

## **Complaint**

Miss W has complained about a loan AvantCredit of UK, LLC (“Avant Credit”) provided to her. She says the loan was provided at a time when she was already struggling and couldn’t afford the payments.

## **Background**

Avant Credit provided Miss W with a loan for £5,000.00 in April 2016. This loan was due to be repaid in 36 monthly instalments of around £155.

One of our adjudicators reviewed Miss W’s complaint and she thought Avant Credit shouldn’t have provided Miss W with this loan. So she thought that Miss W’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 Miss W’s complaint. Having carefully considered everything I’ve decided to uphold Miss 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 Miss 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.

The information Avant Credit has provided suggests that the credit check it carried out showed that Miss W had a number of payday loans and was close to her limit on her credit cards. So I’m persuaded by what Miss W has said about already being in a difficult financial position at the time.

While it’s possible her credit file reflected her choices rather than because she 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 Miss W's version of events.

As this is the case, I do think that Miss W's existing financial position meant that she was unlikely to be able to afford the payments to this loan, without undue difficulty or borrowing further – especially as her monthly payments to creditors was going to take up a significant proportion of her income. And as reasonable and proportionate checks should have extended into finding out about Miss W'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 Miss W.

As Avant Credit provided Miss W with this loan, notwithstanding this, I'm satisfied it failed to act fairly and reasonably towards her.

Miss W has ended up paying (and is still being expected to pay) interest, fees and charges on a loan she shouldn't have been provided with. So I'm satisfied that Miss 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 Miss W**

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

- removing all interest, fees and charges applied to the loan from the outset. The payments Miss W made, to Avant Credit (and any debt purchaser since the account was sold), should be deducted from the new starting balance – the £5,000.00 originally lent. If Miss W has already repaid more than £5,000.00 then Avant Credit should treat any extra as overpayments. And any overpayments should be refunded to Miss W;
- adding interest at 8% per year simple on any overpayments, if any, from the date they were made by Miss 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 Miss W's credit file.

† HM Revenue & Customs requires Avant Credit to take off tax from this interest. Avant Credit must give Miss W a certificate showing how much tax it has taken off if she 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 her debt to), and it's the case that Miss W is experiencing financial difficulty.

### **My final decision**

For the reasons I've explained, I'm upholding Miss 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 Miss W to accept or reject my decision before 27 April 2022.

Jeshen Narayanan

**Ombudsman**