

## **The complaint**

Mr S complains that Advantage Finance Ltd (Advantage) irresponsibly granted him a hire purchase agreement that he couldn't afford to repay.

## **What happened**

In April 2018 Mr S acquired a vehicle financed by a hire purchase agreement from Advantage. Mr S was required to make one instalment of £451.44 and 47 monthly repayments of £276.44 and an optional purchase fee of £175. The total amount repayable under the agreement was £13,444.12. Mr S and his representative for the complaint believe Advantage failed to complete adequate affordability checks. Mr S says that if it had it would've been clear that the agreement wasn't affordable.

Advantage disagreed. It said it carried out an adequate affordability check including credit bureau data that it felt made a strong case for approval of the agreement. It found historic defaults on two accounts and some county court judgments. It said its checks showed Mr S had the ability to sustainably afford the finance proposed.

Our Investigator recommended that the complaint should not be upheld. They thought Advantage's checks weren't proportionate but that had proportionate checks been completed it still would have found the finance was affordable.

Mr S and his representative disagreed, and it explained that the case should be reconsidered because Mr S had two dependants at the time. Our Investigator felt that this did not impact their outcome as they'd already factored in any evidenced income and expenditure from Mr S's bank statements.

Mr S and his representative asked for an Ombudsman to issue a final decision on the matter.

## **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.

Where evidence is incomplete, inconsistent, or contradictory, I reach my decision on the balance of probabilities – in other words, what I consider most likely to have happened in light of the available evidence and wider circumstances.

The Financial Conduct Authority (FCA) was the regulator when Mr S took out his agreement with Advantage. Its rules and guidance obliged Advantage to lend responsibly. Advantage needed to take reasonable and proportionate steps to assess whether a borrower could afford to meet its repayments in a sustainable manner over the lifetime of the agreement. This was set out in its Consumer Credit Sourcebook (CONC).

CONC 5.3.1(G) stated that:

1. *In making the creditworthiness assessment or the assessment required by CONC 5.2.2R (1), a firm should take into account more than assessing the customer's ability to repay the credit.*
2. *The creditworthiness assessment and the assessment required by CONC 5.2.2R (1) should include the firm taking reasonable steps to assess the customer's ability to meet repayments under a regulated credit agreement in a sustainable manner without the customer incurring financial difficulties or experiencing significant adverse consequences.*

Repaying debt in a sustainable manner meant being able to meet repayments without undue difficulty - using regular income, avoiding further borrowing to meet payments and making timely repayments over the life of the agreement without having to realise security or assets (CONC 5.3.1G (6)).

The FCA didn't specify what exact level of detail was needed to carry out an appropriate assessment. But it did say that the level of detail depended on the type of credit, the amount of credit being granted and the associated risk to the borrower relative to the borrower's financial situation (CONC 5.2.4G (2)).

So, I'd expect a lender to require more assurance the greater the potential risk to the borrower of not being able to repay the credit in a sustainable way. I'd expect a lender to seek more assurance the lower a person's income, the higher the amount of credit being applied for and the longer the term of the agreement. It is from this standpoint and criteria that I've approached my decision.

In this case, there are two overarching questions that I need to answer to fairly and reasonably decide Mr S's complaint. These two questions are:

1. *Did Advantage complete reasonable and proportionate checks to satisfy itself that Mr S would be able to repay his loan without experiencing significant adverse consequences?*
  - *If so, did it make a fair lending decision?*
  - *If not, would those checks have shown that Mr S would've been able to do so?*
2. *Did Advantage act unfairly or unreasonably in some other way?*

*Did Advantage complete a reasonable and proportionate affordability check?*

I'm not satisfied that Advantage gathered a reasonable amount of information from Mr S about his income and expenditure prior to approving the finance. Advantage's searches found that Mr S was left with around £1,175 in disposable income, but its credit check data which it's been unable to provide suggested that Mr S had two defaults and some county court judgments. Whilst these were historic – it demonstrated that Mr S had previously failed in his obligations on several accounts. And so, it would have been proportionate to ask Mr S about his actual income and expenditure at the time, to ensure that his financial situation had improved and that he could repay the loan sustainably.

