DRN-4252957

Financial Ombudsman Service

The complaint

Mrs H complains that Advantage Finance Ltd ("AF") was irresponsible to have agreed car finance for her in 2016.

What happened

AF entered into a hire purchase agreement for a car with Mrs H in October 2016. The price of the car was £8,398. The total amount owing under the agreement (including interest and fees) came to £15,196.60. This was to be repaid over 59 monthly instalments of £250.36 and a final payment of £425.36.

As it was a hire purchase agreement, AF remained the vehicle owner until Mrs H had made all her repayments and so she was, in essence, paying for the use of it. Mrs H made her payments by direct debit. A few were returned but then paid shortly after, apart from one missed payment which Mrs H paid a higher monthly fee to clear over a period of six months in 2020. The agreement ran to term and was repaid in full. The account was closed in October 2021.

Mrs H complained to AF that it had agreed credit for her with a very high interest rate which wasn't affordable in her circumstances. She said she had three dependents at the time and the repayments left her with little disposable income each month. Mrs H said she needed to take out high cost short term loans to top up her income throughout the term.

AF disagreed that it had been irresponsible to lend to Mrs H. It says it carried out an affordability check beforehand and verified her income, assessed her existing level of debt and estimated her expenses. AF noted that Mrs H had some historic financial difficulties but its check didn't raise any recent concerns. AF didn't uphold Mrs H's complaint.

Mrs H didn't accept this response and brought her complaint to us. One of our investigators looked into it and recommended that it be upheld. They concluded that AF would likely have found out through further checks that the credit wasn't affordable for Mrs H. They recommended that AF refund all payments Mrs H made above the price of the car, along with compensatory interest.

AF didn't accept this recommendation and asked for the complaint to come to an ombudsman to decide and it came to me. I issued a provisional decision on 13 June 2023 explaining why I didn't plan to uphold Mrs H's complaint. I shared my reasons and the information I'd relied on in that decision.
AF didn't respond to my provisional decision. Mrs H didn't agree with it and provided some comments and new information for me to consider when making 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 considered everything again and Mrs H's response to my provisional decision, I am not upholding her complaint. I am sorry that this isn't the answer Mrs H wishes for and I want to reassure her that have I carefully considered everything she said in response to my provisional decision. I'll set out my reasons for not upholding her complaint again in this final decision and address Mrs H's responses where appropriate.

As I'd said in my provisional decision, AF will be familiar with the regulations in place at the time so I'll summarise its main obligations. AF needed to check that Mrs H could afford to meet her repayments sustainably before entering into a credit agreement with her. In other words, it needed to check that she could meet her repayments out of her usual means without experiencing undue difficulty or adverse consequences, for example while meeting any existing commitments and without having to borrow or realise assets. The necessary checks needed to take into account both the nature of the credit (its type, amount, term etc.) and Mrs H's particular circumstances.

The overarching requirement was that AF needed to pay due regard to Mrs H's interests and treat her fairly. The regulator's guidance (CONC) paragraph 2.2.2G gave an example of contravening this requirement as 'targeting customers with regulated credit agreements which are unsuitable for them by virtue of their indebtedness, poor credit history, age, health, disability or any other reason.'

With this in mind, my main considerations are did AF complete reasonable and proportionate checks when assessing Mrs H's application to satisfy itself that she would be able to make the repayments under the agreement out of her usual means without undue difficulty? If not, what would reasonable and proportionate checks have shown and ultimately, did AF make a fair lending decision?

<u>Did AF complete reasonable and proportionate checks?</u>

Mrs H's income was noted as £2,100 on her application form. AF provided a copy of Mrs H's September 2016 payslip, which showed a monthly net figure of £1,564 after tax and deductions. AF relied on the higher figure of £2,100 which it calculated based on the year to date figures shown on the payslip so as to take into account income fluctuations. It recorded Mrs H's mortgage payments as £693, her other debts as £318 and estimated her bills as £173 plus council tax at £58 – a total of £1,242. This left Mrs H with an estimated disposable income of £858 to meet her finance repayments and any other costs.

