

Complaint

Mr M has complained that AvantCredit of UK, LLC (“Avant Credit”) irresponsibly lent to him.

Background

Avant Credit provided Mr M with a loan for £2,000.00 in February 2015. This loan was due to be repaid in 18 monthly instalments of around £170. One of our adjudicators reviewed Mr M’s complaint and she thought Avant Credit shouldn’t have provided Mr M with this loan. So she thought that Mr M’s complaint should be upheld. Avant Credit didn’t agree 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 M’s complaint. Having carefully considered everything I’ve decided to uphold Mr M’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 M 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. The information Avant Credit has provided suggested that Avant Credit carried out a credit check. The results of which clearly demonstrated that Mr M had recently defaulted on a payday loan and was close to his limit on his credit card. The search also showed Mr M had taken at least 20 payday loans in the two years leading up to this application too.

So I’m persuaded by what Mr M 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, I’d add that my experience of these types of cases suggest this is unlikely, in the absence of any reasonable or plausible arguments from Avant Credit, I’ve been persuaded to accept Mr M’s version of events.

As this is the case, I think Mr M’s existing financial position 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 M’s income and expenditure, I’m satisfied that they would more like than not have shown Avant

Credit that it shouldn't have provided this loan to Mr M. As Avant Credit provided Mr M with this loan, notwithstanding this, I'm satisfied it failed to act fairly and reasonably towards him.

Mr M has paid and is being expected to pay interest, fees and charges on a loan he shouldn't have been provided with. So I'm satisfied that Avant Credit should put things right.

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

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

- removing all interest, fees and charges applied to the loan from the outset. The payments Mr M made, whether to Avant Credit or any third-party debt purchaser, should be deducted from the new starting balance – the £2,000.00 originally lent. If Mr M has already repaid more than £2,000.00 then Avant Credit should treat any extra as overpayments. And any overpayments should be refunded to Mr M;
- adding interest at 8% per year simple on any overpayments, if any, from the date they were made by Mr M 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 M's credit file.

† HM Revenue & Customs requires Avant Credit to take off tax from this interest. Avant Credit must give Mr M 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 it buy the debt back from any third-party debt purchaser and one remains, after all adjustments have been made to the account and it's the case that Mr M is experiencing financial difficulty.

My final decision

For the reasons I've explained, I'm upholding Mr M'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 M to accept or reject my decision before 25 April 2022.

Jeshen Narayanan
Ombudsman