

The complaint

Mrs Z complains that Advantage Finance Ltd (AFL) approved a Hire Purchase Agreement for her without completing adequate affordability checks.

What happened

In July 2019, Mrs Z acquired a used car from a dealership, financed through an agreement with AFL. The cash price of the car was around £9,000 and Mrs Z put down a deposit of around £1,750 consisting of the part-exchange of her existing car and £200 cash.

The agreement required Mrs Z to make 59 monthly repayments of £216.06, followed by a final repayment of £416.06 on month 60. Mrs Z made each repayment until she cleared the outstanding balance in January 2023, settling the agreement early after her car was involved in an accident.

Also in January 2023, Mrs Z complained to AFL that had they carried out adequate affordability checks at the time of her taking out the agreement, they wouldn't have gone on to approve it. She said that they checked her income but didn't check her expenditure. She also said they didn't take into account that she was in financial difficulties at the time – she said she was in a debt management plan and had two defaults on her credit file. She said even though she met the repayments, because of the finance being approved her debt elsewhere increased, and she fell behind paying other committed bills.

AFL didn't think they'd done anything wrong and said they were satisfied the finance approved was affordable. They said at the point of the application Mrs Z told them she'd been working full time for the previous ten years, earning £1780 a month. They said Mrs Z's income was verified and that whilst a credit search had showed she'd defaulted on some accounts in the past, as a specialist lender for consumers who may have had historic financial problems, they considered the agreement to be neither excessive nor disproportionate for the purpose it was required for. They also said there was no evidence of a debt management plan on the credit file they reviewed at the time.

Because Mrs Z remained unhappy, she referred her complaint to the Financial Ombudsman Service.

One of our investigators looked into things but he didn't think the complaint should be upheld. He said whilst he didn't think AFL had carried out proportionate checks, had they done, he thought they still would've approved lending to Mrs Z. Our Investigator said after reviewing Mrs Z's income and expenditure, he was satisfied the monthly repayment was affordable and thought it was likely AFL would've seen the same, so he didn't think they'd done anything wrong by granting the agreement.

Mrs Z disagreed with our Investigators opinion. She said his calculation of her disposable income was incomplete. She also said her bank statements from the months leading up to the loan being agreed showed payments to debt collection agencies and payday loan companies and he'd made no reference to a debt management plan she was in at the time.

Our Investigator's opinion remained unchanged. As Mrs Z remained unhappy and no agreeable resolution could be reached, this case has been passed to me to decide.

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.

Having done so, I'm not upholding it. I realise this will be a disappointment to Mrs Z, so I'll explain why.

But first, I'm aware I've summarised this complaint in less detail than has been provided, and I've done so using my own words. No discourtesy is intended by this. Instead, I've concentrated on what I think are the key issues here. Our rules allow me to do this.

This reflects the nature of our service as an informal alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every detail to be able to reach what I think is the right outcome reasonable in the circumstances of this complaint.

I've carefully looked at everything Mrs Z has said and provided, but I also must consider what AFL knew at the time of the application and take into account the relevant rules put in place by The Financial Conduct Authority (FCA), the regulator at the time.

How we handle complaints about irresponsible and unaffordable lending is explained on our website. It's this approach I've used when deciding Mrs Z's complaint. AFL needed to ensure that it didn't lend irresponsibly which in practice, means they needed to carry out proportionate checks to be able to understand whether any lending was affordable for her before agreeing to provide the agreement.

The rules that apply to credit agreements are set out in the FCA's consumer credit sourcebook (CONC). Section 5.2A of CONC is relevant here, as – among other things – it talks about the need for businesses like AFL to complete reasonable and proportionate creditworthiness assessments before agreeing to lend someone money.

I've considered these rules by asking the following questions:

- 1) Did AFL complete reasonable and proportionate checks to satisfy themselves Mrs Z would be able to meet the repayments of the borrowing without experiencing significant adverse consequences?
 - If they did, was their decision to lend to Mrs Z fair?
 - If they didn't, would reasonable and proportionate checks have shown that Mrs Z could sustainably repay the borrowing?
- 2) Did AFL act unfairly or unreasonably in some other way?

Did AFL complete reasonable and proportionate affordability checks?

What's considered reasonable and proportionate in terms of the checks a business undertakes will vary dependant on the details of the borrowing and the consumer's specific circumstances at the time.

Here, the total amount repayable under the agreement was around £14,900, with monthly

repayments of £216.06 over a five-year term. The agreement required Mrs Z to make an increased repayment of £416.06 in the final month.

This was therefore a relatively significant and lengthy credit commitment for someone to enter into, so my starting point is that I'd expect to see AFL to have completed a thorough affordability check.

AFL say relevant checks were completed because Mrs Z's credit report showed she had what they considered to be a readily serviceable level of debt at the time. And they said whilst she'd defaulted on some accounts a number of years prior, it was likely because of this the lending had been referred to them as a specialist lender, and Mrs Z's profile at the time suggested her accounts were well maintained and up to date.

AFL also say they verified Mrs Z's income via a third-party income check which measured current account turnover data from her primary bank account. And AFL say they completed their own affordability assessment using a range of data including the income verification and the credit report data they'd gathered, and statistical expenditure data. AFL also say they took into account Mrs Z's existing debt repayment commitments and factored in the allowance of a generous buffer to account for any other household expenditure.

