

## **The complaint**

Mrs C complains Advantage Finance Ltd (AFL) didn't sufficiently check whether she could sustain the repayments. And so acted irresponsibly in lending to her as she said the loan was unaffordable.

In bringing her complaint Mrs C is represented by a third party. For ease of reading I will only refer to Mrs C in my decision.

## **What happened**

In September 2018 Mrs C acquired a car when she entered into a hire purchase agreement with AFL. The cash price of the car was £5,795, Mrs C paid a deposit of £100. After interest and charges were applied the total amount she'd to repay was £9,939.82. This was repayable over 48 months, with 47 repayments of £201.35 and a final payment of £376.35.

Mrs C said she struggled to maintain her repayments, and only did so by failing to meet her other financial commitments. She complained to AFL.

AFL said they'd assessed whether the lending was affordable for Mrs C. They said they'd verified her income, and used statistical data to assess her rent, council tax, utility and other costs of living applicable to her postcode area. They said they'd also checked Mrs C's credit file and included an amount to act as a 'buffer' in their assessment. AFL said they didn't see anything from their assessment to raise concern and based on this they considered the lending was affordable.

Mrs C wasn't happy with AFL's response and referred her complaint to us.

Our investigator said that Mrs C's credit file showed that she'd been struggling financially prior to the lending. And so didn't think the checks done by AFL were proportionate. But in checking Mrs C's actual financial situation he said the lending was affordable.

Mrs C didn't agree and asked for an ombudsman to decide.

A provisional decision was issued in May 2024 that said:

## **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.

*Having done so I'm currently minded to uphold Mrs C's complaint. I'll explain why.*

*I've considered the relevant rules, guidance and good industry practice when someone complains about irresponsible and/or unaffordable lending. There are two overarching questions I need to consider in order to decide what's fair and reasonable in all of the circumstances of the complaint. These are:*

*1. Did AFL complete reasonable and proportionate checks to satisfy themselves that Mrs C*

would be able to repay the credit in a sustainable way?

a. if so, did AFL make a fair lending decision?

b. if not, would reasonable and proportionate checks have shown that Mrs C could sustainably repay the borrowing?

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

Regulations in place at the time AFL lent to Mrs C required them to carry out a reasonable assessment of whether she could afford to repay the loan in a sustainable manner.

This is sometimes referred to as an “affordability assessment” or “affordability check”. The affordability checks should be “borrower-focused”, meaning AFL needs to think about whether repaying the loan sustainably would cause difficulties or adverse consequences for Mrs C. In other words, it wasn’t enough for AFL to think only about the likelihood that they would get their money back without considering the impact of repayment on Mrs C 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. Consideration should also be given to the amount, type and cost of credit being applied for.

So, I’ve considered whether AFL in lending to Mrs C were thorough in the checks they did.

I can see AFL’s affordability assessment was based on income verification, a credit file check and statistical data. AFL said none of the measures indicated there was anything in Mrs C’s affordability assessment to raise any concerns. I can see that AFL deemed Mrs C’s income to be around £2,000, her credit file showed her to have five active accounts, and that they’d used statistical data to assess her outgoings. From this they determined that the lending was affordable.

I’ve considered Mrs C’s credit history to see if there were any indications of current or potential difficulties in affording the loan and being able to maintain the repayments that AFL should have seen. And I can see that on one her accounts at the time of the lending that she’d been behind in her payments for the six months prior to the new lending, at one point four months in arrears. I can also see historic financial difficulty in 2015, 2016 and 2017. So given Mrs C’s previous financial struggles and that she was currently struggling to meet her credit commitments, I think AFL should have done more to assess her financial situation rather than relying on statistical data.

As previously mentioned, there isn’t a set list of checks that a lender should do. And I’m not saying AFL needed to ask for bank statements to verify Mrs C’s income and expenditure. But for us it’s probably the most efficient way to work out whether the lending was affordable.

I’ve looked at Mrs C’s bank statements for two accounts for the three months prior to the loan being taken out. This is because I can see regular transfers in and out of each of the accounts to the other. I can see that Mrs C’s average income across the three months was around £2150, slightly more than that used by AFL in their assessment. I can also see Mrs C had non-discretionary spend for rent, transport costs including car insurance, media, mobile phone, credit card and tax. Mrs C has said that her partner was responsible for the general cost of living expenditure, but I can see she also made some sporadic payments to him.

