

The complaint

Mr F complains that Advantage Finance Ltd (“Advantage”) irresponsibly granted him a loan he couldn’t afford to repay.

What happened

I issued my provisional decision on this complaint in December last year. An extract from that provisional decision is set out below.

In February 2016, Mr F acquired a used car. He financed the deal through a hire purchase agreement with Advantage. Mr F was required to make 36 monthly payments of £235.66, with a final optional payment of £175 if he wanted to own the car at the end of the agreement. The total repayable under the agreement was £11,297.76 towards which Mr F paid a deposit of £2,639.

Mr F says that Advantage didn’t complete adequate affordability checks. He says if it had, it would have seen the agreement wasn’t affordable. Advantage didn’t agree. It said that it carried out a thorough assessment reviewing bank statements and Mr F’s credit file. It said it confirmed Mr F’s self-employment and that he lived in rented accommodation.

Our adjudicator recommended the complaint be upheld. He thought Advantage hadn’t carried our proportionate checks and ought to have realised the agreement wasn’t affordable for Mr F.

Advantage didn’t agree. They noted that when they had completed a further credit check on Mr F in 2018 it was apparent he’d taken out several significant hire purchase agreements with other companies to fund vehicles. They said they believed Mr F was setting up a taxi business and that his income could therefore be expected to be significant. They also suggested that as Mr F was taking receipt of a car for self-employed purposes it could be expected to improve his earning potential. Advantage didn’t agree with our adjudicator’s suggested redress either. They noted that Mr F had completed about 150,000 miles in a little over two years in the car and they said that was significantly more than average mileage and must surely increase the usage figure the adjudicator had used in his calculations.

The case has been passed to me for a decision.

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.

Whilst I agree with the adjudicator’s opinion on this case I don’t think he’s calculated the redress correctly. I’ll explain.

Advantage will be familiar with all the rules, regulations, and good industry practice we consider when looking at a complaint concerning unaffordable and irresponsible lending. So, I don’t consider it necessary to set all of this out in this decision.

Advantage didn't ask Mr F about his expenditure and haven't provided evidence to suggest the bank statements they say they had were used for this purpose. Although Advantage did complete a credit check, this won't have indicated what Mr F's regular living expenses were. Without knowing what Mr F's regular committed expenditure was, Advantage wouldn't have got a reasonable understanding of whether the agreement was affordable or not. It therefore didn't complete proportionate checks.

I think it would have been proportionate for Advantage to have found out more about Mr F's committed expenditure, such as his living costs. I can't be sure exactly what Advantage would have found out if it had asked. In the absence of anything else, I think it would be reasonable to place significant weight on the information contained in Mr F's bank statements as to what would most likely have been disclosed.

I've reviewed three months of bank statements leading up to the lending decision and considered any monthly expenditure shown on the credit file. These show that Mr F was paying about £1,085 towards his committed living expenditure including his rent, a loan, credit card repayments, food and insurance. Bank statements also show that his average earnings from taxi driving were around £1,400 per month when taking seasonal variations into account. This demonstrates that Mr F didn't have enough disposable income to afford the additional borrowing of about £235 per month as that would have left very little disposable income from which to afford emergency expenditure or associated motoring costs. Advantage therefore didn't act fairly by approving the finance.

The fact that Mr F may have later established a taxi business does not affect the decision taken at the time of application about whether this credit was affordable for Mr F, and I don't accept the assertion that by funding a new vehicle there was a guarantee his income would improve: that hadn't yet been demonstrated.

Putting things right

As I don't think Advantage ought to have approved the lending, it should therefore refund all the payments Mr F has made, including any deposit. However, as Advantage have pointed out, Mr F did have considerable use of the car until he voluntarily terminated the agreement. Advantage and our adjudicator have both suggested this voluntary termination happened after 16 months, but I don't think that was the case. The agreement was signed in February 2016 and Mr F and Advantage have both advised us that it was voluntarily terminated in May 2018, 27 months later.

So, I think it's fair Mr F pays for that use. But I'm not persuaded that monthly repayments of over £235 a month are a fair reflection of what fair usage would be. This is because a proportion of those repayments went towards repaying interest.

There isn't an exact formula for working out what a fair usage should be. In deciding what's fair and reasonable I've thought about the amount of interest charged on the agreement, Mr F likely overall usage of the car and what his costs to stay mobile would likely have been if he didn't have the vehicle. In doing so, I think a fair amount Mr F should pay is £230 for each month he had use of the car. This means Advantage can only ask Mr F to repay a total of £6,210. Anything Mr F has paid in excess of this amount should be treated as an overpayment.

To settle Mr F's complaint Advantage should do the following:

- *Refund the deposit, adding 8% simple interest per year* from the date of payment to the date of settlement.*
- *Refund all the payments Mr F has made, less £6,210 for fair usage.*

- o If Mr F has paid more than the fair usage figure, Advantage should refund any overpayments, adding 8% simple interest per year* from the date of each overpayment to the date of settlement, or;
- o If Mr F has paid less than the fair usage figure, Advantage should arrange an affordable and sustainable repayment plan for the outstanding balance.
- Once Advantage has received the fair usage amount, it should remove any adverse information recorded on Mr F's credit file regarding the agreement.

**HM Revenue & Customs requires Advantage to take off tax from this interest. Advantage must give Mr F a certificate showing how much tax it's taken off if Mr F asks for one.*

My provisional decision

I'm expecting to uphold this complaint and direct Advantage Finance Ltd to put things right in the manner set out above.

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.

Neither Mr F nor Advantage provided any further information, so I have not found any reason to change my provisional decision.

Putting things right

My provisional decision therefore becomes my final decision on this complaint.

My final decision

For the reasons I've given above I uphold this complaint and tell Advantage Finance Ltd to:

- Refund the deposit, adding 8% simple interest per year* from the date of payment to the date of settlement.
- Refund all the payments Mr F has made, less £6,210 for fair usage.
 - o If Mr F has paid more than the fair usage figure, Advantage should refund any overpayments, adding 8% simple interest per year* from the date of each overpayment to the date of settlement, or;
 - o If Mr F has paid less than the fair usage figure, Advantage should arrange an affordable and sustainable repayment plan for the outstanding balance.
- Once Advantage has received the fair usage amount, it should remove any adverse information recorded on Mr F's credit file regarding the agreement.

**HM Revenue & Customs requires Advantage to take off tax from this interest. Advantage must give Mr F a certificate showing how much tax it's taken off if Mr F asks for one. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 23 March 2022.*

Phillip McMahon
Ombudsman