As mentioned, AF relied on a year to date figure to come to an average estimate of Mrs H's monthly income. I haven't seen any evidence that AF looked into this before doing so. I don't know what might have happened earlier in the year for example Mrs H may have been paid an annual bonus or had fewer deductions from her wages. At the time of taking out the credit Mrs H was paying money directly from her pre-tax wages into a salary sacrifice scheme and having deductions for health care and child care vouchers. Using this net figure of £1,564 alongside the above expenses estimate of £1,242 means Mrs H could end up spending more than a third of her wages on debt and have an estimated £72 left each month. While the credit might have been affordable on a pounds and pence basis I can't find that it looked sustainable for Mrs H based on these figures, given she had dependents and would need to meet her repayments for five years.

AF said that Mrs H's credit file didn't show that she was having current financial difficulty. It said that she'd had some issues in the past, as did many of its customers. Mrs H's credit file showed that she had a history of borrowing from short term lenders and had recently taken out a payday loan with repayments of £245. The only other active debt Mrs H had was a credit card with a balance of £771. Mrs H had a defaulted account from 2011 with a balance of £4,266 and a county court judgement of £4,538 awarded in early 2015 which hadn't yet been repaid. These may have been related and I don't know what Mrs H was paying, or should have been paying, towards this debt. I accept that the adverse information Mrs H had on her credit file had happened more than 12 months before she took out this credit, but she had just taken out a short term loan which could suggest that she had an ongoing need to supplement her income.

Altogether, I think it would have been a proportionate response for AF to have looked into Mrs H's circumstances in more detail before agreeing to lend to her on this occasion.

In response to my provisional decision, Mrs H said that AF didn't complete the necessary checks on her expenditure at the time the finance was approved. She also said that she didn't complete an income and expenditure assessment at the time and that AF based their decision to lend solely on her income/pay slip. Mrs H said that AF was therefore irresponsible to lend to her.

As I've explained above, I've concluded that AF didn't carry out a proportionate check before lending to Mrs H. However, this isn't enough to uphold her complaint. When we find a business has made an error, we also need to find that this error has caused a loss for a consumer and that this loss would not have happened but for this error. In this case I've concluded that AF didn't complete a proportionate assessment. I've therefore gone on to consider whether AF would still have agreed to lend to Mrs H if everything had gone as it should have.

<u>What might proportionate checks have shown?</u>

Mrs H has provided us with her bank statements from the time and I've reviewed these. To be clear I'm not suggesting that AF ought to have done so but this is the information I have and think it's reasonable to rely on this to get some understanding of what a proportionate check would likely have revealed to AF.

Mrs H was paid an amount of £1,564 in August and September 2016 and she also had monthly child benefit payments of £192, a total of £1,756. Our investigator noted that Mrs H was spending about £1,600 a month, which I'd consider a minimum figure having reviewed her bank statements. In addition to her credit card and short term loan repayments, Mrs H was paying at least £50 a month in overdraft and returned direct debit fees as she was regularly using her £1,400 overdraft.

AF said that Mrs H's mortgage was jointly held with her husband and so it was fair to assume that he paid something towards this. I've seen no evidence of this and Mrs H is liable for the full monthly payment, which came out of her account.

Mrs H told us that her husband was self-employed and paid for irregular costs such as birthday presents, clothes, school trips, extra food and travel costs, while meeting his own personal and work costs. The bank statements support what Mrs H told us as it shows ad-hoc payments into the account from her husband. I didn't include irregular costs in my considerations above nor did I include any ad-hoc payments from Mrs H's husband. While it seems likely Mrs H shared some expenses with her husband, ultimately she was solely liable for this credit and I don't think it's fair to assume a level of contribution which would render the credit affordable.

