

Complaint

Ms E has complained about a loan AvantCredit of UK, LLC ("Avant Credit") provided to her. She says the loan was unaffordable.

Background

Avant Credit provided Ms E with a loan for £4,000.00 in October 2015. This loan was due to be repaid in 48 monthly instalments of just under £200.

One of our adjudicators reviewed Ms E's complaint and she thought Avant Credit shouldn't have provided Ms E with this loan. So she thought that Ms E's complaint should be upheld.

Avant Credit disagreed with our adjudicators view 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 Ms E's complaint.

Having carefully considered everything I've decided to uphold Ms E'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 Ms E 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.

Any credit check carried out is more likely than not to have clearly demonstrated that Ms E was significantly indebted and that she had a history of high-cost and other payday lending. Furthermore, even though this loan may have been taken for consolidation, the amount would have made little inroad into what Ms E already owed. So it's unclear to me how or what was going to be consolidated and more crucially how this was going to improve Ms E's financial position.

So I'm persuaded by what Ms E has said about already being in a difficult financial position at the time. And 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 Ms E's version of events.

As this is the case, I do think that Ms E'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. And I'm satisfied that reasonable and proportionate checks would more like than not have shown Avant Credit that it shouldn't have provided this loan to Ms E.

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

Ms E 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 in the first place. So I'm satisfied that Ms E 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 Ms E

Having thought about everything, Avant Credit should put things right for Ms E by:

- removing all interest, fees and charges applied to the loan from the outset. The payments Ms E made, whether to Avant Credit or any third-party debt purchaser, should be deducted from the new starting balance – the £4,000.00 originally lent. If Ms E has already repaid more than £4,000.00 then Avant Credit should treat any extra as overpayments. And any overpayments should be refunded to Ms E;
- adding interest at 8% per year simple on any overpayments, if any, from the date they were made by Ms E 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 Ms E's credit file.

† HM Revenue & Customs requires Avant Credit to take off tax from this interest. Avant Credit must give Ms E 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 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 Ms E is experiencing financial difficulty.

My final decision

For the reasons I've explained, I'm upholding Ms E'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 Ms E to accept or reject my decision before 10 May 2022.

Jeshen Narayanan

Ombudsman