Whilst I've not been provided any detailed results of the income check AFL completed, I've seen Mrs Z's payslips and she's confirmed she was in receipt of child benefit at the time – both of which together amount to the stated income provided to AFL. I've also seen from AFL's system notes that feedback was provided to the dealer to confirm Mrs Z's stated income had been verified successfully, so I'm satisfied on balance this check was completed.

But looking at the credit report obtained by AFL at the time, in summary it shows Mrs Z was in debt by a total of around £3,500 and that she'd defaulted on two unsecured loans several months prior, which appeared to remain in default at the time of the application.

The credit report also showed Mrs Z to be in an arrangement to repay a credit card which at the time remained £39 over the agreed credit limit.

I acknowledge AFL's comments that it may be these very entries on the credit report which led to the lending being referred to them. However, that doesn't mean what they saw shouldn't have given them some cause for concern, and I think they ought to have done more to assess the agreement's affordability for Mrs Z.

To do this I think AFL ought to have tried to find out more about Mrs Z's committed expenditure outside of her active credit commitments. This is because they were asking her to commit to not an insignificant monthly payment for a term of five years.

In summary I don't think AFL carried out proportionate checks given the amount and duration of the loan and considering the results returned on Mrs Z's credit file.

If AFL had carried out proportionate checks, what would they have found?

I can't be sure what information and evidence AFL would've asked for or received had it carried out a reasonable and proportionate check but as I've said above, I think it would have involved them finding more out about Mrs Z's expenditure.

AFL were aware that Mrs Z was married, so they assumed she was sharing living costs, including the statistical monthly cost of accommodation and halved these figures when calculating her disposable income. They didn't include any income for her spouse when

assessing the affordability of the loan.

AFL's income and expenditure assessment shows a net monthly income of £1,780, rental payments of around £430 per month, utility and council tax payments of around £210 per month, and revolving credit repayments of around £115 per month. AFL also allowed headroom of around £550 for other household expenses such as groceries before calculating the maximum amount they would lend.

To determine what else AFL might have found if they'd done more checks, I've looked at what Mrs Z told us about her expenditure and looked at her bank statements for the three months preceding the lending decision.

Mrs Z has shown us she was in a debt management plan at the time. But looking at the credit report AFL received, there is nothing aside from the defaults and the arrangement to pay that I think ought to have indicated to them this was the case. And I'm not persuaded she would've offered up this information. I say this because there is no record of AFL being told this at the time and this was clearly an important purchase for Mrs Z – she's said herself the vehicle was important as it was the only one in the household and was relied upon for commutes to both work and school.

Mrs Z says AFL's understanding she had no dependent children was incorrect. Whilst she says she wasn't responsible for any rental payment (which her spouse paid), purchasing food and groceries was her responsibility in full and amounted to around £500 per month.

Mrs Z also said other expenses such as commuting costs, other household bills, haircuts, school expenses and clothing amongst others weren't accounted for. And she was in a debt management plan at the time.

Looking at Mrs Z's bank statements though, I haven't seen evidence that her non-discretionary expenditure was grossly dissimilar to the statistical data used by AFL.

From what I've seen, Mrs Z was spending on average around £480 per month on utilities, council tax and other essential commitments. She was spending on average another £72 a month on car tax and insurance and around £29 a month on school related fees. And whilst it varied from month to month, Mrs Z also made debt repayments averaging £166 a month over the three-month period. Without accounting for any groceries, this is a monthly total on average of £747, slightly less than AFL's estimate of £757.

Mrs Z also appeared to spend approximately on average £100 a month on groceries from what I've seen on her statements. That however is very low for what a family of four would have likely needed to have spent and other transactions such as ATM withdrawals could also account for some essential expenditure such as food. So, I've included a figure of £500 a month for the benefit of calculating Mrs Z's disposable income.

Mrs Z's statements also show both income and non-essential expenditure which I've excluded from my calculations. I've not included a cash deposit made into Mrs Z's account for £1,500. She says this was deposited to pay a bill at a later date for a family member and wasn't income.

And I've also excluded a monthly childcare payment of approximately £455. This is because Mrs Z confirmed this was for nursery fees which were ending due to her son starting school. Mrs Z has said this dispute is about her financial position at the time and the fact the payment was ending isn't relevant, but I disagree. It was for AFL to determine both if the lending appeared to be affordable for Mrs Z and her ability to sustainably make the payments over the life of the agreement, considering any known changes to her finances –

both increases and decreases. This significant payment was ending and would've been an amount Mrs Z no longer had to pay out.

Taking everything into account, I've calculated Mrs Z's monthly disposable income using her average income of £1,750, not including any rental expense, but allocating her a 100% share of her stated approximate grocery costs (£500 per month). I've included the cost of repayments to the credit commitments shown on her statements and all other visible essential expenditure. This suggests Mrs Z had disposable income of around £500 per month at the time the lending decision was taken. This isn't dissimilar from AFL's estimated maximum monthly budget of £477 after they had deducted headroom of £545 to cover other household expenditure such as food.

The monthly repayments to the agreement were £216.06, so this would have left Mrs Z with around £285 disposable income per month after taking out the agreement. Because of this, I'm satisfied even if AFL had done more thorough checks, they could've fairly decided to lend to Mrs Z.

Did Black Horse act unfairly or unreasonably in some other way?

Taking into consideration everything I've seen; I'm not persuaded that AFL acted unfairly or unreasonably in some other way.

My final decision

For the reasons I've explained above, my decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs Z to accept or reject my decision before 4 October 2023.

Sean Pyke-Milne
Ombudsman