

The complaint

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

What happened

In September 2018 Mr W acquired a vehicle financed by a hire purchase agreement from Advantage. Mr W was required to make 59 monthly repayments of £225.88 and one final monthly payment of £400.88. The total amount repayable under the agreement was £13,727.80. Mr W believes Advantage failed to complete adequate affordability checks. Mr W and his representative says that if it had it would've been clear the agreement wasn't affordable at the time.

Advantage disagreed. It said it carried out an adequate assessment which included credit file searches, verification of Mr W's income and statistical estimation of his non-discretionary expenditure. It said these searches showed Mr W had sufficient headroom to comfortably afford the loan.

Our Investigator didn't recommend that the complaint should be upheld. They thought Advantage's checks weren't proportionate but that as Mr W and his representative had failed to provide the bank statements needed to decide what proportionate checks would have shown they could not conclude that the lending was unaffordable.

Mr W's representative didn't agree. They provided a copy of Mr W's credit file in response but failed to provide the requested bank statements. Mr W 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.

We explain how we handle complaints about irresponsible and unaffordable lending on our website. I've used this approach to help me decide Mr W's complaint. Advantage needed to ensure that it didn't lend irresponsibly as per the rules set out in the FCA's Consumer Credit Sourcebook (CONC). In practice, what this means is that Advantage needed to carry out proportionate checks to be able to understand whether any lending was affordable for Mr W before providing it.

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

1. Did Advantage complete reasonable and proportionate checks to satisfy itself that Mr

W 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 W 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?

Advantage was required to ensure it carried out adequate checks on Mr W's ability to sustainably afford the agreement. These checks had to be borrower-focussed and proportionate (see CONC 5.2A). What is considered proportionate will vary depending on the circumstances, such as (but not limited to): the total amount repayable, the size of the monthly repayments, the term of the agreement (CONC 5.2A.20 R), and the consumer's specific circumstances.

Advantage says that Mr W's application underwent credit and underwriting checks, and these didn't raise any concerns. His income was verified through payslips, and Advantage also used statistical data to estimate the level of expenditure Mr W had at the time. It felt that these searches were reasonable and proportionate in this scenario.

I'm not satisfied that Advantage gathered a reasonable amount of information from Mr W about his expenditure prior to approving the finance. I understand Advantage made the decision to lend on the basis that his estimated disposable income was acceptable and that it found the risk this posed to itself as acceptable. But I'm not satisfied enough consideration was given to the personal risk posed to Mr W.

Advantage has provided a copy of the credit file check it completed. At the time of the application Mr W had recently defaulted on a credit card account just three months prior to the sale. I can see in the same year he'd also missed payments for his credit card and communications contract. I do think this all ought to have indicated Mr W may have been struggling financially and so I would've expected Advantage to take further consideration of Mr W's specific financial situation before approving any lending.

I want to be clear that I've considered Advantage's position about the number and type of checks that it did complete. And I understand that its searches attempted to approximate Mr W's disposable income. However, considering the possibility of financial difficulties in his specific circumstance I'm not satisfied that these checks adequately gathered a proportionate amount of information as they failed to answer how much he actually had left to spend after his existing commitments.

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

As Advantage don't appear to have sought a reasonable understanding of Mr W'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.

Did Advantage make a fair lending decision?

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 W 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 W's statements three months prior to the finance being approved as an indication of what would most likely have been disclosed.

However, Mr W and his representative have been unable to provide the requested statements, instead providing another copy of Mr W's credit file. This means that Mr W has failed to provide the requested evidence for me to consider his income and expenditure any further. And so, I'm unable to see what his overall expenditure was at the time. This means I can't say that the agreement should have been considered unaffordable.

As Mr W and his representative haven't been able to demonstrate that his agreement was unaffordable, I can't reasonably conclude that Advantage ought to have known he would struggle to make the repayments due under the agreement. I appreciate that Mr W's testimony is that the borrowing was unaffordable, but the question I must consider is what Advantage would have been able to find out if proportionate checks had been completed. In the absence of the information already requested by our Investigator I'm unable to see what Advantage would have most likely found at the time had it completed proportionate checks.

So, it follows that I can't reasonably say that Advantage made an unfair lending decision.

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 W to accept or reject my decision before 27 October 2023.

Paul Clarke
Ombudsman