However, Mrs H had other sources of income. I can see payments of £480 into Mrs H's account on 23 September and 7 October 2016 from her employer. Mrs H told us that these amounts were for additional freelance work which was sporadic and not guaranteed.

I don't doubt what Mrs H told us about the nature of this work however, had AF looked into Mrs H's finances in more depth I think it would have continued with its offer of credit. The amounts were substantial enough and frequent enough that it seems more likely than not Mrs H would have enough disposable income to support her repayments. I can see from the bank statements that Mrs H was also paid £480 in late October and £600 in late November. In December Mrs H received £925 from another company.

I concluded in my provisional decision that a proportionate assessment wouldn't have caused concerns for AF. Mrs H's level of income meant she would be able to meet her repayments of £250 while meeting her existing commitments and usual living costs.

In response to my provisional decision Mrs H told us that she paid about £500 a month in nursery fees, about half of which was paid via the salary sacrifice scheme. Mrs H also said that her husband was working part-time and had his own costs and so she took on the majority of the credit responsibilities. As I explained above, I estimated that Mrs H's monthly spending was at least £1,600 a month based on her bank statements, which included nursery fees.

Mrs H also told us that that in addition to the bank account I referred to (where she was paying about £50 a month for her overdraft usage), she had another bank account with an overdraft of over £2,000 at the time. Mrs H provided bank statements for this other account for September, October and November 2016 which show she was paying about £40 a month in overdraft interest and fees for this debt. This additional regular commitment doesn't change my view that the monthly repayments would have seemed affordable to AF.

I have reconsidered that some of Mrs H's income was for additional work which wasn't guaranteed. But because of the history of a higher level of pay and the evidence from her bank statements of the regularity and level of these funds, I've concluded that it was more likely than not that AF would have continued with its decision to lend. And so I can't find that it was irresponsible to have proceeded on the basis of the information it had.

<u>Did AF make a fair lending decision?</u>

Even if credit is affordable a lender might not be acting fairly by entering into an agreement depending on the customer's circumstances (as per CONC 2.2.2G). As mentioned Mrs H said in response to my provisional decision that in addition to the debts I'd considered, she had another overdraft of over £2,000. Mrs H also said that both she and her husband were maxed out with living expenditure which could be seen from their bank statements. I appreciate Mrs H's strength of feeling on this point and I have carefully reconsidered whether AF made a fair lending decision here.

As I've said above, Mrs H held a credit card and two bank accounts and she had reached her credit limits on these. Mrs H also had a county court judgement of £4,538 awarded against her in early 2015 (but I don't know what the status of this was at the time) and she had recently taken out a short term loan. I think it is fair to say that her finances were pressured. However, I haven't seen enough to suggest that Mrs H was struggling with her finances to the extent that it was foreseeable she would have difficulty meeting her repayments and that AF should have declined to lend to her.

Mrs H provided evidence that she'd taken out a payday loan in March 2017 and another in June. Mrs H also provided evidence of taking out a line of credit with a high cost lender some years later in March 2020. I can see from the customer contact information provided that Mrs H missed payments to AF around these times and told AF that this was because her pay dates had changed. Taking everything into account, I've concluded that it's more likely that Mrs H experienced cash flow issues on a few occasions and managed her finances accordingly as opposed to the credit having such an adverse impact on her finances that she needed to borrow to cover the repayments. The agreement ran to term and was repaid in full and the account was closed in October 2021.

Mrs H said that the interest rate charged for the credit was extremely high and that she couldn't afford to borrow at this rate. I appreciate that Mrs H might not make the same decision about the credit now, but I haven't found that AF made an irresponsible lending decision which adversely impacted on her. I am sorry that this will be a disappointing outcome for Mrs H but my final decision is that I am not upholding her complaint.

My final decision

For the reasons set out above, I am not upholding Mrs H's complaint about Advantage Finance Ltd.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 16 August 2023.

Michelle Boundy
Ombudsman