

## **The complaint**

Mrs E complains that AvantCredit of UK, LLC failed to notify her that agents would visit her home when seeking repayment of a debt. She further complains that the agents discussed details of the debt with a third party. She wants an apology and compensation.

## **What happened**

Mrs E told us that she took out a loan in 2016. But that she thought all her payments on the debt had been made by 2017. She said that she had updated her email address to Avant in 2017 but didn't receive any letters or calls from Avant until debt collection agents called at her home. She states that the agents spoke about the debt with her husband – without authority – and that this had resulted in difficulties within the family.

Avant told us it had used the contact details it had on file for Mrs E. And that it had attempted emails and calls to alert her to the visit of the agents and the outstanding debt. It said that any complaint about what was discussed with Mrs E's husband should be directed to the agents.

I issued a provisional decision on this complaint on 30 December 2020. I said that I intended to uphold the complaint. And that I was satisfied to a high degree of probability that the agents which Avant had appointed had discussed the loan with Mrs E's husband without her authority. And that I intended to make an award of compensation.

But that in view of the breakdown in understanding between Avant and Mrs E I thought it was best that the amount I was proposing could be used towards repaying the account. This could then be closed.

[Avant replied to my provisional decision and said that if Mrs E paid the missing instalment of £98.10 it would waive the arrears and close the account. Mrs E hasn't replied.

I thank Avant for its response. But for the reasons I'll explain I'm going to broadly maintain the terms I set out in my provisional decision. I'll give my reasons in the final decision which is set out below.

## **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 understand that Mrs E would be upset at debt collection agents calling at her home if she hadn't received advance notice. And that by discussing the details of the debt with her husband – without her permission - it would potentially have been the source of considerable distress and embarrassment.

Mrs E's complaint comprises of two main elements. Firstly that Avant didn't update her details and contact her about the debt or the intended visit of its agents. And that those agents discussed details of her debt with her husband without her authority.

I'm aware that I've summarised this complaint in far less detail than the parties and I've done so using my own words. I'm not responding to every single point made by all the parties involved. No discourtesy is intended by this. Instead, I've concentrated on what I think are the key issues here. Our rules allow me to do this.

This reflects the nature of our service as an informal alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome.

I'll deal with each of the issues separately.

Mrs E's loan required her to make 12 payments of about £98. She made all the required payments both before and after the one missed payment in April 2019. Why the direct debit failed I'm unable to say – but it did.

It seems that during early 2017 Miss E started using a new email address. And that Avant contacted her asking her to confirm if this was the email address that she wished in future to use. I can't see that it received any reply. And it seems that Avant didn't update its records without the confirmation.

Whilst Avant has accepted it could've done more to contact Mrs E about the debt, it's also the responsibility of the borrower to ensure that all payments have been made. So whilst I'm in no doubt that Mrs E assumed the direct debit had gone through - it was still up to her to check. Had she done so, no doubt the matter would have been amicably resolved by the payment being made. As all the other payments were made there's no reason to suppose the missing payment arose from anything other than an oversight.

I can see how the misunderstanding over the email address occurred. It's most unfortunate that it led to the breakdown in contact and the subsequent events this caused. I don't see any benefit in trying to apportion responsibility at this stage. All I will say is that Avant tried to contact Mrs E but that she didn't receive those communications.

The second part of her complaint is, I feel, more serious. It was unfortunate that the problems with contact meant that Avant felt it necessary to send agents to visit Mrs E's home address. But we wouldn't say this was necessarily wrong if all other attempts at contact had failed. And prior notice of the visit had been sent. Unfortunately, the nature of the misunderstanding meant that Mrs E didn't receive contact or advance notice of the visit.

It would, no doubt, still have come as a shock even had she been able to deal with it herself. But Mrs E states the agents discussed the debt with her husband. I accept this occurred.

In its latest response letter Avant appears now to accept that that it is responsible for the actions of those it appoints to chase debts on its behalf. This accords with the requirements of the relevant rules which apply to firms and debt collecting activities and which are contained in The Financial Conduct Authority Consumer Credit sourcebook (CONC).

These include:

*CONC 1.2.2 R*

*A firm must:*

*(1) ensure that its employees and agents comply with CONC; and*

*(2) take reasonable steps to ensure that other persons acting on its behalf comply with CONC.*

#### CONC 1.2.3

*(1) Although CONC does not apply directly to a firm's appointed representatives, a firm will always be responsible for the acts and omissions of its appointed representatives in carrying on business for which the firm has accepted responsibility (section 39(3) the Act). In determining whether a firm has complied with any provision of CONC, anything done or omitted by a firm's appointed representative (when acting as such) will be treated as having been done or omitted by the firm (section 39(4) of the Act).*

#### CONC 1.2.4

*The credit-related regulated activities comprise consumer credit lending, credit broking, debt counselling, debt adjusting, debt administration, debt collecting,*

#### CONC 7.1.3

*1) In accordance with CONC 1.2.2 R firms must ensure that their employees and agents comply with CONC and must take reasonable steps to ensure that other persons acting on the firm's behalf act in accordance with CONC.*

*(2) The rule in CONC 1.2.2 R is particularly important in relation to the requirements in CONC 7, for example, in dealing with an individual from whom the person referred to in the rule is seeking to collect a debt.*

#### CONC 7.9.6

*A firm must not unfairly disclose or threaten to disclose information relating to the customer's debt to a third party.*

#### CONC 7.9.7

*When contacting a customer:*

*(1) a firm must ensure that it does not act in a way likely to be publicly embarrassing to the customer; and*

*(2) a firm must take reasonable steps to ensure that third parties do not become aware that the customer is being pursued in respect of a debt*

It's clear from the above that as Avant chose to appoint agents to seek to collect this debt on its behalf, it is responsible for the actions of those agents. Whether the agents are also liable is immaterial to this complaint as it's brought only against Avant.

Avant has suggested that if Mrs E repays the "missing" instalment of £98.10 it will remove all other charges and interest and close the account. I've been advised by Avant that the current balance at the time of issuing this decision is £257.79.

I feel Mrs E's experienced considerable embarrassment and that this was almost entirely avoidable. I'd indicated in my provisional decision that the level of compensation I was considering for the distress and inconvenience caused was between £250 - £350.

Usually we'd expect an award for distress and inconvenience to be paid separately. And not be used towards repaying an account unless the customer specifically requested this. But I

think in the current circumstances with the debt now approaching two years old and Mrs E not having replied to the provisional decision that it is in the best interests of both parties to use the award in a way that enables the account to be closed.

The overall financial benefit to Mrs E is within the range that I'd indicated in my provisional decision. And I believe it amounts to a fair and reasonable resolution of this complaint.

### **Putting things right**

Avant now needs to take the following action:

Credit the account with £257.79 which represents the award I make for distress and inconvenience caused to Mrs E. And then close the account.

If the account has been reported to credit reference agencies, arrangements should be made – once the account has been closed – for that to be recorded in the appropriate manner.

### **My final decision**

For the above reasons my final decision is I'm upholding this complaint. I require AvantCredit of UK, LLC to take the action I've stipulated in the preceding paragraph.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs E to accept or reject my decision before 10 March 2021.

Stephen Ross  
**Ombudsman**