

## **The complaint**

Mr N says AvantCredit of UK, LLC irresponsibly lent to him.

## **What happened**

Mr N took out a 24-month instalment loan for £7,000 from AvantCredit on 15 May 2016. The monthly repayments were £426.48 and the total repayable was £10,235.56.

Mr N says the lender did not take into account the other borrowing that would have been on his credit report and made an unfair lending decision. He was in a financially abusive relationship and was coerced into taking out this loan, and a lot of other credit. Then as part of its collections process the lender, and its agent, disclosed details of the status of the loan to his ex-partner.

He asks that all interest and charges he paid are refunded with interest, that the remaining debt is written-off and that he is compensated for the unauthorised disclosure of his personal financial information. He has explained how the overall situation severely impacted his mental health and wellbeing.

Our investigator found Mr N's complaint should be upheld in part. He said AvantCredit should not have lent to Mr N as its credit check showed he was having financial difficulties and was reliant on credit. However, whilst he understood it would have been distressing for details of the loan to later be disclosed to his ex-partner he found it was a third party who did this, not the lender. He also could not see Mr N had provided a change of address to AvantCredit. Finally, he concluded there weren't grounds to instruct the lender to write-off the loan balance as he could see Mr N had the benefit of some of the money.

Both parties responded, disagreeing with aspects of this assessment.

Mr N said, in summary:

- He strongly objects to the idea that he had any 'enjoyment' (his word) from the money. He has provided adequate evidence to support what he has told us about the financial abuse he suffered.
- Had the lender done more to understand the reason for his application, not only should it have seen that giving the loan would be irresponsible, but it could have identified he was a victim of financial abuse.
- Once he stopped making payments in March 2017 AvantCredit did not help, despite knowing the circumstances, rather it added more charges to his balance. It was the only lender who did not engage positively with his debt management advisor, and it continues to chase him for a balance in excess of the capital he borrowed despite now knowing the circumstances and him having repaid £2982.
- The investigator has misunderstood who disclosed the status of his loan to his ex-partner. It was not the third party he named, rather it was an agent acting on behalf of AvantCredit to collect the debt. And his debt management advisor had notified

AvantCredit of his change in contact details, providing the necessary written authorisation from him. He had also notified AvantCredit that he was no longer with his ex-partner. So, the agent was very wrong to disclose his personal financial information to his ex-partner, and seemingly threaten to place a charge on her property. This error brought his abuser back into his life, creating a threat to his mental health and generating costs as his solicitor became involved.

AvantCredit said, in summary:

- The loan was for debt consolidation so would have reduced Mr N's monthly spend on credit from 55% to 20% of his net income, leaving him with disposable income of £1,368.87.
- Whilst it now appreciates the issues involving Mr N's ex-partner it cannot see that it could have discovered this from additional checks.
- It remains satisfied the loan was affordable and lent fairly.

As an agreement wasn't reached the complaint was passed to me to make a decision.

### **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.

Our approach to unaffordable/irresponsible lending complaints is set out on our website and I've followed it here.

The Financial Conduct Authority (FCA) was the regulator when AvantCredit lent to Mr N. Its rules and guidance, set out in its Consumer Credit Sourcebook (CONC), obliged AvantCredit to lend responsibly. Amongst other things, AvantCredit was required to carry out a reasonable and proportionate assessment of whether Mr N could afford to repay what he owed in a sustainable manner. This is sometimes referred to as an affordability assessment or an affordability check.

The checks also had to be borrower-focused. So AvantCredit had to think about whether repaying the credit sustainably would cause any difficulties or adverse consequences for Mr N. 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 Mr N. Checks also had to be proportionate to the specific circumstances of each loan application. In general, what makes up 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 and cost of credit they have applied for.

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 repayments to credit from a lower level of income);
- the *higher* the amount due to be repaid (reflecting that it could be more difficult to meet higher repayments from a particular level of income);
- the *longer* the period of time a borrower will be indebted for (reflecting the fact that the total cost of the credit is likely to be greater and the customer is required to make repayments for an extended period).

There may also be other factors which could influence how detailed a proportionate check should've been for a given application – including (but not limited to) any indications of borrower vulnerability and any foreseeable changes in future circumstances. I've kept all of this in mind when thinking about whether AvantCredit did what it needed to before agreeing to lend to Mr N, and have considered the following questions:

- did AvantCredit complete reasonable and proportionate checks when assessing Mr N's loan application to satisfy itself that he would be able to repay the loan in a sustainable way?
- if not, what would reasonable and proportionate checks have shown?
- did AvantCredit make a fair lending decision?
- did AvantCredit act unfairly or unreasonably in some other way?

Before presenting my findings, I want to first respond to Mr N's comment on the word 'enjoyment'. I can't see that the investigator used that language in his assessment, but I wonder perhaps if Mr N is referencing the phrase 'some funds were also used for Mr N's benefit'. I apologise if this has led Mr N to make the inference he complains about. I can assure him that wasn't the investigator's intention – he meant no more than he could see Mr N had receipt of the money, and with it repaid some of the payday loans and other debts in his name. We appreciate how difficult it must be for Mr N to revisit this period of his life. I also want to reassure Mr N that our approach to complaints that concern financial abuse do not vary by gender, only by the individual circumstances of each case.

I can see that AvantCredit asked for some information from Mr N before it approved the loan. It asked for details of his salary and monthly expenses, and his employment and residential status. It carried out a credit check to understand his existing credit commitments and his credit history. It asked about the purpose of the loan which was debt consolidation. From these checks combined AvantCredit concluded the loan would be sustainably affordable for Mr N.

