

The complaint

Mr G complains AvantCredit of UK LLC trading as AvantCredit didn't respond to his partial settlement offer, and then sold his account without telling him.

What happened

I set out the background to this complaint and my initial findings in my provisional decision dated 30 January 2024 (below).

Mr G took a loan with AvantCredit in March 2016. The loan was for a period of 48 months, Mr G made the regular monthly payments until May 2017 when he fell into some financial difficulties and asked for a reduced payment plan to be put in place. The plan lasted for four months. Following the plan Mr G made two contractual payments towards the loan one in September 2017 and the other in May 2019.

Throughout 2019 and the beginning of 2020 Avant Credit made multiple attempts to contact Mr G by phone, to discuss the arrears that were accruing on his account, but they were unable to reach him.

In February 2020 Mr G called AvantCredit, informing them he had been made redundant. He told them he may be in a position to pay the account in full but needed to discuss this with his wife first. Avant Credit gave him a settlement figure valid for that day of £4,464.71. AvantCredit explained to Mr G he could, if he wanted, make a smaller lump sum payment and spread the remaining outstanding balance across monthly payments. Mr G said he would come back to them.

The following day Mr G emailed AvantCredit making an offer to settle the account at a reduced balance of £3,400. AvantCredit acknowledged the offer and placed a 30 day hold on the account while they considered it. AvantCredit never gave Mr G an answer to the offer.

AvantCredit sent Mr G Notice of Sums in Arrears (NOSIA) letters in April and September 2020, February, July and December 2021. They also sent him an annual statement of his account in December 2020 and in November 2021.

In December 2021 AvantCredit sold Mr G's account to a debt purchaser, that for the purposes of this decision I'll call P. P appointed a separate company to administer the collection of the debt on its behalf. They informed Mr G they were now looking after the account.

Mr G was unhappy AvantCredit had sold his account without responding to his settlement offer. He felt this increased the amount he would now have to pay to settle the account, as he feels it was likely AvantCredit would have accepted his lower offer if they had considered it and given him an answer. He also believed Avant Credit should have told him they were planning to sell the account to P, before doing so.

AvantCredit apologised to Mr G for their failure to respond to the offer. They said that

it was likely this had happened due to the impact caused to the business by the Covid 19 pandemic. They offered £50 to Mr G to recognise this.

They also said that the account had been sold to P due to the arrears that had accrued on the account and the last payment being received in September 2019.

Mr G remained unhappy and so brought his complaint to this service. In summary our investigator said he didn't think AvantCredit had acted unfairly in selling the account and that a Notice of Assignment (NOA) letter had been provided to Mr G by P or their agent.

Mr G disagreed with the investigators findings. I've summarised his argument using my own words:

He feels it's likely AvantCredit would have accepted the offer and the sale has now had a detrimental impact on him, as he will now need to pay more to settle the account than he had offered. He said he hasn't disputed the fact P informed him of the change of ownership after the event, but his point is AvantCredit should have told him beforehand so he could do something to prevent that. The matter has now been passed to me to decide.

What I've provisionally decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I realise that I've summarised this complaint in less detail than the parties and I've done so using my own words. I've concentrated on what I consider to be the key issues. The rules that govern this service allow me to do so. But this doesn't mean that I've not considered everything that both parties have given to me.

The terms and conditions of Mr G's loan state:

"12 Miscellaneous

12.1...

12.2...

12.4 We may assign or transfer this Loan Agreement (including any of our rights thereunder) without your consent. You may not assign or transfer any of your rights or obligations under this Loan Agreement."

In essence this means AvantCredit could chose to sell the account if and when they wanted to, without the need to prewarn Mr G. However, I've thought about in Mr G's circumstances if it was fair for them to do so, and I think it was. I'll explain.

Mr G signed a contract agreeing to make monthly payments in return for a loan from AvantCredit. When Mr G fell into financial difficulties in 2017, he couldn't continue making the contractual payments. AvantCredit took account of his circumstances and agreed a four- month reduced payment plan. After the plan ended Mr G only made two more contractual payments towards the loan, the last being in September 2019. And despite AvantCredit actively trying to contact him about this, Mr G didn't make any offers of payment towards the loan until the settlement offer in February 2020.

There is no dispute Mr G was aware of the account and the arrears that had accrued on it. He was also aware that he hadn't made a payment towards those arrears, AvantCredit had told Mr G they would place a 30 day hold on the account while they considered the offer. While it's disappointing AvantCredit didn't respond to Mr G's settlement offer, the onus isn't only on them, Mr G has some responsibility here too, to make sure he is paying the debt that he owes and has contractually agreed to. Given this, I think when he hadn't heard from them after the 30 days, it would have been reasonable for him to chase them for an answer or to assume it was more likely than not that the offer hadn't been accepted. At this point he could have made a different offer or set up a monthly payment plan, whichever was more suitable for his circumstances.

Although Mr G has said he thought AvantCredit would have likely accepted the offer had they responded to him, so the sale of it to P means he will now have to pay more to settle the account than he would have. I haven't seen any evidence to support this and AvantCredit have told this service, based on the offer being significantly less than the amount owed, it's unlikely they would have accepted it at the time.

AvantCredit have confirmed that they added no further interest or fees to Mr G's account from 2018, so I can't agree that Mr G is going to have to pay more than he should to settle the debt. I say this because Mr G owes the full amount of the loan, and while a business can accept a lower offer as a partial settlement, this would be a commercial decision for it and it's under no obligation to do so. To pay a lower amount than he owes isn't an entitlement of Mr G's.

As I've said above it is disappointing that AvantCredit didn't respond to Mr G's offer with an answer, but I feel the £50 they offered to him to recognise this is fair and reasonable. They should now arrange to pay this to Mr G.

My provisional decision

For the reasons explained above, I'm currently intending to uphold Mr G's complaint about AvantCredit of UK, LLC trading as AvantCredit. And intend to ask them to pay the £50 already offered to Mr G.

I invited both parties to let me have anything in response they thought was relevant.

AvantCredit responded with a question about the way we would record the outcome of the case but didn't raise any new points or arguments about the outcome I'd reached.

Mr G responded saying he accepted my provisional findings.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I have asked the investigator to respond separately to Avant Credit on its process question. As neither party has made any further representations, I see no reason to depart from my provisional decision.

Putting things right

AvantCredit should now pay Mr G the £50 already offered to him in their final response letter.

My final decision

For the reasons set out above, my final decision is that I uphold this complaint and I require AvantCredit of UK, LLC trading as AvantCredit to carry out the actions as set out under the 'Putting things right' section of this decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 7 March 2024.

Amber Mortimer
Ombudsman