

Complaint

Mr W has complained about a loan AvantCredit of UK, LLC ("Avant Credit") provided to him. He says the loan was provided at a time when he was already struggling and placed him into further hardship.

Background

Avant Credit provided Mr W with a loan for £2,800.00 in October 2015. This loan was due to be repaid in 24 monthly instalments of around £178.

One of our adjudicators reviewed Mr W's complaint and he thought Avant Credit shouldn't have provided Mr W with this loan. So he thought that Mr W's complaint should be upheld. Avant Credit didn't respond so the case was passed to an ombudsman for a final decision.

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 explained how we handle complaints about unaffordable and irresponsible lending on our website. And I've used this approach to help me decide Mr W's complaint. Having carefully considered everything I've decided to uphold Mr W's complaint. I'll explain why in a little more detail.

Avant Credit needed to make sure it didn't lend irresponsibly. In practice, what this means is Avant Credit needed to carry out proportionate checks to be able to understand whether Mr W could afford to repay any credit it provided.

Our website sets out what we typically think about when deciding whether a lender's checks were proportionate. Generally, we think it's reasonable for a lender's checks to be less thorough – in terms of how much information it gathers and what it does to verify it – in the early stages of a lending relationship.

But we might think it needed to do more if, for example, a borrower's income was low or the amount lent was high. And the longer the lending relationship goes on, the greater the risk of it becoming unsustainable and the borrower experiencing financial difficulty. So we'd expect a lender to be able to show that it didn't continue to lend to a customer irresponsibly.

Despite being provided with an extended period of time to do so, Avant Credit hasn't explained why it disagrees with our adjudicator's assessment. I find Avant Credit's lack of a response and its apparent disregard of its DISP 1 obligations to be extremely disappointing. Nonetheless, I've looked at the information Avant Credit obtained when it provided this loan in an attempt to determine whether it made a fair lending decision.

The information Avant Credit has provided suggested that Mr W was asked to provide copies of bank statements, which he did. The statements provided clearly show that Mr W was in a cycle of payday and other high-cost lending.

So I'm persuaded by what Mr W has said about already being in a difficult financial position at the time. And while it's possible he could have been taking these loans through choice rather than because he was struggling, in the absence of any reasonable or plausible arguments from Avant Credit, I've been persuaded to accept Mr W's version of events.

As this is the case, I do think that Mr W's existing debts and the cycle of borrowing he was already in meant that he was unlikely to be able to afford the payments to this loan, without undue difficulty or borrowing further. And as reasonable and proportionate checks should have extended into finding out about Mr W's income and expenditure, I'm satisfied that they would more likely than not have shown Avant Credit that it shouldn't have provided this loan to Mr W. As Avant Credit provided Mr W with this loan, notwithstanding this, I'm satisfied it failed to act fairly and reasonably towards him.

Mr W has ended up paying (and is still being expected to pay) interest, fees and charges on a loan he shouldn't have been provided with. So I'm satisfied that Mr W lost out because of what Avant Credit did wrong and that it should put things right.

Fair compensation – what Avant Credit needs to do to put things right for Mr W

Having thought about everything, Avant Credit should put things right for Mr W by:

- removing all interest, fees and charges applied to the loan from the outset. The payments Mr W made, to Avant Credit (and any debt purchaser since the account was sold), should be deducted from the new starting balance – the £2,800.00 originally lent. If Mr W has already repaid more than £2,800.00 then Avant Credit should treat any extra as overpayments. And any overpayments should be refunded to Mr W;
- adding interest at 8% per year simple on any overpayments, if any, from the date they were made by Mr W to the date of settlement†
- if no outstanding balance remains after all adjustments have been made, all adverse information Avant Credit recorded about this loan should be removed from Mr W's credit file.

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

I'd also remind Avant Credit of its obligation to exercise forbearance and due consideration if it intends to collect on an outstanding balance, should one remain after all adjustments have been made to the account (should it buy it back from the third-party debt purchaser it sold his debt to), and it's the case that Mr W is experiencing financial difficulty.

My final decision

For the reasons I've explained, I'm upholding Mr W's complaint. AvantCredit of UK, LLC should put things right in the way I've set out above.

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

Jeshen Narayanan
Ombudsman