*The bank statements also show Mrs C was making a monthly payment for debt collection. While this wasn't showing on the credit file check done by AFL. If AFL had checked Mrs C's bank statements, I would have expected them to question Mrs C about this. I can't say what Mrs C would have told AFL if asked, but she has shown us that the repayment related to a county court judgement from 2017.*

*Overall looking at Mrs C's income and non-discretionary spending she should have had sufficient disposable income to maintain her repayments of £201.35. But if AFL had considered Mrs C's bank statements, they would also have seen she gambled repeatedly and significantly, from £30 to around £250 often on a daily basis. In June 2018 for example, she spent around £800, in July 2018 this had increased to around £900, and by August 2018 to around £1,200 on gambling sites. Mrs C did also have some winnings, but this tended to see an increase in her gambling activity. This is an indicator that her gambling was escalating and showed more likely than not a compulsion to gamble. And if this had been seen by AFL I think it would have been unlikely that they would have agreed to lend to her as it wouldn't have been responsible to do so.*

*AFL has shown that Mrs C maintained her repayments and settled her account, but I can also see that Mrs C took out further credit over the period of the agreement. So, I don't think it was responsible of AFL to lend to Mrs C – the evidence available from the time suggests it was on balance more likely Mrs C would have continued to gamble, which she has. And that this would impact her ability to make the repayments for her financial commitments in a sustainable way.*

*I've also considered whether AFL acted unfairly or unreasonably in some other way given what Mrs C has complained about, including whether their relationship with Mrs C might have been viewed as unfair by a court under s.140A Consumer Credit Act 1974. But because I'm currently minded to uphold Mrs C's complaint already for the reasons I've explained I don't think I need to make a finding on this. I believe the redress I've suggested results in fair compensation for Mrs C in the circumstances of her complaint.*

## **Responses to provisional decision**

AFL said they're a lender who assist consumers who have an adverse credit history. And that their checks allowed for some scoring detriment, with their affordability calculator allowing headroom for poor credit. AFL said they'd checked Mrs C's income using an electronic primary check that satisfied regulatory standards. Added to which they'd spoken to Mrs C and she'd been happy to proceed.

They accepted there was an account that was in arrears prior to the lending but this had been for a balance of £342, and as outlined above they assist consumers who have adverse credit. They also said Mrs C had reduced the arrears on this account to being one month behind in her repayments shortly before the lending, which they said showed she was managing her credit commitments. And they hadn't seen any evidence of Mrs C having had a county court judgement.

Based on their credit worthiness assessment and Mrs C's credit management they said their checks had been proportionate and reasonable. And that these checks showed the lending to be affordable for her. They added that Mrs C had maintained her repayments under the agreement and had since sought further financing from them.

Mrs C hasn't asked for any further representations to be considered.

I've thought carefully about the comments made by AFL, as they're a lender that consider consumers who've had financial difficulties in the past so it wouldn't be unusual for them to see some adverse credit information. CONC 5.2A.22 G says:

*The firm should also have regard to information of which it is aware at the time the creditworthiness assessment is carried out that may indicate that: (1) the customer is in, has recently experienced, or is likely to experience, financial difficulties....*

As I said in my provisional decision the affordability checks should be "borrower-focused", meaning AFL needed to think about whether repaying the loan sustainably would cause difficulties or adverse consequences for Mrs C.

From Mrs C's credit history at the time of the lending I can see she'd five active accounts, which comprised two current accounts, two communication accounts and a home credit account. I recognise the balance owed by Mrs C on one of her communications accounts was relatively low. But this raises the question why she was struggling to repay such a small amount each month considering her debt-to-income ratio. Her credit file showed she'd struggled financially over each of the preceding three years even though her credit commitments were relatively few, she'd defaulted on a communications account (2017), a mail order account (2016) and a credit card/store card (2015). Her credit file showed she'd been several months behind with her repayments on her communications account in the six months prior to the new lending. I think this was an indication that Mrs C was falling again into financial difficulty. And so even though this wasn't unusual for AFL to see, given Mrs C's indebtedness would increase a further £9,939.82 over 48 months and taking into account her credit history I think AFL should have checked further.

As I said in my provisional decision, I wouldn't necessarily expect a lender to get bank statements. AFL has said they spoke to Mrs C about the lending, but this was a "Welcome" call, I haven't seen any information that shows AFL questioned Mrs C about her recent arrears or what had happened to cause this. Which I think they've shown they could have done. So I don't think their checks were proportionate.

I can't know whether Mrs C would have told AFL about the payments she was making to a debt collector or about her county court judgement from 2017, or about her gambling activity if they had asked her. For our purposes the provision of Mrs C's bank statement give us a good understanding of her financial situation prior to the lending. And if AFL had seen Mrs C's bank statements I don't think they would have considered it was responsible to lend to her as her gambling activity could be seen.

Having considered the representations made I haven't changed my thinking that AFL shouldn't have approved the lending, and so it's not fair for them to charge Mrs C any interest and other charges under the agreement. Mrs C has already paid more than the cash price of the vehicle, the agreement has been settled so she now owns the car outright.

My final decision

I uphold this complaint. And ask Advantage Finance Ltd to:

- Refund all the payments Mrs C has made in excess of the cash price of £5,795.
- They should add \*8% simple interest per year from the date of each overpayment to the date of settlement; and
- Remove any adverse markers that may have been recorded on Mrs C's credit file regarding the agreement.

\*If Advantage Finance Ltd consider tax should be deducted from the interest element of my award they should provide Mrs C with a certificate showing how much they've taken off so that she can reclaim that amount, assuming she is eligible to do so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 17 July 2024.

Anne Scarr  
**Ombudsman**