

## The complaint

Miss N complains through her representative that AvantCredit of UK, LLC lent her money on high interest loans she was unable to afford to repay.

## What happened

	Date of loan	Amount	Term	Monthly repayment	Date repaid
Loan 1	1/12/2014	£4,000	36m	£180	7/5/2015
Loan 2	8/3/2016	£3,000	48m	£120	1/5/2019

Miss N complained to AvantCredit that:

- It did not ask for proof of her financial situation; payslips, bank statements etc. in order to complete adequate checks.
- A sufficient review of her circumstances would have shown that she was not in a position to take on another large loan.
- It didn't take the necessary steps to ensure she properly understood her obligations.
- She advised of difficulties with her repayments but received no assistance.
- She was struggling to pay for essentials; priority bills and food etc. due to repayments to AvantCredit.
- She had to obtain further lending just in order to repay what she owed.
- It extended / topped up the loan even though she had difficulty in repaying already.
- It didn't ask her if her circumstances had changed at all before extending/topping up the loan.

She further said that:

- She was in a domestic abusive relationship where financial and coercive control were the main themes. Her now ex-partner had full control of her finances and either took out large loans in her name without permission or she was left with no option but to take out further lending to try make the repayments as she spiralled further into debt.
- She had been left with over £45,000 worth of debt and her ex-partner walked away when the truth came out, leaving her with a 7 week old baby. Her mental health had been hugely affected.

- Financially she is still drowning in debt but now had an appropriate plan in place, lenders offering further borrowing at high interest helped support and continue the cycle of abuse and plunged her further into unmanageable debt.

She repaid loan 1 early (within six months). She struggled to keep up the repayments for loan 2 but eventually paid this off within three years.

AvantCredit said that:

- Following its creditworthiness and affordability assessment, it concluded that the amounts requested, of £4,000 and £3,000 were affordable and sustainable based on her financial circumstances.
- At no time did it offer loans for an amount higher than it considered she could afford.
- Considering the above information, it does not consider that it failed to properly assess the affordability of an additional credit obligation for her prior to making a credit decision for her loan applications.

Our adjudicator established that AvantCredit hadn't been advised about Miss N's personal situation. However, she said that she didn't think AvantCredit had carried out proportionate checks for either loan. These should've included obtaining a thorough knowledge of Miss N's financial circumstances – including verifying the information. As a result she didn't think that Miss N would've been able to sustainably repay either loan.

AvantCredit disputed this – it said that both loans were for debt consolidation. In respect of loan 1 Miss N would have been able to pay off two loans and reduce her credit commitments to a manageable amount, with reasonable disposable income left over. In respect of loan 2 it said Miss N would have been able to consolidate her credit card and mail order debts into one payment and be left with a reasonable disposable income.

I issued a provisional decision. In it I said that for loan 1 I thought, given the evidence there was, AvantCredit had made a fair lending decision. But for loan 2 I didn't think it had made a fair lending decision.

AvantCredit didn't agree, and made the following comments in respect of loan 2:

- Miss N's salary was above the national average salary in the UK at the time she took this loan. So it would not share the view that she was of low income
- As Miss N stated that £140 of her expenses relate to her car and she had a hire purchase loan at £140 it would consider these two expenses to be the same, so it would consider it already accounted for in Miss N's credit commitments.
- On review, if it increased Miss N's living expenses to £900 to cover what I calculated as the actual expenses, with the customer's credit expenses post loan being £594 per month, the customer would be left with £578 per month, using the net income figure of £2,072. So with the £140 loan instalment it would estimate that she would have at least the £578 but up to £718 of income post loan.
- Considering she would have all credit commitments, housing and her other expenses listed covered by her income, it believes Miss N would have the disposable income remaining to repay the loan without resorting to further lending.

- The second loan was not funded directly after the settlement of the first loan, which would be the typical behaviour it would associate with someone in financial distress. Miss N had cleared her debts previously, paid back well, as well as having a lower overall balance of credit and paying less per month than previously it does not believe she looked to be struggling or gave an indication that she could become distressed.

Miss N accepted my provisional findings.

