

The complaint

Mr T complains Advantage Finance Ltd (Advantage) irresponsibly entered into a hire purchase agreement because the repayments weren't affordable or sustainable based on his financial circumstances at the time.

What happened

Mr T entered into the hire purchase agreement in July 2018 for a used car. The cash price of the car was £4,995 and he paid a deposit of £155. The total amount of credit was for £4,840 and with other charges the total amount payable under the agreement was £10,504.68. It included an acceptance fee of £325 and an option to purchase fee of £175. Mr T was to pay 53 monthly repayments of £188.42 and a final payment of £363.42.

Mr T is represented in his complaint but for ease of reading, I'll only refer to Mr T throughout this decision. Mr T complained to Advantage in February 2023. He asked it to look into his complaint about the affordability and felt it was shocking Advantage had accepted his credit application when he was in financial distress.

Advantage responded to the complaint in March 2023. It said it received Mr T's application via a credit broker and it carried out a creditworthiness and affordability assessment prior to approving the loan. This included electronically verifying income from Mr T's primary bank account via a credit reference agency. It also said it used statistical data from a variety of sources in its assessment process (including rent, council tax, utility and other costs of living applicable to Mr T's specific post code area). It said such checks also considered overall indebtedness and it concluded Mr T had sufficient headroom to comfortably afford the loan. It said missed payments seemed to be down to a change in Mr T's personal circumstances which it says it can't be held responsible for.

Mr T referred the complaint to our service. He said he felt the agreement was unaffordable because he already had a separate car finance loan which was in arrears and was still live. The arrears were around £1,054 and the outstanding amount at the time of the application was £11,594. So, he says his credit file would have shown numerous missed payments and he borrowed money to pay towards the arrears.

Our Investigator issued a view explaining why they felt the checks weren't proportionate. However, they didn't think the complaint should be upheld. They felt had reasonable and proportionate checks been carried out at the time of the lending then it's likely the information obtained would have shown the agreement was affordable.

Mr T didn't agree. He provided a summary of his financial circumstances and reiterated the arrears he was in at the time. He said he had nothing left at the end of each month and needed to borrow money. He said he didn't have use of his normal card in May 2019 and so doesn't feel it would be fair for this to impact on the expenditure. He also said at times he received less than £2,000 for his salary. He has also spent time providing further information and evidence to outline his financial circumstances.

As Mr T didn't agree, the complaint 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.

The Financial Conduct Authority (FCA) sets out in a part of its handbook known as CONC what lenders must do when deciding whether or not to lend to a consumer. In summary, a firm must consider a customer's ability to make repayments under the agreement without having to borrow further to meet repayments or default on other obligations, and without the repayments having a significant adverse impact on the customer's financial situation.

CONC says a firm must carry out checks which are proportionate to the individual circumstances of each case.

Did Advantage complete reasonable and proportionate checks to satisfy itself that Mr T would be able to repay the agreement in a sustainable way?

Advantage said the application provided by Mr T confirmed he was single, living at home and in full time employment. It says it successfully verified his income at £2,000 per month using current account turnover data from a credit reference agency. It provided a screenshot confirming the results of this electronic check.

Advantage confirmed its system for assessing affordability takes into account affordability at application and future sustainability, whilst acknowledging Mr T's indebtedness. I've seen a copy of the credit search which shows some of the credit information Advantage took into account at the time of the checks. This included three County Court Judgments (CCJs) from May, August and December 2017.

Advantage confirmed it noted Mr T's credit profile showed he had previously defaulted on some accounts several years prior. The search shows they were from 2012 and 2013. Advantage also confirmed pre contract information setting out the terms of the agreement was sent to Mr T, and he had every opportunity to ensure that he was happy for the finance to go ahead. Ultimately, it says he signed to say as such.

For other expenditure, it used statistical data obtained from a variety of sources to consider Mr T's likely costs for rent, council tax, utility costs and other living costs. It has provided a list of these sources which includes things such as data from the government website and Office of National Statistics (ONS) and real estate websites. It estimated Mr T's expenditure as being around £1,432 which it felt provided sufficient headroom to comfortably meet the repayments with remaining funds for other household expenses.

Overall, I don't think the checks carried out by Advantage were reasonable and proportionate in the circumstances of this complaint. Advantage had evidence of previous and recent financial difficulties. This included three CCJs (two of which was within a year of the lending decision), as well as a fairly recent default and current missed payments and arrears. This ought to have prompted further checks as there were clear indicators Mr T might be in financial difficulties. Also, that there might be non-discretionary commitments which had not been identified by the checks Advantage did carry out. Given the indicators, further information should have been obtained to get a more accurate understanding of Mr T's financial circumstances so Advantage could reasonably assess whether the agreement was affordable for him. Although Mr T signed the agreement, this doesn't free Advantage of its obligation to complete appropriate checks.

Would reasonable and proportionate checks have shown that Mr T would be able to repay the agreement in a sustainable way?

