

Complaint

Ms H 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 Ms H with a loan for £3,100.00 in October 2015. This loan was due to be repaid in 60 monthly instalments of around £103.

One of our adjudicators reviewed Ms H’s complaint and she thought Avant Credit shouldn’t have provided Ms H with this loan. So he thought that Ms H’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 Ms H’s complaint. Having carefully considered everything I’ve decided to uphold Ms H’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 H 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 it obtained information on Ms H’s income and some of her expenditure as well as carrying out a credit check. It looks like the amount Avant Credit arrived at for Ms H’s expenditure exceeded what was a low monthly

income. So it seems to me that Avant Credit ought to have been aware from what it gathered that Ms H wouldn't be able to make the payments to this loan.

Furthermore, I'm also concerned at the results of the credit check which shows that Ms H was already significantly indebted, bearing in mind the amount of the monthly income, and that she was using payday and other high-cost lending. And while there's some suggestion this loan might have been for debt consolidation, the amount didn't correspond to what Ms H owed. It's therefore unclear to me how or what was going to be consolidated and more crucially how this was going to improve Ms H's financial position – especially as she also appears to have had no monthly disposable income.

So I'm persuaded by what Ms H has said about already being in a difficult financial position at the time. And while it's possible Ms H's credit file was showing what it did as a result of 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 H's version of events.

As this is the case, I think that Ms H's lack of disposable income coupled with her existing debts meant that she simply wouldn't have been able to make the payments to this loan, without undue difficulty or borrowing further. So I'm satisfied that Avant Credit ought to have realised that it shouldn't have provided this loan to Ms H.

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

Ms H 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 Ms H 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 H

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

- removing all interest, fees and charges applied to the loan from the outset. The payments Ms H made, to Avant Credit (and any debt purchaser since the account was sold), should be deducted from the new starting balance – the £3,100.00 originally lent. If Ms H has already repaid more than £3,100.00 then Avant Credit should treat any extra as overpayments. And any overpayments should be refunded to Ms H;
- adding interest at 8% per year simple on any overpayments, if any, from the date they were made by Ms H 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 H's credit file.

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

My final decision

For the reasons I've explained, I'm upholding Ms H'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 H to accept or reject my decision before 19 September 2022.

Jeshen Narayanan
Ombudsman