

## complaint

Mr T complains that Advantage Finance Ltd gave him a hire purchase agreement which was unaffordable.

## background

Mr T acquired a used car in November 2016 by entering into a hire purchase agreement with Advantage. The cash price of the car was £5,400 and the total repayable under the agreement was £9,545.08. The duration of the agreement was for 54 months with monthly repayments of £173.52 with a final repayment of £348.52.

Mr T missed the first payment under the agreement but kept up with the repayments on the agreement after this and eventually settled the agreement early in July 2018. But he complained to Advantage to say the agreement shouldn't have been given to him because he couldn't afford it. He said Advantage should have seen he was already over committed with other debts at the time. He said he was only able to keep up with the repayments on the agreement by taking out further borrowing elsewhere.

Advantage didn't think it had done anything wrong. It said there were no concerning entries on Mr T's credit file that might have indicated he was struggling financially. It said Mr T had declared he was living with his parents at the time which would indicate he had low costs for living expenses. It said he was employed full-time and earning nearly £2,000 per month. It said its assessment of Mr T's ability to repay the borrowing was adequate and proportionate.

I sent Mr T and Advantage my provisional decision on 15 September 2020. I explained why I didn't think the complaint should be upheld. I said:

*I think there are two overarching questions I need to consider in order to decide what's fair and reasonable in all of the circumstances of this complaint. These questions are:*

- *Did Advantage complete reasonable and proportionate checks to satisfy itself that Mr T would be able to repay his loan in a sustainable way?*
  - *If so, did it make a fair lending decision?*
  - *If not, would reasonable and proportionate checks have shown that Mr T could sustainably repay the borrowing?*
- *Did Advantage act unfairly or unreasonably in some other way?*

*If I think Mr T has been disadvantaged in any way by Advantage's actions, I'll go onto consider what I think is a fair way to put things right.*

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

*The regulatory framework required Advantage to carry out a reasonable and proportionate assessment of whether Mr T could afford to sustainably repay the proposed borrowing. This is often referred to as an 'affordability check'.*

*This check had to be borrower-focused. Meaning that instead of focusing on how statistically likely Mr T was to repay the borrowing (which is the risk posed to Advantage as a lender, or 'credit risk'), it needed to be concerned with whether Mr T could afford and sustainably repay the borrowing – considering his specific circumstances. It needed to ensure the borrowing wouldn't have a significant adverse impact on Mr T's financial situation.*

*What is considered proportionate will vary depending on a number of factors such as (but not limited to):*

- The consumer's individual circumstances, including their financial circumstances;*
- The amount of credit;*
- The total repayable;*
- The duration of the agreement;*
- The cost of the credit; and*
- The size of the regular repayments.*

*This means what's considered proportionate could look different for two different consumers looking to borrow exactly the same amount, on the same terms. And what's considered proportionate could be different for the same consumer depending on what the terms of the proposed agreement are. In summary, there is no one-size-fits all approach to what is considered proportionate.*

*Mr T was required to repay around £9,500 in four and a half years, which I think is quite a significant financial commitment. It follows that a proportionate and reasonable borrower-focused affordability check ought to have been relatively thorough.*

*Advantage says it has a two-tier system for assessing whether to grant someone credit. The first is its creditworthiness assessment. Advantage says this assesses how statistically likely Mr T would be to repay the borrowing. It did this by looking at Mr T's financial circumstances taken from his credit file and information obtained from him during the application process. Advantage says around 80% of its applicants 'fail' at this stage of their assessment but the 'score' returned from Mr T's information indicated he was statistically very unlikely to default on the agreement. It says for this reason the decision to grant him credit was the right decision.*

*Advantage says the fact Mr T did repay the agreement without any difficulty, including making a large early settlement payment shows its creditworthiness assessment was accurate and it generated the right outcome. Although Mr T did repay the agreement, that doesn't mean the lending was affordable or sustainable for him. He may have, for example, had to borrow further or neglected to pay other debts instead. And as I've set out above, Advantage was required to carry out a borrower-focussed affordability assessment, which I don't think is what its creditworthiness assessment was.*