I want to be clear that I've considered Advantage's position about the type of checks that it did complete. And I understand that it felt none of the searches it completed demonstrated any risk of financial stress. However, considering the circumstances already mentioned I'm not satisfied that these checks adequately gathered a proportionate amount of information. Advantage was lending Mr S a significant amount of money which required payments over a four-year period. Its checks failed to answer how much Mr S actually had left to spend from his income after existing commitments.

Advantage have also highlighted that Mr S signed the agreement confirming he understood the credit agreement to be affordable for him – and I don't doubt that at the time he believed this to be true, but I'm also not satisfied that this confirmation would remove the need for Advantage to complete proportionate affordability checks for his specific circumstances and come to its own conclusion.

Given the size of the lending, the monthly repayments, the length of agreement and the information in Mr S's credit file, I think it would have been proportionate for Advantage to have enquired about Mr S's specific expenditure – including costs such as food, petrol, utilities and housing. Without knowing what his regular committed expenditure was Advantage wouldn't have got a reasonable understanding of whether the agreement was affordable for his specific circumstances.

As Advantage don't appear to have sought a reasonable understanding of Mr S's total committed expenditure, I don't think it carried out reasonable and proportionate affordability checks before lending. Advantage needed to do more in the circumstances before agreeing to lend. Without knowing what his regular committed expenditure was, Advantage wouldn't have got a reasonable understanding of whether the agreement was affordable for him.

I'm satisfied Advantage didn't complete proportionate affordability checks, but this doesn't automatically mean it failed to make a fair a lending decision.

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

I've considered what Advantage would likely have found out if it had completed reasonable and proportionate affordability checks. I can't be certain what Mr S would have told Advantage had it asked about his regular expenditure. I don't think Advantage necessarily needed to request bank statements, but in the absence of anything else, I've placed significant weight on the information contained in Mr S's statements from the three months leading up to the application.

The statements show Mr S was receiving an average of around £2,300 a month in income from his salary. His regular committed monthly expenditure at the time was around £1,400. In calculating these amounts I've included any applicable payments for credit commitments, housing costs, utilities, food, fuel and other ongoing costs. I've also removed Mr S's previous motor finance agreement that was ended upon obtaining this hire purchase agreement.

It's clear from the statements that Mr S shared responsibility for the various financial commitments of his household with his partner, and this hasn't been disputed after our Investigator issued their view stating as such. Mr M's income amounted to around 65% of their combined income. So, I've apportioned 65% of the commitments listed in his joint bank account statements. It appeared that Mr S was left with around £900 in disposable income before factoring in the finance agreement. Again, this takes account of a 65% share of the outgoings in the statements provided, along with removal of the existing car finance agreement that was ended when the finance with Advantage was approved. This means that after factoring in the finance payments Mr S was left with around £620 of disposable income for things such as unexpected or emergency costs.

The one caveat for these figures is that they don't account for numerous cash withdrawals on the bank statements provided – but even if I assume that every cash withdrawal was for a committed expenditure (which is unlikely given their sporadic and variable nature) and include 65% of the withdrawals in my calculations, this still left Mr S with around £300 for emergency costs.

Mr S's testimony suggests that at the time he was behind on household bills, and struggling to remain within his overdraft. However, the evidence he's provided doesn't demonstrate that this was the case – the statements provided show a joint current account that was being managed well at the time. So, on balance of the evidence provided I'm satisfied that proportionate checks would have shown Mr S could sustainably repay the borrowing.

Mr S's representative has explained that he had two dependants, and it feels that this has not been factored in. However, I'd expect any impact this had on Mr S's finances to already be present in the bank statements he's provided, and so in the absence of any further evidence I'm satisfied that this consideration is also already included.

Taking all this into account, it appears to show the agreement was affordable for Mr S. Altogether his income and expenditure at the time satisfies me that the agreement did not appear to be unaffordable. It's clear that if Advantage had completed reasonable and proportionate affordability checks it would most likely have found that Mr S could sustainably afford the hire purchase agreement.

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

I'm not persuaded from the submissions made to date that Advantage acted unfairly or unreasonably in some other way.

**My final decision**

My decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 27 December 2023.

Paul Clarke  
**Ombudsman**