

As the parties are in agreement over loan 1, this decision is only considering whether Avant Credit acted fairly and reasonably when it provided loan 2.

## My findings

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 the key rules, guidance and good industry practice - on our website. And I've referred to this when deciding Miss C's complaint.

Having carefully thought about everything, I think that there are two overarching questions that I need to answer in order to fairly and reasonably decide Miss C's complaint. These two questions are:

1. Did Avant Credit complete reasonable and proportionate checks to satisfy itself that Miss C would be able to repay loan 2 in a sustainable way?
  - o If so, did it make a fair lending decision?
  - o If not, would those checks have shown that Miss C would've been able to do so?
2. Did Avant Credit act unfairly or unreasonably in some other way?

*Did Avant Credit complete reasonable and proportionate checks to satisfy itself that Miss C would be able to repay loan 2 in a sustainable way?*

Avant Credit provided loan 2 while it was authorised and regulated by the Financial Conduct Authority ("FCA"). The rules and regulations in place required Avant Credit to carry out a reasonable and proportionate assessment of Miss C'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 Credit had to think about whether repaying the loan would cause significant adverse consequences *for Miss C*. In practice this meant that Avant Credit had to ensure that making the payments to the loan wouldn’t cause Miss C undue difficulty or adverse consequences.

In other words, it wasn’t enough for Avant Credit to simply think about the likelihood of it getting its money back, it had to consider the impact of the loan repayments on Miss C. 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.

In light of this, I think that a reasonable and proportionate check ought generally to have been *more* thorough:

- the *lower* a customer’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 *longer* the term of the loan (reflecting the fact that the total cost of the credit is likely to be greater and the customer is required to make payments for an extended period); and
- the *greater* the number and frequency of loans, and the longer the period of time 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).

There may also be other factors which could influence how detailed a proportionate check should’ve been for a given loan application – including (but not limited to) any indications of borrower vulnerability and any foreseeable changes in future circumstances.

I’ve carefully thought about all of the relevant factors in this case.

*Were Avant Credit’s checks reasonable and proportionate?*

Avant Credit says that it carried out an income and expenditure assessment with Miss C prior to providing her with all of her loans. It also carried out a credit check. Avant Credit checks suggested Miss C’s income was around £1,600.00 a month and her expenditure £1,100.00 based what it saw on her credit file. This left her with more than enough to cover the payments to this loan.

I’ve carefully considered what Avant Credit has said. But Avant Credit’s checks showed that Miss C’s debt burden had significantly increased in the short period that had passed since

loan 1. This coupled with this being a second application within a short period lead me to think that Avant Credit needed to take steps to verify Miss C's actual monthly expenditure.

As I can't see that this Avant Credit did do this, I don't think that the checks it carried out before providing Miss C with loan 2 were reasonable and proportionate.

*Would reasonable and proportionate checks have indicated to Avant Credit that Miss C would have been unable to repay loan 2?*

As reasonable and proportionate checks weren't carried out before loan 3 was provided, I can't say for sure what they would've shown. So I need to decide whether it is more likely than not that a proportionate check would have told Avant Credit that Miss C would have been unable to sustainably repay this loan.

Avant Credit was required to establish whether Miss C could make her loan repayments without experiencing significant adverse consequences – not just whether the loan payments were technically affordable on a strict pounds and pence calculation.

I've carefully considered the information provided. Having done so, it is clear a significant proportion of Miss C's income was being used to meet commitments to existing creditors. So I think she was always unlikely to be able to make the payments she was being asked to commit to without borrowing further or suffering significant adverse consequences.

Bearing all of this in mind, I'm satisfied that reasonable and proportionate checks would more likely than not have demonstrated that Miss C would not have been able to make the repayments to this loan without borrowing further and/or suffering undue difficulty. And, in these circumstances, I find that reasonable and proportionate checks would more likely than not have alerted Avant Credit to the fact that Miss C was in no sort of position to make the payments to loan 2 without suffering significant adverse consequences.

*Did Avant Credit act unfairly or unreasonably towards Miss C in some other way?*

I've carefully thought about everything provided. And having done so, I don't think Avant Credit acted unfairly or unreasonably towards Miss C in some other way.

*Did Miss C lose out as a result of Avant Credit unfairly providing her with this loan?*

As Miss C paid a high amount of interest and charges on a loan that she shouldn't have been provided with, I'm satisfied that she lost out as a result of what Avant Credit did wrong. So I think that Avant Credit needs to put things right.

### **Fair compensation – what Avant Credit needs to do to put things right for Miss C**

Having thought about everything, I think it would be fair and reasonable in all the circumstances of Miss C's complaint for Avant Credit to put things right by:

- refunding all interest, fees and charges Miss C paid as a result of being provided with loan 2;
- adding interest at 8% per year simple on any refunded amounts from the date they were paid by Miss C to the date of settlement†;
- removing any adverse information recorded on Miss C's credit file as a result of this loan.

† HM Revenue & Customs requires Avant Credit to take off tax from this interest. Avant Credit must give Miss C a certificate showing how much tax it has taken off if she asks for one.

### **My final decision**

For the reasons I've explained, I'm upholding Miss C's complaint. AvantCredit of UK, LLC needs to put things right in the way set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss C to accept or reject my decision before 13 April 2022.

Jeshen Narayanan  
**Ombudsman**