

The complaint

Mr W complains about the affordability of a hire purchase agreement provided by Advantage Finance Limited (Advantage).

Mr W is represented by a claims management company (CMC) but for ease of reading, I'll refer to everything that's been said on his behalf as if Mr W said it himself.

What happened

In August 2017 Mr W acquired a used car through a hire purchase agreement with Advantage. The agreement ran for 48 months, Mr W was required to make monthly repayments of £369.09 and a final payment of £544.09.

Mr W complained to Advantage, he said he had very little, or no money left after paying his bills and debts each month. He also said his income changed between taking out and repaying the lending, but Advantage didn't check.

Advantage looked into Mr W's concerns but didn't uphold the complaint. In summary, it said appropriate checks had been made as to whether Mr W could afford the agreement and said the loan was affordable.

Mr W remained unhappy and so referred his complaint to the Financial Ombudsman. Our Investigator didn't recommend the complaint be upheld because she didn't think there was enough evidence or information to suggest the agreement wasn't affordable to Mr W.

Mr W didn't agree and said Advantage should have done more to establish his financial situation at the time.

As an agreement can't be reached the case has been passed to me for a 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.

Advantage will be familiar with all the rules, regulations and good industry practice we consider when looking at a complaint concerning unaffordable and irresponsible lending. So, I don't consider it necessary to set all of this out here. Information about our approach to these complaints is set out on our website.

In summary, Advantage needed to check that Mr W could make his repayments sustainably before entering into a credit agreement with him. It needed to check that he could meet his repayments out of his 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 Mr W's particular circumstances.

My main considerations are whether Advantage completed reasonable and proportionate checks when assessing Mr W's application to satisfy itself that he would be able to make his repayments under the agreement sustainably. If not, what would reasonable and proportionate checks have shown and, ultimately, did Advantage make a fair lending decision.

Before granting the finance, I think Advantage gathered a reasonable amount of evidence and information from Mr W about his ability to repay. I say this because it completed a credit check in order to understand how Mr W had managed his existing and previous finance arrangements. It also verified Mr W's income, confirmed his accommodation type, his employment and that he had no dependents. It used statistical data specific to Mr W's location and household to estimate his likely expenditure on rent, utilities and council tax.

Advantage also considered what would have been left over to cover other expenditure and made an allowance of around £1,400. It noted that even after the estimated expenses had been taken into account, Mr W would have had enough disposable income to afford monthly repayments up to £369.09.

Having said that, I've reviewed the credit check provided by Advantage and I don't think the checks were proportionate, given that the check revealed Mr W had two county court judgements with outstanding balances. I also think Advantage could've been more specific in asking Mr W about his monthly expenditure to assess his circumstances at the time, rather than relying on statistical data.

Advantage says, due to Mr W passing its internal credit check it didn't think it needed to verify anything further before approving the finance. But given the outstanding amount of the county court judgements along with the overall size of the borrowing, the monthly repayments and the term of the agreement I think it would have been proportionate for Advantage to have done so to ensure it was affordable.

I've considered what Advantage would likely have found out if it had completed reasonable and proportionate affordability checks. Mr W has sent in some bank statements to help us get an indication of what would most likely have been disclosed at the time. I'm not saying Advantage needed to obtain bank statements as part of its lending checks. However, in the absence of any further information, I think the bank statements will likely show a reflection of Mr W's financial circumstances at the time.

Having reviewed the bank statements, I don't think they contain enough information to establish what Mr W's daily living and committed expenditure at the time would have likely been. This is because the bank statements provided show very little committed monthly expenses and there are transfers of large sums each month to other accounts for which bank statements have not been provided. This means I can't say that the agreement should have been considered unaffordable.

I have thought about what Mr W has said his expenditure would've been in 2017 and taking everything he's disclosed into account, he would've been left with a disposable income of around £1,300, out of which making a monthly payment of £369.09 would've been affordable. So even if Advantage had completed reasonable and proportionate checks, I think it's fair to determine that the repayments would've appeared to be affordable. I'm therefore not persuaded that Advantage acted unfairly in approving the finance.

As Mr W hasn't been able to demonstrate that his agreement was unaffordable, I can't reasonably conclude that Advantage ought to have known he may have been struggling to make the repayments due under the agreement. Further, having reviewed Mr W's account statement I can't see that he missed payments and voluntarily terminated the agreement in April 2019, paying off the outstanding balance.

Mr W has said that his income changed between taking out and repaying the finance and Advantage didn't check. But from what I've seen, I'm not persuaded Mr W disclosed any changes in his circumstances, or that there was anything to prompt Advantage to believe Mr W's income had changed. So, I wouldn't have expected Advantage to be aware that a change in Mr W's circumstances could've impacted his ability to repay the finance.

Whilst I've carefully thought about everything Mr W has told us, I'm afraid it doesn't affect my findings. I don't think there is enough evidence or information to suggest the agreement was unaffordable for Mr W, or that Advantage acted irresponsibly in granting the credit.

My final decision

For reasons outlined above, 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 1 August 2023.

Rajvinder Pnaiser
Ombudsman