As reasonable and proportionate checks weren't carried out for this agreement, I need to decide what reasonable and proportionate checks were likely to have shown. It would have been proportionate for Advantage to obtain further information about Mr T's financial circumstances, including his income and expenditure. So, I've reviewed Mr T's bank statements which cover the three-month period leading up to the agreement. For clarity, I'm not saying Advantage necessarily needed to obtain bank statements. But the statements do show what information Advantage were likely to have seen had it carried out reasonable and proportionate checks.

I can see from the bank statements that Mr T received an average income of around £2,300. I appreciate Mr T has raised concerns about the use of an average here. Mr T declared his income as £2,000 and his pay fluctuated. I do appreciate this, and I've asked for some further payslips to understand what income Mr T could expect at the time. This is also to see what information Advantage were likely to have found out through reasonable checks. I can see his pay did fluctuate, but he regularly received more than his basic pay. So, I think it would have been reasonable for Advantage to have relied on the average over three months.

I've also thought about the credit commitments and committed expenditure I can see on the statements. I'd note from the statements there were missed direct debits and payments made towards commitments which were sometimes less or more than the set monthly repayments. This showed Mr T was having difficulty managing his finances and was trying to catch up with missed payments. Mr T has provided an explanation of his commitments at the time, and I've cross referenced this with the information I do have.

I'd note some of the day to day spend is missing from the May 2018 statement. Mr T has explained he didn't have use of his card during this month. I think this was likely the case as there is limited retail spend, so I've taken this into account when considering what his likely committed spend was. Ultimately, I must decide what reasonably and proportionate checks were likely to have shown about Mr T's circumstances and what Mr R was likely to be committed to pay throughout the course of the agreement. Overall, I've made a reasonable assessment based on what I have and what I think was more likely than not to have been the case at the time.

In respect of living costs, Mr T seemed to be paying around £400 per month towards child maintenance. His payments towards food and petrol seem to have been around £294. He also had other committed spend these included payments towards phone contracts and his rent. Overall, his committed spend in terms of living costs each month seems to have been around £1,140.

In respect of Mr T's credit commitments, Mr T had an existing hire purchase agreement with a set monthly repayment of £298. This agreement wasn't ending or being replaced. He also paid money towards bank charges and other finance providers including home credit. He also paid towards his CCJs in order to reduce the outstanding balance. I've had to think carefully about what proportionate checks were likely to have shown. To do this, I've thought about the full credit report provided by Mr T, what payments he was actually making on his statements and Advantage's credit search. Based on this information, I think it's likely proportionate checks would have shown Mr T had credit commitments of around £650.

Mr T has also explained he had to borrow money from friends and family which meant he had to pay around £235 per month. Mr T has said he owed a total of around £4,000. I can see there was an incoming payment from his sister, and then Mr T transferred money back

to her. I don't think these payments would have necessarily indicated he owed any further money or was repaying a set amount. I'm not satisfied it's likely Advantage would have identified any further commitments from the information I've seen.

Overall, Mr T had total committed expenditure of around £1,790. Taking this from his income, he had £510 remaining after his existing spend. So, he had around £322 disposable income per month after making the repayments under the agreement. And this would mean the agreement would have seemed affordable for Mr T. I appreciate my figures are different to those of the Investigator. I note I've identified a higher level of non-discretionary spend and credit commitments, which I think would have come to light through proportionate checks. I've also considered the comments and information provided in response to the view. However, it hasn't changed the outcome.

I am mindful that his actual circumstances might have been different, particularly in respect of what Mr T has said about owing his friends and family. But it wouldn't be fair for me to expect Advantage to have uncovered everything about Mr T's circumstances at the time. I have to make an assessment based on what I think reasonable and proportionate checks were likely to have shown – this includes what was likely to have been disclosed to Advantage at the time bearing in mind Mr T wanted the lending.

I can see Mr T was in arrears at the time. The information on his credit file shows he was in six months of arrears with his previous hire purchase agreement. So, I understand why he feels Advantage shouldn't have lent to him. However, I note the information Advantage obtained included the arrears and showed he was only in two months of arrears. The information Advantage had also showed he was in arrears on two other credit products. The overall amount seemed to be around £1,000. Whilst this is still significant, with the disposable income Mr T seemed to have at the time he could set up suitable repayment plans and bring those accounts up to date within a reasonable period.

In light of everything I've seen, I'm satisfied that reasonable and proportionate checks had been carried out, it's likely they would have shown the agreement was affordable. I appreciate this will be considerably disappointing for Mr T as he has explained he had to borrow money from friends and family in order to meet his commitments. I also appreciate there is a difference between his actual circumstances at the time, and what I think appropriate checks were likely to have shown. However, my decision is based on the information I do have and what I think reasonable and proportionate checks were likely to have shown about Mr T's circumstances.

I note Advantage have offered to refund the charges on the account (£139.50) as a gesture of goodwill. As I'm not upholding this complaint, I can't comment on this offer. Mr T will need to reach out to Advantage about it directly.

My final decision

For the reasons outlined above, I'm not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 25 April 2024.

Laura Dean
Ombudsman