

## The complaint

Miss V is complaining that Advantage Finance Ltd (AFL) shouldn't have lent to her – she says they were irresponsible in doing so.

## What happened

In March 2018, Miss V took out a hire purchase agreement with AFL to finance the purchase of a vehicle. She paid a deposit of £100 and borrowed £11,897 – the cash price of the car was £11,997. The agreement required Miss V to make 59 monthly repayments of £352.42, followed by a final instalment of £527.42. The total amount she'd have to pay to AFL was around £21,320. Miss V fell behind with her payments in early 2022 and AFL obtained a court order to collect the car – which they did in June 2023.

In July 2023, Miss V complained to AFL, saying that she thought AFL hadn't checked her finances properly before lending to her. She said her credit score was very low and she'd already defaulted on several accounts at the time of her application. She also complained that it wasn't clear how much she would need to pay in total. And she felt AFL hadn't dealt with her sympathetically and positively when she couldn't make the repayments.

In response, AFL said when she'd applied, Miss V told them she was single, living in rented accommodation, and employed full time. They said they verified her income at £1,859 per month by checking a payslip and carried out an affordability assessment using statistical data as well as the actual credit repayment costs from her credit file. They said she had one defaulted account and one County Court Judgment (CCJ) on her credit file but these were from 2012 and 2013 and wouldn't stop them lending.

AFL said Miss V had made her payments on time up until January 2022, and that when she began to miss payments she advised AFL that she'd been out of work – a situation that AFL couldn't have foreseen at the outset. AFL said the arrears grew to £1,400 with no payments in five months – which had led them to pursue collection of the vehicle. They felt they'd acted fairly and didn't uphold Miss V's complaint.

Miss V was unhappy with AFL's response and brought her complaint to our service, where one of our investigators looked into it. He didn't think AFL had done enough to check that the lending was affordable for Miss V but he said he hadn't seen enough information about Miss V's financial circumstances at the time to say that AFL shouldn't have lent to her. He said the costs had been clearly set out in the documentation sent to Miss V. And he said he couldn't look further into Miss V's complaint about how AFL had treated her because this had been a matter the courts had dealt with.

Miss V wasn't happy with our investigator's proposed outcome. She said her bank was making it very difficult for her to obtain statements. She asked for a decision – and the matter was passed to me.

I issued a provisional decision on 4 June 2024. In that I said:

*“The Financial Conduct Authority (FCA) sets out in a part of its handbook known as CONC what lenders must do when deciding whether or not to lend to a consumer. In summary, a firm must consider a customer's ability to make repayments under the*

agreement without having to borrow further to meet repayments or default on other obligations, and without the repayments having a significant adverse impact on the customer's financial situation.

CONC says a firm must carry out checks which are proportionate to the individual circumstances of each case.

Did AFL carry out proportionate checks?

AFL said they carried out the following checks:

- reviewed Miss V's credit file;
- calculated Miss V's average monthly income from the year-to-date totals on her January 2018 payslip; and
- used statistical data to estimate Miss V's cost of living and hence disposable income.

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 AFL found. Miss V needed to pay AFL over £21,000 over a five-year term. So I'd expect the checks to be thorough.

AFL said they verified Miss V's income as £1,859 per month, took her total monthly credit payments figure of £76 from her credit file and estimated her cost of rent, utilities and council tax as around £532. They said these estimates were based on statistical data from a variety of sources. That left around £1,200 to cover the repayments for the agreement, as well as all other expenses.

CONC allows a business to use statistical data when it hasn't got reasonable cause to suspect the statistical data might not be appropriate. Miss V's credit file showed she had a CCJ from 2012 and a default from 2013. I'm satisfied these were historic and wouldn't have given AFL reason to think Miss V might be struggling. However, the credit report also shows Miss C was over her credit limit and had missed payments on three credit cards, and had two overdrafts totalling around £2,000. These were all indicators that Miss V was likely in financial difficulty, and therefore that it wasn't appropriate to rely on statistical data in an affordability assessment.

On balance I'm not satisfied AFL carried out proportionate checks – in the context of the recent defaults I think they should have done more to understand Miss V's expenditure.

If AFL had done proportionate checks, what would they have found?

