

## **Complaint**

Miss B complains that Advantage Finance Ltd (“Advantage Finance”) unfairly entered into a hire-purchase agreement with her. She’s effectively said that the payments to the agreement were unaffordable and so it shouldn’t have been provided to her.

## **Background**

In February 2020, Advantage Finance provided Miss B with finance for a used car. The cash price of the vehicle was £3,700.00. Miss B didn’t pay a deposit and applied for finance to cover the entire amount of her purchase.

As a result she entered into a 48-month hire-purchase agreement with Advantage Finance. The loan had interest, fees and total charges of £2,893.12 (comprising of interest of £2,368.12, an acceptance fee of £325 and an option to purchase fee of £200), and the total amount to be repaid of £6,593.12 was due to be repaid in 47 monthly instalments of £133.19 and a final monthly payment of £333.19.

Miss B’s complaint was considered by one of our investigators. She didn’t think that Advantage Finance had done anything wrong or treated Miss B unfairly. So she didn’t recommend that Miss B’s complaint should be upheld.

Miss B disagreed with our investigator and the complaint was passed to an ombudsman for a final decision.

## **My findings**

I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint.

We’ve explained how we handle complaints about irresponsible and unaffordable lending on our website. And I’ve used this approach to help me decide Miss B’s complaint.

Having carefully thought about everything I’ve been provided with, I’m not upholding Miss B’s complaint. I’d like to explain why in a little more detail.

Given Miss B’s response to our investigator’s assessment and her reiteration of what she thinks about the checks that were carried out, I think that it would be helpful for me to set out that we consider what a firm did in order to understand whether the repayments to any credit were affordable (asking it to evidence whatever checks it did) and determine whether this was enough for the lender to have made a reasonable decision on whether to lend.

Generally, we think it’s reasonable for a lender’s checks to be less thorough – in terms of how much information it gathers and what it does to verify that information – in the early stages of a lending relationship.

But we might think it needed to do more if, for example, a borrower’s income was low, the amount lent was high, or the information the lender had – such as a significantly impaired

credit history – suggested the lender needed to know more about a prospective borrower's ability to repay.

That said, I think that it is important for me to explain that our website does not provide a set list of mandated checks that a lender is expected to carry out on every occasion – indeed the regulator's rules and guidance did not and still do not mandate a list of checks to be used. It simply sets out the types of things that a lender could do. It is a for a lender to decide which checks it wishes to carry out, although we can form a view on whether we think what done was proportionate to the extent it allowed the lender to reasonably understand whether the borrower could make their payments.

Furthermore, if we don't think that the lender did enough to establish whether the repayments to a credit agreement were affordable, this doesn't on its own meant that a complaint should be upheld.

We would usually only go on to uphold a complaint in circumstances were we were able to recreate what reasonable and proportionate checks are likely to have shown – typically using information from the consumer – and most importantly this recreated check clearly shows that the repayments in question were unaffordable and had the potential to result in significant adverse consequences for the customer.

I kept this in mind when deciding Miss B's complaint.

Advantage Finance says it agreed to this application after it completed an income and expenditure assessment on Miss B. During this assessment, Miss B provided details of her monthly income which it cross checked against information received from credit reference agencies on the amount of funds she received in her main bank account each month.

Advantage Finance says it also carried out credit searches on Miss B which did show previous she had had previous difficulties with credit as well as outstanding balances. But when the amount Miss B already owed plus a reasonable amount for Miss B's living expenses, based on statistical data, were deducted from her monthly income the monthly payments were still affordable. On the other hand, Miss B says she was already struggling at the time and that these payments were unaffordable.

I've thought about what Miss B and Advantage Finance have said.

The first thing for me to say is that I don't think that the checks Advantage Finance carried out did go far enough. Advantage Finance's searches showed that Miss B had had significant difficulties with credit. In my view, Advantage Finance needed to take further steps to verify Miss B's actual living costs, given what the credit search showed in order for its checks to have been proportionate.

As I've explained where a firm didn't carry out sufficient checks (such as Advantage Finance here), it does not automatically mean that a complaint should be upheld, as I still need to consider what reasonable and proportionate checks are likely to have shown. So I've gone on to decide what I think Advantage Finance is more likely than not to have seen had it obtained further information from Miss B.

Bearing in mind, the term of the agreement, Miss B's previous difficulty with credit and weighing these factors against the amount of the monthly payment here, I would have expected Advantage Finance to have had a reasonable understanding about Miss B's regular living expenses as well as her income and existing credit commitments.

I've considered the information Miss B has provided us with. And having done so, this information does appear to show that when Miss B's committed regular living expenses and existing credit commitments are deducted from her monthly income at the time, she did have the funds, at the time at least, to sustainably make the repayments due under this agreement. As this is the case, I don't think that it would have been unfair for Advantage Finance to have concluded that Miss B could make the payments to this agreement, notwithstanding her previous difficulty with credit, had it carried out further checks here.

So overall and having carefully considered everything, while I don't think that Advantage Finance's checks before entering into this hire-purchase agreement with Miss B did go far enough, I'm satisfied that carrying out reasonable and proportionate checks won't have prevented Advantage Finance from providing these funds, or entering into this agreement with her.

As this is the case, I also think it unlikely that a court would find that the relationship between Advantage Finance and Miss B was unfair to Miss B under section 140A Consumer Credit Act 1974 – notwithstanding the fact that further affordability checks weren't carried out.

I appreciate that this will be very disappointing for Miss B. But I hope she'll understand the reasons for my decision and that she'll at least feel her concerns have been listened to. As I'm not upholding the complaint, I leave it to Miss B to contact Advantage Finance to see whether it is still willing to write off the remaining amount due in the way that it suggested in its final response.

### **My final decision**

My final decision is that I'm not upholding Miss B's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms B to accept or reject my decision before 5 July 2024.

Jeshen Narayanan  
**Ombudsman**