DRN-4319456

Financial Ombudsman Service

The complaint

Miss P complains that Advantage Finance Ltd (Advantage) unfairly agreed to a loan that she couldn't afford.

What happened

In August 2018 Miss P acquired a car when she entered into a Hire Purchase agreement with Advantage. The cash price of the car was £6,295 with a total amount repayable after interest and charges were applied of £13,720. This was repayable in 59 monthly instalments of £225.75 with a final payment of £400.75. Miss P said she struggled to meet the monthly repayments and missed several instalments. She complained to Advantage as she said they hadn't done enough to establish the lending was affordable for her. And if they had they would have seen she was constantly utilising her overdraft to meet her credit commitments and day to day living costs.

Advantage said Miss P on her application had said her monthly income was £2,600 a month and this was verified through a credit reference agency (CRA) as the amount that credited Miss P's bank account. They said they'd used statistical data to assess Miss P's expenditure for rent, council tax, utility and other costs of living applicable to her specific postcode area. And they'd considered Miss P's credit commitments shown on her credit history, as well as including a contingency amount. Advantage said Miss P's credit history did show she'd had financial difficulties previously, but they offered loans to consumers who'd previous financial problems and a need to improve their credit profile. Advantage said their assessment showed Miss P had sufficient disposable income to sustain the repayments.

They added that her struggles to maintain her repayments were because of changes in her employment status. They said Miss P had voluntarily terminated the agreement in January 2022 and had settled the small outstanding balance that had remained.

Miss P wasn't happy with Advantage's response she said she was struggling to meet her financial commitments before Advantage agreed to lend to her, and she reiterated they hadn't done enough to check the lending was affordable. She referred her complaint to us.

Our investigator said Advantage should have looked further into Miss P's financial situation before agreeing to lend to her. But said that having considered Miss P's bank statements, and income and expenditure Advantage had made a fair lending decision.

Miss P didn't agree, she said not all of her financial commitments had been considered. She asked for an ombudsman to decide.

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.

I understand Miss P will be disappointed by my decision but having done so I'm not upholding her complaint. I'll explain why.

The rules that apply to credit agreements are set out in the consumer credit sourcebook (CONC) of the Financial Conduct Authority's handbook. Section 5.2A of CONC is relevant guidance as covers the need for businesses like Advantage to complete reasonable and proportionate creditworthiness assessments before agreeing to lend money.

So, in reaching my decision I need to consider:

1. Did Advantage complete reasonable and proportionate checks to satisfy themselves that Miss P would be able to sustainably repay the borrowing?

    a. If they did, was the decision to then lend to Miss P fair?

    b. If they didn't, would reasonable and proportionate checks have shown that Miss P could sustainably repay the borrowing?

2. Did Advantage act unfairly or unreasonably in some other way?

The affordability checks should be "borrower-focused", meaning Advantage need to think about whether repaying the loan sustainably would cause difficulties or adverse consequences for Miss P In other words, it wasn't enough for Advantage to think only about the likelihood that they would get their money back without considering the impact of repayment on Miss P herself.

There's no set list for what reasonable and proportionate checks are. But I'd expect lenders to consider the specific circumstances of the loan application. What constitutes a proportionate affordability check will generally depend on several factors such as the specific circumstances of the borrower, their financial history, current situation and whether there are any indications of vulnerability or financial difficulty.

So, I've considered whether Advantage in lending to Miss P had been thorough in the checks they made. And whether they've taken all these factors into account in deciding to lend to her.

Advantage said they verified Miss P's income using a Current Account Turnover check through a CRA. And that they'd checked her credit file and used statistical data from a variety of official sources to assess Miss P's rent, council tax, utility and other costs of living applicable to her specific postcode area. And they'd assessed what Miss P's discretionary spend would be for day to day living costs such as food and petrol. Advantage said this left Miss P with £1,870.94 in disposable income which they said was sufficient to sustain her repayments.

Whether or not these checks were proportionate depends on various factors, including the size and length of the loan, the cost of credit, and what Advantage found. The total amount repayable for the loan was £13,720, and Miss P would be indebted for five years - so I think the checks needed to be thorough.

CONC allows firms to use statistical data in their affordability assessments unless they have reason to suspect that a customer's non-discretionary expenditure is significantly higher than that described in the data.

Advantage said Miss P's credit file didn't give them any cause for concern. But I've looked at the credit report Advantage used in their assessment, and I can see that Miss P had a history of financial difficulty previously, including county court judgments (CCJ). Whilst most were sometime before the current lending, I can see that Miss P had recent difficulty in meeting her credit commitments just prior to the lending, and for relatively small amounts which I think indicates Miss P's expenditure was more than the statistical data assessed it to be. So, I'm not satisfied Advantage did proportionate checks – I think they should have done more to understand Miss P's expenditure.

This doesn't automatically mean Advantage shouldn't have lent to Miss P as I need to consider whether further checks would have shown that the repayments were unaffordable to her – or in other words that she lost out because of Advantage's failure to complete proportionate checks.

I've looked at statements for Miss P's bank account for the three months leading up to her application to Advantage. I'm not saying Advantage needed to look at Miss P's bank statements but they provide a good indication of Miss P's income and expenditure at the time the lending decision was made.

Advantage said they verified Miss P's income to be around £2,600, I can see from Miss P's bank statements that her income, comprising of salary and benefits (excluding child benefit) averaged across the three months was around £2712. Her regular financial commitments, for rent, utilities, council tax, food, petrol, insurance, media, communications, childcare - and I've also included the amounts Miss P has highlighted for school payments and debt collection averaged around £2,082. This would leave Miss P with around £630 in available income.

Miss P has said she'd borrowed money from a relative which she needed to pay back at £100 a month. I can see regular payments in and out of Miss P's account to this relative, with payments of more than the £100 she said she was committed to. Advantage wouldn't have seen these transactions on Miss P's credit history at the time of lending, but I've accounted for the declared commitment of £100 when considering Miss P's expenditure. This would have meant Miss P's expenditure would be around £2,182, leaving her with a disposable income of around £530. As the new lending was around £226 this would leave Miss P with around £304 in disposable income for any unexpected or discretionary spend.

Miss P has said that she was regularly using her overdraft facility, and I've considered her overdraft fees as expenditure in the above. While I can see Miss P was utilising her overdraft to manage her finances, I can't see that this usage was increasing over the three months prior to the lending. So, taking all of the above into account I don't think Advantage has made an unfair lending decision as Miss P had sufficient disposable income to sustain her repayments.

My final decision

I don’t uphold this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Miss P to accept or reject my decision before 26 February 2024.

Anne Scarr
Ombudsman