

## **The complaint**

Mr A complains that Advantage Finance Ltd ('Advantage') entered into a Hire Purchase agreement with him when it was unaffordable and that commission was unfairly paid to the broker without it being disclosed to him.

Mr A complained using a professional representative, but for ease I will refer to Mr A throughout.

## **What happened**

In December 2021, Mr A acquired a vehicle, which cost £8,242.00. After paying a deposit of £634.00, Mr A borrowed the remaining £7,608.00 through a Hire Purchase agreement with Advantage.

The agreement was due to run for 31 months, with 30 payments of £328.82 and a final payment of £528.82, which included an optional purchase fee of £200.00. This meant the total amount payable under the agreement was £11,027.42, of which £2,785.42 was interest, fees and charges.

After Mr A complained about the agreement being unaffordable and commission being paid to the broker in secret, Advantage didn't uphold his complaint.

It said it verified his income and carried out an assessment of his ability to afford the agreement before approving his application. This assessment included checking his credit report for his credit commitments and also using third party information to estimate his other areas of expenditure.

It also said that its pre-sale paperwork told Mr A that commission may be payable to the broker. It said it had never used a commission model which linked the amount of commission paid to the amount of interest Mr A paid. Instead it said the commission was a fixed fee.

An investigator considered Mr A's complaint. They felt that the affordability assessment Advantage carried out wasn't proportionate because, although it had verified Mr A's income, he had a recent CCJ which indicated he might have been struggling financially. They thought Advantage should have gathered more borrower-specific information about Mr A's expenditure to ensure the lending would be affordable.

Having looked at his financial situation in more detail, they found that Mr A's monthly committed expenditure was higher than his income and had Advantage carried out proportionate checks, it would've found the agreement not to have been affordable for him.

They thought Advantage should refund all the interest charges on the agreement and remove any adverse information from his credit file. They said that in refunding all the interest and charges it would put Mr A back in the position he would have been in had he not entered into this agreement and as such would remedy any potential unfairness, if any, created by the commission arrangement.

In response, Advantage said its affordability assessment would have taken into account the adverse information in Mr A's credit file and remained of the view that its checks were proportionate. Advantage disagreed with the investigator's opinion and the complaint has been passed to me to make a 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.

I'll make my decision based on the balance of probabilities – that means what I consider to have more likely than not happened – given the available information, including where information or evidence is missing or contradictory.

In order to reach my decision, I will first consider whether the checks were proportionate given the circumstances of the lending. If they were, I will go on to consider whether Advantage made a fair lending decision. If they weren't, I will consider what proportionate checks would more likely than not have told Advantage.

*Did Advantage carry out proportionate checks to ensure Mr A could make the monthly repayments to this agreement?*

Before lending, Advantage needed to ensure it wasn't lending irresponsibly. In doing so, it had to carry out proportionate checks to establish the repayments were affordable for Mr A.

There are no specific checks that lenders must carry out, but they should have been proportionate to the circumstances based on what Advantage knew about Mr A. You might expect checks to be more thorough for a consumer, for example, with lower income or previous debt issues. But the expectation of more detailed checks being carried out may be lower where, for example, the amount borrowed is low or the borrower has a long history of maintaining credit well. But there's no hard and fast rules and what's proportionate will vary depending on the circumstances.

In response to the investigator's view, Advantage said it specialised in providing credit to customers with poor credit ratings. It pointed to Mr A's positive repayment record once the agreement was live and that he was managing his existing credit well. After initially misunderstanding the reasons given by the investigator for saying the checks weren't sufficient, Advantage felt as though its automated scorecard was reliable enough to assess Mr A's ability to make the repayments under the agreement.

The investigator specifically felt that the CCJ that Mr A had been given just six months prior to applying for this agreement was enough to warrant Advantage carrying out additional affordability checks. Indeed he had two CCJs within a year of the application totalling just over £7,000.

While some of what Advantage has mentioned are relevant considerations, the recency of the CCJs is a very strong indication that Mr A had not maintained recent commitments to the extent that he was taken to court by a creditor twice within a year.

Advantage's own risk appetite may involve lending to consumers in these circumstances, but it also had to appropriately consider the risk to Mr A of him suffering adverse consequences as a result of not being able to make repayments under the agreement. Although it verified Mr A's income, using average statistical data to estimate his expenditure, when it had clear

recent evidence of him failing to meet his commitments, wasn't reasonable or proportionate in the circumstances.

*What would proportionate checks more likely than not have shown?*

Based on what I've said above, Advantage should have taken additional steps to establish Mr A's actual expenditure. As I've concluded that Advantage's checks weren't proportionate in these circumstances, I've gone on to consider what would've more than likely been found out if it had carried out such checks.

Advantage verified that Mr A's income was £1,726.39 per month. It took information from his credit report to establish his credit commitments were £135.90 per month. It estimated his rent (£311.52), utilities (£112.12) and council tax (£68.61) using statistical data. From this it concluded that he'd have £569.92 spare after the maximum monthly payment Advantage would have allowed (which was roughly £200 higher than the actual monthly payment).

The credit report Advantage has provided shows a loan (£151 per month), a mortgage (£472 per month), an overdraft with a balance of £1,157 and it also shows an unsatisfied judgment of £4,435 that would've required repayment over time.