*After passing its creditworthiness check, Advantage says Mr T's application then had an affordability assessment carried out on it. It says of all the applicants each month that apply, only around 2% are granted credit (80% don't pass creditworthiness and the remaining 18%*

*don't pass affordability). It says everything it knew about Mr T indicated he could comfortably afford the borrowing. This is because his income was around £1,900 a month and he lived at home with his parents with no significant outgoings. Despite this, Advantage says it still estimated what his likely living costs would be if he lived alone.*

*It did this using ONS data and publicly available information about council tax and rental costs. It says this indicated Mr T had "well over £1,000 per month" in disposable income. For this reason, it says there was no need to carry out further checks or ask for further evidence about Mr T's income or expenditure.*

*It says from the copy it saw of Mr T's payslip it was able to take an average of Mr T's salary over the first seven months of the tax year and this indicated the bonus he got paid was likely to be a regular feature of his income. Looking at the information Mr T supplied, I don't think Advantage acted unreasonably in using Mr T's bonus payments as regular income. This is because it did appear Mr T received a similar 'bonus' payment each month and had done so for a considerable period of time.*

*But even taking into account this 'higher' income, Advantage had information available to it already that was inconsistent with its assumption that he had over £1,000 in disposable income. So it wasn't reasonable to rely on estimates of his expenditure.*

*Advantage says the FCA considers the use of ONS and statistical data to be a reasonable way to assess creditworthiness and affordability. Although the FCA has said this might be reasonable in some circumstances, it has also said it isn't reasonable if the firm knows or ought reasonably to suspect that the statistical data is unlikely to be representative of the consumer's specific circumstances<sup>1</sup>.*

*I'm not suggesting that Mr T's rent or utility bills were necessarily significantly higher than the average in his local area or that Advantage should have thought that was the case. Instead, I'm saying it was clear it was very unlikely his overall expenditure and financial situation could be accurately estimated based on what Advantage already knew.*

*I say this because Advantage carried out a credit check which showed – amongst other things – that Mr T had:*

- Defaulted on a credit card in February 2016 with an outstanding balance of around £2,000. Since the default the balance had only reduced by about £30.*
- Defaulted on a communications account in February 2016 with an outstanding balance of around £197. But the debt did appear to have since been cleared.*
- He was currently six months in arrears on another communications account.*
- He was currently over his overdraft limit of £200 on a current account.*

*I find it surprising that Advantage thinks the information it saw about Mr T's financial situation meant he was unlikely to be in financial difficulty. This is because I think the information above clearly showed he was very likely to have been struggling with his debts recently as he had defaulted on two accounts. But it also showed his situation was unlikely to have improved since then. The information ought to have raised several concerns and questions for Advantage about Mr T's ability to sustainably repay the borrowing.*

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<sup>1</sup> FCA Policy Statement PS18/19 – Assessing creditworthiness in consumer credit

*For these reasons I don't think Advantage carried out a reasonable or proportionate check on Mr T's ability to sustainably repay the borrowing. It ought to have realised the estimates and information it had gathered were very unlikely to be a reliable indication of Mr T's actual circumstances.*

*Advantage doesn't agree it needed to carry out further checks. It says that if it had to do so here it would need to do it with all other similar applicants. But it says these applicants generally turn out to be good credit risks – just like Mr T was. It says it couldn't apply this level of scrutiny to every applicant as it doesn't have the resources to do so.*

*Advantage has appeared to focus on its credit risk, lending model and viability of its business as a reason why it shouldn't have done more, rather than what it was required to do by the regulatory framework. And it's not considered what the impact and risk was to Mr T in being able to sustainably repay the borrowing.*

*Advantage says its lending model means it lends to people with poorer credit histories. And I'm not suggesting it shouldn't do that. There will be people who have struggled financially in the past but their circumstances have since improved meaning they might be able to sustainably repay borrowing now. I think in this particular case Advantage should have realised the information it had about Mr T's circumstances was likely to be inaccurate and unreliable and therefore prompted it to ask more questions and seek further clarity.*

*Advantage has also said the FCA recently provided it with positive feedback about its affordability assessment processes. It says the FCA didn't recommend any remedial action be undertaken following its review in 2019. It says that its affordability process hasn't significantly changed since Mr T's lending was approved in 2016.*

