

## The complaint

Mr E believes Advantage Finance Ltd acted irresponsibly by agreeing a hire purchase agreement he'd applied for.

## What happened

On 6 January 2016, Mr E took out a hire purchase with Advantage. The loan was for £3,975 over 48 months, with 47 monthly repayments of £145.90, and a final payment of £320.90. The agreement was used to finance the purchase of a used car. Mr E has said that the car broke down in July 2019 and it was uneconomical for him to repair this. So he arranged to have the car scrapped, and he's no longer in possession of it.

Mr E has complained Advantage didn't act responsibly when approving the agreement. He said he was in default with several payday lenders, and that it was clear from his bank statements that he has a gambling problem. He also didn't think that Advantage took into consideration the he was a sole income earner with two dependent children.

Advantage thought they'd acted reasonably, but Mr E wasn't happy with this response. So he brought his complaint to the Financial Ombudsman Service for investigation.

Advantage said they'd carried out a credit check, but they weren't able to provide a copy of this. But, from the income check they did, and from what they said was on the credit check, Advantage considered the monthly payments were affordable.

Our investigator reviewed Mr E's credit file and considered what it would've showed at the time of the application. And she said that, at the time, Mr E had historic payday loans, and defaults. And he also had active credit cards and a loan with a high cost lender. She thought this showed that Mr E had struggled financially, so she thought Advantage should've carried out further checks before approving the finance.

The investigator considered what Advantage would most likely have seen if they'd carried out additional checks. And she said these would've shown that Mr E wasn't able to afford the monthly payments to Advantage. So she said that Advantage shouldn't have approved the finance.

The investigator said Advantage should refund all of the payments Mr E made (less the amount he originally borrowed) and refund all of the interest and charges. And, if that meant that Mr E has paid back more than he borrowed, then Advantage should also pay interest. She also said that Advantage should remove any adverse credit from Mr E's credit file.

Advantage didn't agree with the investigator. They said that the credit search they carried out didn't suggest he was in financial difficulties; and they maintained the payments were affordable. They also said that Mr E was responsible for his own budgeting choices and considered he would *"be perfectly capable of organising his own domestic finances and could decide if any new agreement was something he could afford along with his essential expenditure."*

Because Advantage didn't agree, this matter has been passed to me to make a final decision.

### **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.

When someone complains about irresponsible and/or unaffordable lending, there are two overarching questions I need to consider in order to decide what's fair and reasonable in all of the circumstances of the complaint. These are:

1. Did Advantage complete reasonable and proportionate checks to satisfy itself that Mr E would be able to repay the credit in a sustainable way?
  - a. if so, did Advantage make a fair lending decision?
  - b. if not, would reasonable and proportionate checks have shown that Mr E could sustainably repay the borrowing?
2. Did Advantage act unfairly or unreasonably in some other way?

And, if I determine that Advantage didn't act fairly and reasonably when considering Mr E's application, I'll also consider what I think is a fair way to put things right.

#### *Did Advantage complete reasonable and proportionate checks to satisfy itself that Mr E would be able to repay the credit in a sustainable way?*

There's no set list for what reasonable and proportionate checks are, but I'd expect lenders to consider things such as the amount, duration and payments of the finance being applied for; as well as the borrowers' personal circumstances at the time of each application.

After the investigator had issued her view, Advantage provided a copy of the credit search they did at the time of Mr E's application. This shows Mr E had five previous defaults between December 2010 and July 2012, two of which hadn't been repaid, with outstanding balances totalling £6,759. The only active credit showing was a current account, and all of Mr E's existing credit agreements had been settled (or defaulted) by no later than July 2012.

Different lenders have different criteria, so I don't think the presence of historic defaults was a reason for Advantage to automatically decline the application. But I would expect them to take these into consideration when making their overall lending decision. So I would've expected Advantage to establish Mr E's income and expenditure, and account for payments to the existing default balances as part of that expenditure.

Mr E had declared he earned £1,651 a month; and Advantage confirmed this from his December 2015 payslip, which showed a net pay of £1,701.53. Advantage say that they also completed an income and affordability check. This was based on data from a number of sources, including the payslip and credit file, and used an average cost for rent and utility costs for Mr E's area. But they haven't provided a copy of the calculation they actually did.

Given that Advantage can't provide a copy of the checks they did, I can't say if what they did was either reasonable or proportionate.

#### *Would any additional checks Advantage could've done have shown that Mr E could sustainably repay the borrowing?*

Because Advantage have evidenced what checks they did, I've gone on to consider what they would've seen if these checks had been carried out.

Mr E declared a monthly income of £1,651. He's also said that his monthly expenditure at the time was £650 rent, £95 council tax, £190 utility bills and £100 TV and internet – a total of £1,035. There were no outstanding credit commitments on the credit search, but he did have £6,759 outstanding on his default balances. And I think it's reasonable to assume he was paying (or should have been paying) towards these. Assuming 3% of the outstanding balance, this would be £202.77 a month.

So, even allowing for the higher income of £1,701.53 showing on the December 2015 payslip, Mr E would have £463.76 disposable income each month, with which to pay for food, travel and other discretionary expenditure; as well as Advantage's payment of £145.90. And, as Mr E has said that he was paying £450 a month for food alone, this would make the finance unaffordable.

Given this, I would've expected Advantage to have done further checks into Mr E's income and expenditure, before making any decision to lend.

Mr E has provided us with his bank statements for the period 1 October to 31 December 2015. If Advantage had asked for more information about Mr E's income and expenditure, then the bank statements for this period give a good indication of what Advantage would likely have discovered.

The bank statements show Mr E's average monthly income was £1,710.94. And while they show the rent (£695) and mobile phone payment (£78.37), they don't show the council tax or other utility bills Mr E paid. Mr E has said that he had pre-paid energy meters that he topped up at the local shop, paying cash. So, they wouldn't show on the bank statements.

However, the bank statements also show a high number of gambling transactions – 150 over the three months – and that Mr E was betting an average of £587.92 a month. The bank statements also show that Mr E was paying regular bank charges, going overdrawn, and was reliant on payments into his account from other people to cover his expenditure.

Taking all the above into consideration, I'm satisfied that Mr E was in financial difficulties, and the finance wasn't affordable for Mr E when considering what he was actually paying out each month. What's more, making payments over the full term of the loan also wasn't likely to be sustainable.

So, given this, I'm satisfied that Advantage shouldn't have approved the finance.

*Did Advantage act unfairly or unreasonably in some other way?*

I haven't seen anything to make me think Advantage acted unfairly or unreasonably in some other way.

### **Putting things right**

As I don't think the finance should've been approved, I've thought about how to put Mr E back in the position he would've been in if this hadn't happened. But I've also taken into consideration that Mr E had the benefit of the money he borrowed and should pay this back.

So, Advantage end the agreement, with nothing further to pay. They should add up the total amount of money Mr E has paid them and deduct the amount of money Mr E received from them.

- a) if this results in Mr E having paid more than he received, Advantage should refund any overpayments, along with 8% simple interest a year calculated from the date of the overpayments to the date of the refund †; or
- b) if this results in an outstanding capital balance, Advantage should attempt to arrange an affordable and sustainable repayment plan with Mr E.

†HM Revenue & Customs requires Advantage to take off tax from this interest. Advantage must give Mr E a certificate showing how much tax they've taken off if he asks for one.

Advantage should also remove any negative information, relating to the agreement from Mr E's credit file.

### **My final decision**

For the reasons explained above I uphold Mr E's complaint. Advantage Finance Ltd must follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 28 December 2021.

Andrew Burford  
**Ombudsman**