

Complaint

Mrs S has complained about loans AvantCredit of UK, LLC (“Avant Credit”) provided to her. She says the loans were unaffordable.

Background

Avant Credit provided Mrs S with an initial loan for £2,000.00 in April 2014. This loan was due to be repaid in 18 monthly instalments of just over £182. Mrs S was then provided with a second loan for £8,000.00 in July 2015. This loan was due to be repaid in 48 monthly instalments of just under £400.

One of our adjudicators reviewed Mrs S’ complaint and he thought Avant Credit shouldn’t have provided Mrs S with either of these loans. So he thought that Mrs S’ complaint should be upheld. Avant Credit accepted our adjudicator’s finding on loan 2 but disagreed with his findings on loan 1 so the case was passed to an ombudsman for a final decision.

As the parties are in agreement that loan 2 shouldn’t have been provided this decision will only be looking at whether Avant Credit acted fairly and reasonably when providing loan 1 to Mrs S.

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 Mrs S’ complaint.

Having carefully considered everything I’ve decided to uphold Mrs 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 Mrs S 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 it carried out a credit check before providing loan 1. The results of which showed that Mrs S was already significantly indebted

and had a history of taking out payday loans. Furthermore, while there's some suggestion the purpose of this loan might have been debt consolidation there is no indication of which debts Mrs S was going to consolidate. So it's unclear to me how or what was going to be consolidated and more crucially how this was going to improve Mrs S' financial position.

This leaves me persuaded by what Mrs S has said about already being in a difficult financial position at the time of loan 1 (as well as loan 2 which Avant Credit already accepts this is the case). And while it's possible Mrs S' impaired credit file reflected her choices rather than any financial difficulty, 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 Mrs S' version of events.

As this is the case, I do think that Mrs S' existing financial position meant that she was unlikely to be able to afford the payments to loan 1, 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 loan 1 to Mrs S. As Avant Credit provided Mrs S with loan 1 (as well as loan 2 which it has already accepted it should have provided), notwithstanding this, I'm satisfied it failed to act fairly and reasonably towards her.

Mrs S ended up paying interest, fees and charges on a loan she shouldn't have been provided with. So I'm satisfied that Mrs S 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 Mrs S

Having thought about everything, Avant Credit should put things right for Mrs S by:

- refunding all interest, fees and charges Mrs S paid on loan 1;
- removing all interest, fees and charges applied to loan 2 from the outset. The payments Mrs S made, whether to Avant Credit or any third-party debt purchaser, should be deducted from the new starting balance – the £8,000.00 originally lent. If Mrs S has already repaid more than £8,000.00 then Avant Credit should treat any extra as overpayments. And any overpayments should be refunded to Mrs S;
- if an outstanding balance remains on loan 2 after all adjustments have been made, Avant Credit can use the compensation due from loan 1 to reduce and/or clear any amount owing on loan 2;
- adding interest at 8% per year simple on any refunded payments from the date they were made by Mrs S to the date of settlement†;
- removing all adverse information it recorded on Mrs S' credit file as a result of loan 1. Avant Credit should also remove all adverse information if recorded on Mrs S' credit file as a result of loan 2, if after all adjustments have been made no outstanding balance remains on this loan.

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

My final decision

For the reasons I've explained, I'm upholding Mrs 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 Mrs S to accept or reject my decision before 8 June 2022.

Jeshen Narayanan
Ombudsman