DRN-4479024

The complaint

Mr H is complaining about Advantage Finance Ltd. He says they were irresponsible in lending to him because the repayments were unaffordable.

What happened

In April 2021, Mr H took out a hire purchase agreement with Advantage to finance the purchase of a van. He paid no deposit and borrowed £7,999 - the cash price of the vehicle. The agreement required Mr H to make 59 monthly repayments of £225.39 and a final instalment of £425.39 – so the total amount payable was £13,723.40. In late October 2021, Mr H asked for a settlement figure and then voluntarily terminated the agreement the following month. There was a significant balance left to pay and Mr H continued to make monthly payments to Advantage.

In March 2023, Mr H complained to Advantage, saying that he'd been given the finance at a time when he'd just started self-employment, knowing that it was unaffordable. This meant he'd struggled to make payments and had to voluntarily terminate the agreement and send the van back after six months.

Advantage didn't uphold Mr H's complaint. They said Mr H had said on his application that he was single, living in rented accommodation and working full time with income of over £2,000 per month. They said they'd verified his income using current account turnover (CATO) data and used statistical data to estimate his expenditure. Advantage added that when they checked Mr H's credit file they could see he'd defaulted on some accounts but this was several years prior to the application. And they said they'd provided Mr H with sufficient information about the costs of the agreement and asked whether he was aware of any planned changes to his working arrangements before allowing him to proceed with the agreement.

Advantage pointed out that Mr H had told them he was terminating the agreement because of a change in circumstances. They concluded that they'd done proportionate checks and appropriately decided to lend to Mr H but that the repayments had become unaffordable because of Mr H's change in circumstances.

Mr H was unhappy with Advantage's response so brought his complaint to our service. One of our investigators looked into it but didn't uphold it. He said from the evidence he'd seen, he thought Advantage hadn't conducted proportionate checks. But when he looked at Mr H's bank statements from the time of lending, he thought these showed the agreement was affordable for Mr H.

Mr H replied, disputing our investigator's calculation of his disposable income. Because Mr H disagreed with our investigator, the complaint was referred for a decision – and it's come to me. I issued a provisional decision on 23 November 2023. Both parties accepted my provisional decision so I've copied it below and this now forms my 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.

Having done so, I'm upholding Mr H's complaint – I'll explain why below.

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 carry out proportionate checks?

Advantage said they carried out the following checks:

- reviewed Mr H's credit file;
- used statistical data to estimate Mr H's expenditure; and
- used CATO data to check Mr H's income.

They arrived at monthly income of £2,280, housing costs (including utilities and council tax) of about £710 and payments to creditors of around £720. Advantage said this left Mr H with around £850 per month to cover other household expenditure and the repayments on this agreement, which they said meant he could comfortably afford the loan he was looking for.

Whether or not these checks were proportionate depends on various factors, including the size and length of the loan, the cost of credit, and what Advantage found. The loan was a moderate amount, for five years, and at a high interest rate – so my starting point is that checks needed to be thorough.

CONC allows firms to use statistical data in their affordability assessments unless they have reason to suspect that a customer's non-discretionary expenditure is significantly higher than that described in the data.

Advantage said Mr H's credit file didn't give them any cause for concern. But I've looked at the credit report Advantage used and I can see Mr H had total credit balances of over £19,000. He had a County Court Judgement against him dated February 2019, had missed payments for utilities and an unsecured loan in mid-2020, and defaulted on two further unsecured loans in October 2020, just six months before his application. All of these are indicators that Mr H might be in some financial difficulty and therefore that his expenditure might be significantly higher than Advantage had estimated.

It follows that I'm not satisfied Advantage did proportionate checks – I think they should have done more to understand his expenditure given the levels of debt and the recent defaults seen on his credit file.

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

As I've explained above, I think proportionate checks would have involved finding out more about Mr H's expenditure.

I've looked at statements for Mr H's bank account for the three months leading up to his application to Advantage. I'm not saying Advantage needed to look at Mr H's statements but in the absence of any other information, bank statements provide a good indication of Mr H's income and expenditure at the time the lending decision was made.

Having done so, I can see Mr H's rent and council tax totalled around £580 per month. His payments for utilities averaged £150 per month and for communications and TV it was also around £150 per month. However, Mr H was paying £400 a month on average in child maintenance. So his committed expenditure (excluding his credit commitments) was around £1,280 at the time of his application.

Deducting this from Mr H's income left him with £1,000 per month to cover his payments to creditors, food, and other expenditure. Advantage said the credit report showed Mr H needed to pay around £720 per month to his creditors, and having reviewed the credit report myself I don't disagree with this figure. So that left Mr H with £280 per month. Clearly this wasn't enough to cover food, monthly repayments for the new agreement, and associated costs like vehicle insurance, road tax and fuel.

In summary, I think there were a number of indicators on Mr H's credit file which should have prompted Advantage to do more to understand Mr H's expenditure. And if they had, they'd have realised that in addition to the expenditure they'd calculated, he was making significant regular payments for child maintenance which meant the agreement would be unaffordable for him. I'm satisfied that if Advantage had carried out proportionate checks, they couldn't fairly have decided to lend to Mr H.

Putting things right

As I don't think Advantage should have approved the lending, I don't think it's fair for them to be able to charge any interest or other charges under the agreement. But Mr H had use of the van for around seven months so I think it's fair he pays for that use. I'm not persuaded that his monthly repayments of over £225 are a fair reflection of what fair usage would be – because a significant proportion of those repayments went towards repaying interest.

There isn't an exact formula for working out what a fair monthly repayment would be to reflect Mr H's usage. But in deciding what's fair and reasonable I've thought about the amount of interest charged, Mr H's likely overall usage of the van, and what his costs to stay mobile would likely have been if he didn't have this van. Having done so, I'm satisfied a fair amount for Mr H would be £135 per month, or a total of £945.

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

- Refund all the payments Mr H has paid in total against the agreement, less £945 for fair usage, adding 8% simple interest per year from the date of payment to the date of settlement.
- End the agreement with nothing further to pay.
- Remove any adverse information recorded on Mr H's credit file regarding the agreement.

If Advantage consider tax should be deducted from the interest element of my award they should give Mr H a certificate showing how much tax it's taken off if he asks for one.

My final decision

As I've explained above, I'm upholding Mr H's complaint. Advantage Finance Ltd need to take the steps outlined above to settle the matter.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 25 December 2023.

Clare King
Ombudsman