*It seems Advantage are saying that because the FCA recently agreed that its processes are broadly in line with the regulator's expectations (as set out in Policy Statement 18/19), it must follow that the assessment of affordability carried out at the time of Mr T's application was reasonable and proportionate. But I disagree.*

*Just because Advantage's processes might be broadly in line with the regulator's expectations now, it doesn't mean that Advantage can't or won't make an irresponsible lending decision in some cases either previously or in the future. In any event, in determining the outcome of Mr T's case, I'm required to consider what's fair and reasonable in all the circumstances of the case. That's a different question to whether the current regulator thinks Advantage's affordability processes needed remedial action in 2019.*

*The assessment Advantage carried out needed to be proportionate to Mr T's circumstances as well as the circumstances of the borrowing itself. For the reasons I've set out above, I don't think Advantage did carry out reasonable or proportionate checks in this particular case. I've therefore gone on to consider what I think reasonable and proportionate checks would likely have revealed.*

*Would reasonable and proportionate checks have shown that Mr T could sustainably repay the borrowing?*

*As I've set out above, I don't think it was reasonable for Advantage to rely on the estimated disposable income figure of over £1,000 per month. So I think a reasonable and proportionate check ought to have included a more thorough review of Mr T's expenditure.*

*I think in the circumstances it ought to have done something to try to verify what actual non-discretionary regular expenditure Mr T had.*

*I don't know what questions Advantage would have asked or what further information or evidence they would have requested from Mr T had they done this. But I've reviewed Mr T's current account statements (for both of his current accounts) to assess what his financial situation was at the time. In the absence of anything else, and bearing in mind the further investigation required into what was shown on the credit file, I think these are a good indication of what information Advantage would have likely discovered if it had carried out reasonable and proportionate checks.*

*I've seen that Mr T took out a number of high-cost-short-term loans (payday loans) in the months leading up to taking out the agreement with Advantage as well as some longer term high cost loans. Many of these weren't necessarily visible to Advantage when it carried out its credit check. But I think it's likely it would have discovered these had it done more to verify Mr T's expenditure. So Mr T's other credit commitments were significantly greater than Advantage had estimated and his credit commitments were also high cost.*

*Mr T was regularly overdrawn on both current accounts. He was receiving regular charges for going overdrawn and for various direct debits failing to collect for insufficient funds. There were also a large amount of ad-hoc gambling transactions each month. Mr T has explained he turned to gambling as a way to try and pay back his creditors.*

*Mr T has told us he lived at home with his parents and his expenditure consisted of £200 per month for child maintenance, his various credit commitments, fuel and food. As I've set out above it appears there were a number of credit commitments Advantage wouldn't have necessarily been aware of from the credit check it did. But from everything I've seen, it seems Mr T's monthly commitment to his creditors was around £700 per month. This included paying money back to some debt collection firms, which presumably were for the outstanding balances on his defaulted accounts.*

*Mr T earned a salary of around £1,900 per month and taking into account his other committed expenditure, it seems Mr T would have had in excess of £900 in disposable income each month. While this might seem similar to the figure Advantage came to, it doesn't include the estimated living costs Advantage added on.*

*Despite Mr T living with his parents, Advantage still estimated what costs Mr T might ordinarily incur if he lived by himself. Given Advantage also needed to consider the ongoing sustainability of the finance, I think it's appropriate to also consider what future costs Mr T may have had if he'd moved to his own accommodation. Advantage used a figure of £550 per month and I see no reason why this isn't a reasonable estimate.*

*The monthly repayments on the finance agreement with Advantage were £173.52 so it seems had Advantage carried out reasonable and proportionate checks on Mr T's ability to sustainably repay the borrowing it would likely have lent to him anyway. This is because even with those additional living costs of £550 (which Mr T didn't currently have) and the cost of the car finance agreement, Mr T would still be left with around £200 in disposable income each month.*

*I recognise Mr T was consistently using his overdraft on his current accounts and on many occasions exceeding his overdraft limit. He had also defaulted on credit relatively recently and was continuing to take out further borrowing. However, it seems that despite this, Mr T did have enough disposable income to cover these credit commitments.*