Before considering Mr A's actual expenditure, his credit commitments were higher than what Advantage had factored into its assessment of Mr A's expenditure. It's not clear how and why this happened, but this information was available to Advantage and this difference would have eaten up the buffer which it had relied on in order to lend to Mr A.

I've explained that for Advantage's checks to have been proportionate, it needed to find out about Mr A's actual living costs. I can't guarantee what information it would have been provided with or what would have been evidenced in this information, if requested, at the time. However we've been provided with a copy of Mr A's bank statements which cover the months leading up to the application.

I wish to be clear in saying that Advantage was not required to request this specific information before it lent to Mr A. Nonetheless, I consider this information to be a reliable resource as it contains all I now need and is information I can reasonably consider in order to recreate what a proportionate check would more likely than not have shown at the time.

In the three months leading up to the application Mr A's average salary was around £1,650 per month, which is broadly consistent with what Advantage had verified.

Our investigator asked Mr A about the transactions on his account, and after seeking further evidence and clarification they found that Mr A's actual income was closer to £2,000 and that after all of his committed expenditure and the new monthly payment he wouldn't have had any disposable income left for food (or any other expenditure).

Looking at Mr A's statements, the amounts he declared to the investigator as his non-discretionary expenditure are plausible and largely tally with what's in those statements. Mr A has some incoming transactions from rental income and there's also expenditure connected with this. These transactions seem to relate to separate commercial activity and I have excluded these when thinking about Mr A's ability to make repayments under this agreement in his own right. I should say the outgoing payments associated with this do outstrip the incoming payments – and so, in any event, even if these were included in any assessment of his overall ability to make repayments under the agreement, it would mean Mr A had even less disposable income.

As I've said, I've thought about Mr A's salary and his personal expenditure. Like the investigator, I've found that even using an income figure higher than the one Advantage had verified, Mr A did not have sufficient funds to be able to cover the monthly repayments, without borrowing further or suffering significant adverse consequences, based on his committed expenditure at the time.

Advantage has made a particular effort to highlight Mr A's subsequent positive repayment record as evidence that the repayments were affordable for him. Although Advantage seeks to rely on Mr A's repayment record as evidence that Mr A repaid the agreement without issue, I think it would be remiss not to highlight Advantage's own notes which seem to contradict this. After having the agreement for one month Mr A contacted Advantage to explain that he would struggle to make the repayments and asked for them to be reduced. He was told this wasn't possible and he was warned that the account would default if he didn't keep up to date with them.

This is by no means determinative of the outcome of this complaint, and Advantage has downplayed the significance of Mr A's contact at this time, but I do think that it undermines the argument Advantage has made in relation to Mr A's repayment record being indicative of the agreement being as a matter of fact affordable for Mr A.

Even without this evidence, if Mr A had a perfect repayment record, it wouldn't mean that the payments were affordable for him. What happened after Mr A took on the agreement doesn't necessarily reflect the reasonableness of the lending decision made at the time. If he had gone on to improve his credit position, he may have done so by borrowing from elsewhere, by it impacting his ability to meet other essential expenditure, or by it having an adverse impact on his financial situation generally. It's too simplistic to say that because repayments had been made under the agreement, it automatically meant it was affordable at the outset.

In summary, I'm satisfied that Advantage's affordability checks were not proportionate in the circumstances. It used average statistical data to estimate Mr A's expenditure in circumstances where his recent CCJs meant that data was unlikely to be representative of his situation. Had Advantage carried out proportionate checks and considered Mr A's committed expenditure, I think it would more likely than not have shown that Mr A had insufficient funds to be able meet the repayments for this agreement without difficulty, borrowing further or experiencing significant adverse consequences.

In reaching my conclusions, I've also considered whether the lending relationship between Advantage and Mr A might have been unfair to Mr A under s140A of the Consumer Credit Act 1974. However, I'm satisfied that what I direct Advantage to do below results in a fair award for Mr A given the overall circumstances of his complaint.

### **Putting things right**

Mr A's agreement ran its full term and so the agreement was settled in full. Because of this, I'm satisfied it would be fair and reasonable in all the circumstances of the case for Advantage to put things right for Mr A by:

- refunding any and all interest, fees and charges he paid as a result of this agreement
- adding interest at 8% per year simple on any refunded payments from the date they were originally made by Mr A to the date of settlement†
- removing any and all adverse information it may have recorded on Mr A's credit file as a result of this agreement.

† HM Revenue & Customs requires Advantage to take off tax from this interest. Advantage must give Mr A a certificate showing how much tax it has taken off if he

asks for one.

Finally, and for the sake of completeness, I should explain that I've noted that Mr A has also complained about the commission Advantage paid to his motor dealer. He says that this was not disclosed to him and in breach of the rules, regulations as well as Advantage's obligations.

However, what I've directed Advantage to do to put things right for Mr A effectively places him in the position he would now be in had his Hire Purchase agreement never existed. I'm therefore satisfied that this unwinds the impact of any commission that Advantage might have paid to the motor dealer for introducing Mr A.

As this is the case, I don't think there is any need for me to look at the complaint about commission, as upholding this part of the complaint wouldn't, in any event, make a difference to the overall outcome.

### **My final decision**

My final decision is that I uphold Mr A's complaint against Advantage Finance Ltd. It must now settle the complaint in the way I've outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 20 January 2026.

Scott Walker  
**Ombudsman**