Miss V has provided some more information since our investigator issued his view. I've used a combination of her testimony, her credit report, and the transaction listing from her main bank account to understand what AFL might have found if they'd done more to understand Miss V's expenditure.

Looking first at Miss V's spending on credit commitments, it appears AFL estimated this at 3% of the balance on her credit cards. However, they didn't take into account the balance on her overdrafts. And a repayment of 3% per month doesn't generally allow a consumer to pay a debt within a reasonable timeframe – instead I'm inclined to say they should have used at least 5% of all credit card and overdraft balances at the time of lending. That's a figure of £224.

Miss V was also paying £300 per month to a family member, in repayment of a personal debt. And the monthly repayment due under this agreement was around £352. So in total I think AFL would have estimated Miss V's monthly spending on credit commitments at £876 if they'd done reasonable and proportionate checks. Given AFL had verified

Miss V's income at around £1,860 per month, that would have left Miss V with just under £1,000 per month to cover all her living expenses.

Miss V's bank transactions suggest her rent, energy costs, water, and communications costs came to around £1,019 per month. That's before accounting for any food, fuel, or insurance expenditure. And it doesn't include council tax, which Miss V has told us was £112 per month but she wasn't paying. She's told us she was also in arrears with her energy and water bills.

In summary, I'm inclined to say that if AFL had done proportionate checks they'd have found that Miss V's credit report showed adverse information because her essential outgoings outweighed her expenditure. I think it would have been clear that she couldn't afford this agreement – and so they wouldn't have been able to fairly decide to lend to Miss V. It follows that I'm upholding this element of Miss V's complaint.

#### Have AFL acted unfairly in any other way?

I'm not inclined to uphold Miss V's complaint that AFL didn't make the total cost of the finance clear. I'm satisfied the signed hire purchase agreement clearly sets out the monthly repayments required and the total amount payable. This information was also set out within the pre-contract credit information which it's likely the vehicle dealership provided to Miss V. In summary I think AFL did enough to disclose the total cost and other terms and conditions of the agreement to Miss V.

Miss V's also complained about the way that AFL treated her once she fell into arrears, saying this had caused her significant amounts of fear and stress. AFL obtained a court order for the return of Miss V's car. So I can't look into whether or not they should have repossessed her vehicle. And her Admission document for the court case set out her offer of payments and the circumstances leading up to the court order. So I can't look into this either. But I have reviewed the contact notes between AFL and Miss V. Having done so, I'm satisfied AFL made reasonable efforts to contact Miss V, assess what was affordable for her, and treat her with due forbearance and consideration.

#### Summary

In conclusion, I'm inclined to say AFL shouldn't have lent to Miss V – and I'll set out below how I think they should put this right. But I can't say they did anything else wrong in relation to the agreement.

#### Putting things right

As I don't think AFL should have lent to Miss V, I'm inclined to say it's not fair for her to pay any interest or charges under the agreement. But it is fair that she pays for her use of the car, which she had for longer than the full term of the agreement. So I think it's fair Miss V pays the full cash price of the car, being £11,997. It appears Miss V has already paid more than this so I think AFL should:

- refund to Miss V all amounts she's paid (including the deposit) in excess of £11,997, together with simple interest at 8% per year from the date of each overpayment to the date of settlement; and
- remove any adverse markers from her credit file once she's paid this amount in full.

If AFL consider tax should be deducted from the interest element of my award they should provide Miss V a certificate showing how much they've taken off so that Miss V can reclaim that amount, assuming she is eligible to do so."

### **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.

Both parties accepted my decision, so my findings are unchanged from those set out above.

### **My final decision**

As I've explained above, I'm upholding Miss V's complaint. Advantage Finance Ltd need to:

- refund to Miss V all amounts she's paid (including the deposit) in excess of £11,997, together with simple interest at 8% per year from the date of each overpayment to the date of settlement; and
- remove any adverse markers from her credit file once she's paid this amount in full.

If AFL consider tax should be deducted from the interest element of my award they should provide Miss V a certificate showing how much they've taken off so that Miss V can reclaim that amount, assuming she is eligible to do so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss V to accept or reject my decision before 15 July 2024.

Clare King  
**Ombudsman**