*It might be that had Advantage carried out a reasonable check for affordability, it would have seen how Mr T had been managing his finances and decided against lending to him because it didn't wish to take on that level of risk. But it seems Advantage was already aware of the defaults, many of the outstanding balances and the current account usage and was satisfied with this level of lending risk, so I don't think it would have acted differently. And because it appears Mr T could afford the repayments from his disposable income, Advantage hasn't acted unfairly in lending to him.*

*Therefore, although I don't think Advantage did carry out reasonable and proportionate checks, had it done so, it would have discovered the lending was likely to be affordable to Mr T and would have granted him the finance anyway. For that reason, I don't think Advantage needs to do anything to put things right.*

*Did Advantage act unfairly or unreasonably in some other way?*

*I've not seen anything to suggest Advantage acted unfairly or unreasonably towards Mr T in any other way.*

Advantage accepted my provisional decision, but Mr T didn't. In summary, he said he had taken out a number of high cost loans and payday loans in the months leading up to the hire purchase agreement. He said he wasn't able to afford to pay one of the payday loans which was for £500 and had set up a repayment plan for it. He said Advantage didn't investigate his financial circumstances appropriately and should have asked to see his bank statements, which would have shown the additional borrowing and gambling.

Mr T provided his own figures for his outgoings which he said showed that he only had £77 in disposable income before he took out the hire purchase agreement.

### **my findings**

I've reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I've come to the same conclusions I reached in my provisional decision and for the same reasons. However, I'll address the additional points Mr T has raised.

I've thought about the additional borrowing Mr T says he took out just before the hire purchase agreement. This was in addition to the circa £700 per month credit commitments I'd calculated in my provisional decision. Some of the loans Mr T mentions I had already taken into consideration, such as his monthly payment of £123 to a particular lender.

However, there were some I hadn't seen any evidence of before. There isn't, for example, any indication from his bank statements that he was repaying the particular payday loan provider he has mentioned being in a repayment plan with. So, I'm not persuaded further robust questioning would have revealed that additional borrowing. Overall, I think had Advantage carried out reasonable and proportionate checks it would have likely discovered that Mr T's monthly credit commitments appeared to be around £700.

I've reviewed Mr T's income and expenditure figures that he's provided following my provisional decision. As well as his credit commitments (which he's listed as £700, being the same as I indicated in my provisional decision) and child maintenance payment, he's included costs for clothing, travel, food, insurance, personal care and mobile. I don't think any of the costs Mr T has included are unreasonable, although the cost of his mobile contract was included in my calculation of his credit commitments.

Mr T has also said his housing costs were £550, which is the figure Advantage estimated it to be if he were to move into his own apartment. These weren't costs Mr T had at the time he took the borrowing out. So, it follows that Mr T's monthly disposable income wasn't £77, it was £627 – if I accept the figures he's now provided me with. This means even using Mr T's own calculations, the finance agreement Advantage gave him did appear to be affordable, at least while he continued living at home.

While Advantage did calculate an estimated living cost if Mr T were to move out to his own place, it did so as it's told me it estimates living costs for all its applicants, even if they've said they live with their parents. However, I've already explained that I don't think the checks Advantage carried out were reasonable and proportionate. Had it done more it would have likely gathered a much more accurate picture of Mr T's living costs and disposable income. And as I've set out above, this would have likely shown that it appeared Mr T could afford the borrowing.

From everything Mr T has said and provided it is clear he was struggling with his debts and continued to borrow from other lenders in order to meet his credit commitments. However, I don't think reasonable and proportionate checks ought to have revealed to Advantage that he couldn't afford the hire purchase agreement. For these reasons I don't think Advantage acted unreasonably in providing Mr T with the finance.

Apart from Mr T missing his first monthly repayment, which he quickly repaid, I don't think Advantage ought to have realised Mr T was struggling or in financial difficulty. This is because he didn't tell them, nor did he fail to meet any of his future repayments. Overall, while Mr T clearly did struggle, I don't think Advantage acted unfairly as I don't think it could have reasonably known this.

### **my final decision**

For the reasons given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 20 November 2020.

Tero Hiltunen  
**ombudsman**