### **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.

I made the following provisional findings:

*"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 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 Miss N would be able to repay the loans in a sustainable way?*
- *If not, would those checks have shown that Miss N would have been able to do so?*

*The rules and regulations in place required AvantCredit to carry out a reasonable and proportionate assessment of Miss N's ability to make the repayments under the agreements. 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 Miss N 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 Miss N. 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).*

*Miss N had a low income, and the loans required a considerable commitment from her. So AvantCredit should have carried out a thorough assessment of Miss N's financial circumstances at the time of the application.*

*First of all I am sympathetic to the situation Miss N found herself in. It must have caused a great deal of anxiety and, as she says, hugely affected her mental health. That said she has advised us that she didn't make AvantCredit aware of her problems, for wholly understandable reasons. But in deciding whether AvantCredit made fair lending decisions I have to consider the information it had in front of it about Miss N's circumstances.*

#### loan 1

*For this loan AvantCredit carried out a credit report and verified Miss N's income and bank account independently. It obtained a bank statement though I've only seen a small snapshot of that statement which shows a few payments for credit cards and loans. I think it carried out proportionate checks, indeed it's difficult to say what other checks it should have done. I'm aware that Miss N hasn't been able to obtain bank statements from this period.*

*The information AvantCredit had showed that Miss N had four credit cards, although only two had substantial balances on them, two loans, a hire purchase and a mail order account. She was paying about £405 in regular monthly payments and estimated minimum payments towards the credit cards of £158. This was about 29% of her income. It said that paying off the loans would reduce her outgoings by about £85 a month, bringing that down to about 24% of her income. This takes into account the new loan payment. As far as I can see, Miss N did pay off those loans.*

*Miss N had estimated her regular household outgoings and rent to be around £690 a month, which, after paying off the loans would have left her with a disposable income of about £822 a month. So I think, from the information obtained by AvantCredit, this loan would have been affordable to her.*

*I appreciate that Miss N had had payday loans, but there were no active loans on her record apart from those I've referred to. I'm also aware that credit reports may not show the full picture and that there may be entries on her bank statements which may have shown a different picture of her finances. However as those statements aren't available it's not possible to say whether further information would have meant the loan was unaffordable. I'm also aware that, as happened in respect of loan 2 she may have underestimated her regular outgoings. But even if she had I think there was sufficient disposable income here.*

*As I've said I think the checks carried out were proportionate. I don't think those checks would have alerted AvantCredit to carry out any further investigation. So I think it made a fair lending decision in respect of this loan. Miss N repaid this loan early - there's no indication on the documents I've seen that she had any trouble making the repayments.*

## loan 2

*Having paid off loan 1 Miss N again approached Avant Credit for another debt consolidation loan. Avant Credit carried out the same checks as before, although as far as I can see didn't obtain any bank statement, as it had for the first. It would have been clear that Miss N had increased her credit card debts and was paying out more for loans than she had been before taking out loan 1. So I think this should have alerted AvantCredit to carry out a more thorough assessment of Miss N's circumstances, especially, as I've set out below, as the new proposed loan would increase her credit commitments.*

*I don't think this loan benefited Miss N, apart from consolidating three credit cards into one payment. But it increased her monthly credit commitments, purely on AvantCredit's assessment, from around £558 to £594 a month – an increase from 27% of her income to 29%.*

*On reviewing Miss N's bank statements I can see that she did appear to be reliant on borrowing from family members. And that she had taken out a payday loan in the month before her application. And whilst she said her monthly outgoings were about £690, I think that underestimated that by about £200 a month just on ordinary outgoings. Taking into account that her disposable income would increase after the loan it was most likely that she would have had to keep on relying on borrowing. So whilst AvantCredit assessed that Miss N had a reasonable disposable income of over £780 left after paying the new loan, realistically this figure was likely to be far less.*

*So I don't think AvantCredit made a fair lending decision."*

I won't make any further comment about loan 1, as both parties have accepted the position here.

With regard to loan 2, AvantCredit will be aware that we don't just look at the calculated figures, but also consider whether it acted fairly and whether there were other indicators of distress. From Miss N's bank statements they simply show that she didn't have any income left over at the end of the month, the HP payment hasn't been counted twice. And she had borrowed money from family members and on a payday loan. If her credit card payments are calculated according to a minimum payment of 3% of the balances on each, her credit commitments, before the loan were roughly similar to those at the time of loan one, so in effect she hadn't managed to better her financial situation. Also she had been making larger payments towards her credit cards than 3% each month.

So I don't think it was fair to lend Miss N so as to *increase* her credit commitments against income to at least 29%, only enabling her to clear a couple of credit card debts.. Bearing in mind her circumstances which I think AvantCredit should have been alerted to when she returned to it for more debt consolidation, I think its checks should have been more thorough. In the circumstances I still maintain it didn't make a fair lending decision.

I haven't been persuaded to change my provisional findings by the responses to my provisional decision, as set out above. Those findings are now final and form part of this final decision.

## **Putting things right**

Miss N has had the capital payment in respect of loan 2, 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 loan 2.
- Treat any payments made by Miss N as payments towards the capital amount of £3,000.
- If Miss N 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 loan 2 from Miss N's credit file.

\*HM Revenue & Customs requires AvantCredit to deduct tax from this interest. It should give Miss N 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 Miss N to accept or reject my decision before 27 May 2022.

Ray Lawley  
**Ombudsman**