I am not persuaded these checks were proportionate – Mr N was borrowing a significant amount of money, the monthly repayments were high at £426.48 and the initial credit check showed Mr N was already borrowing frequently. However, I won't comment further on this as even with the information it gathered I don't think AvantCredit made a fair lending decision. I'll explain why.

The credit check the lender completed showed Mr N had just over £18,000 of unsecured debt and needed to spend £1,955 each month to service this debt. This excluded his mortgage payment. This was around half of his declared income and I think AvantCredit ought to have seen there was a risk he would be unable to sustainably repay this loan. He had already needed to take out six payday loans in the previous six months and was overlimit on two credit card accounts.

AvantCredit argues that the loan was for debt consolidation and would reduce Mr N's monthly spend on unsecured credit to 20% of his income. But it also admits that it didn't ask which debts he intended to settle, or settle them directly as other lenders do. In the circumstances I don't think it was responsible for AvantCredit to go ahead and lend without knowing this, and also without understanding why Mr N had taken out so many payday loans recently. Mr N's credit file as it stood showed that he was under financial duress.

Even assuming the entire loan was used to settle existing debt, this loan was nearly doubling Mr N's total indebtedness (unsecured) and so extending his reliance on high-cost credit. To meet its regulatory obligations AvantCredit had to check Mr N could afford to sustainably

repay this loan – so without borrowing to repay or suffering other adverse financial consequences – not just the pounds and pence affordability. And I can't see it considered this.

It follows I think AvantCredit was wrong to lend to Mr N.

I have then turned to how AvantCredit must put things right. Our investigator found that there were insufficient grounds to instruct the lender to write-off the balance. And I have reached the same conclusion. Mr N has told us he was a victim of financial abuse at the time of this loan application and detailed how this affected his mental health. He has provided two pieces of expert evidence to support his submission. I find Mr N's testimony that he was co-erced into applying for this loan wholly plausible. The Financial Conduct Authority (FCA) has published in detail about the long term and devastating impact financial abuse can have on victims, and so how firms must support vulnerable consumers.

But I have not seen any evidence that AvantCredit was aware of Mr N's position at the time he applied, or indeed in May 2017 when his debt advice caseworker contacted it. I can see that in May 2017 Mr N's representative provided evidence of his mental health circumstances – but not of the financial abuse.

CONC 7.10.1R states that a lender must suspend the pursuit of recovery of a debt from a customer when:

- 1. the firm has been notified that the customer might not have the mental capacity to make relevant financial decisions about the management of the customer's debt and/or to engage in the debt recovery process at the time; or*
- 2. the firm understands or ought reasonably to be aware that the customer lacks mental capacity to make relevant financial decisions about the management of the customer's debt and/or to engage in the debt recovery process at the time.*

*[Note: paragraphs 3.7r of DCG and 7.13 of ILG]*

From what I can see AvantCredit met these requirements in part. It paused payment and collections communications. But it didn't freeze interest and charges as the debt advisor had requested (or respond to discuss what steps it would agree to take) until it set up a payment plan in February 2018. It did at that time however backdate the plan which had the effect of removing interest and charges applied since May 2017. The suspension was then deactivated in error in May 2019. AvantCredit has subsequently agreed to work with the new debt owner to reduce the outstanding balance by the amount of the interest and charges applied between May 2019 and December 2019 (the interest was again suspended in January 2020).

However, as I have decided it was irresponsible for AvantCredit to lend to Mr N, and am instructing it to refund all interest and charges over the life of the loan, my award will supercede its offer. In addition, AvantCredit offered £50 compensation to Mr N for any distress and confusion its administrative errors caused. I think an amount of £150 is more reasonable given the level of distress Mr N suffered as a result of the lender's mismanagement of his account at times.

Did AvantCredit act unfairly or unreasonably in some other way towards Mr N?

Mr N says that AvantCredit disclosed information about the loan to his ex-partner. But from the evidence I have seen this happened in February 2021, after the debt was sold on 16 December 2020. So I can't investigate this as part of this complaint. I note his comment that this incident renewed his contact with his abuser, but in fairness to all parties involved I have

to first direct him to the owner of the debt who was responsible for the collections activity at the time. It can then investigate and respond to Mr N's concerns. I know he has the contact details. If he is unhappy with the business' response he can of course bring his complaint to us.

### **Putting things right**

I think it is fair and reasonable for Mr N to repay the capital amount that he borrowed in the circumstances of this complaint. But he has paid extra for lending that should not have been provided to him so AvantCredit needs to put that right.

I understand it has sold the debt so it should first try to buy it back or if that is not possible it must work with the new debt owner to achieve the same outcome as the steps set out below.

It should:

- refund all interest and charges Mr N paid on the loan;
- if reworking Mr N's loan account results in him having effectively made payments above the original capital borrowed, then AvantCredit should refund these overpayments with 8% simple interest calculated on the overpayments, from the date the overpayments would have arisen, to the date of settlement\*;
- if reworking Mr N's account results in there still be a capital balance outstanding AvantCredit should work with Mr N to agree an affordable repayment plan;
- remove any negative information about the loan from Mr N's credit file; and
- pay Mr N directly £150 compensation for the distress caused by the administrative errors on his account.

\*HM Revenue & Customs requires AvantCredit to take off tax from this interest. AvantCredit must give Mr N a certificate showing how much tax it's taken off if he asks for one.

### **My final decision**

I am upholding Mr N's complaint in part. AvantCredit of UK, LLC must put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 28 July 2022.

Rebecca Connelley  
**Ombudsman**