

The complaint

Miss B is complaining about Advantage Finance Ltd (AFL). She says they acted irresponsibly in lending to her and complains that this created an unfair relationship. Miss B's complaint has been brought to us by a representative but for ease I've written as if we've dealt directly with her.

What happened

In February 2020, Miss B took out a hire purchase agreement with AFL to finance the purchase of a van. She paid a deposit of £400 and borrowed £8,595 – the cash price of the vehicle was £8,995. The agreement required Miss B to make 59 monthly repayments of £259.69, followed by a final payment of £459.69.

Miss B missed payments almost immediately, which AFL put down to the pandemic. She subsequently made most of her payments on time until February 2022 after which she made no further payments until voluntarily terminating the agreement. Miss B then paid off the outstanding balance over several months, settling the agreement in January 2023.

In September 2023, Miss B complained to AFL. She said they'd not taken reasonable steps to assess whether the agreement was affordable or suitable for her, this had caused her financial difficulty, and had meant the relationship between herself and AFL was unfair. Miss B also said AFL hadn't treated her with forbearance and due consideration when she missed payments.

In response, AFL said they assessed Miss B's affordability and creditworthiness using their own policies and credit reference agency (CRA) data. They said they verified her income using an automated CRA facility and estimated her expenditure using statistical data and actual credit repayment costs from her credit file. They said they'd added a generous buffer and were satisfied the loan was affordable at the time. So they didn't uphold Miss B's complaint and she brought it to our service.

One of our investigators looked into the matter but didn't think it should be upheld. She said she didn't think AFL had carried out reasonable and proportionate checks. But she thought if they had, they would have found the repayments were affordable and would have been able to fairly decide to lend to Miss B. Miss B didn't accept our investigator's view so the complaint came to me for a decision.

I issued a provisional decision on 3 June 2024. In that, I said:

"I've considered Miss B's statement that AFL's failure to establish that the hire purchase agreement was unsuitable resulted in the relationship being unfair. She referred to the 2020 High Court judgment in the case of Kerrigan vs Elevate Credit International Limited ("Kerrigan") where HHJ Worster confirmed a breach of creditworthiness assessment is a significant factor in making the relationship unfair.

I've considered the Kerrigan judgment and I'm inclined to agree with Miss B - paragraph 11 states: "Thus a failure by a creditor to undertake a proper creditworthiness assessment prior to entering into a regulated credit agreement would almost certainly affect the fairness of the relationship and so trigger the Court's power to make appropriate orders under section 140B." So I'll first consider whether AFL carried out a proper creditworthiness assessment before deciding to lend to Miss B.

Did AFL carry out a proper creditworthiness assessment?

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. This gives clear guidance as to what a “proper creditworthiness assessment” might look like. 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. In effect this means considering whether a customer is likely to be able to meet their financial commitments (including the repayments under the proposed agreement) and their non-discretionary expenditure out of their income each month.

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

Whether or not a firm’s checks were proportionate would normally depend on factors such as the size and term of the loan, the cost of credit, and what AFL found in the process of doing the checks. This was a five-year agreement requiring Miss B to pay AFL around £260 each month. So the checks needed to be thorough.

AFL told us they verified Miss B’s income at £1,500 per month. It’s clear from the file that Miss B (or the broker) initially told AFL her income was £1,200 per month but that the maximum loan that allowed was significantly less than the price of the van. It seems the broker entered the higher income figure of £1,500 per month soon after. Although AFL were given two quite different income figures for Miss B within a short time, they were able to verify the higher figure, so I’m inclined to say they were entitled to rely on this. It’s now come to light that some of the income into Miss B’s account wasn’t hers – but I can’t say AFL should have been aware of that at the time.

AFL then used statistical data to estimate Miss B’s expenditure. They estimated her rent, utilities and council tax would come to around £500 per month and used her credit file to calculate her credit commitments would be around £200 per month. That left her with around £800 per month to cover the £260 needed under this agreement together with all food, fuel, insurance and other essential and committed expenditure.

CONC 5.2A.19G says a firm can use statistical data as long as it doesn’t have reason to suspect the data are unlikely to be representative of the customer’s situation. In Miss B’s case her credit file showed that she was in significant arrears on one of her credit cards, with a balance of £1,635. I’m inclined to say this is an indicator that Miss B might have been in financial difficulties and ought to have led AFL to carry out further checks.

What would AFL have found if they had carried out proportionate checks?

Miss B’s provided us with a statement of her monthly income and expenditure at the time. She says her income was £1,100, her rent, utilities and council tax came to around £475, phone and internet came to £125, and food and fuel totalled around £150. I’ve also looked at Miss B’s credit report and her bank statements to verify these figures and get a fuller understanding of her financial circumstances at the time. I’m not saying AFL should have looked at Miss B’s bank statements, but these documents give me a good idea of what AFL would have found if they’d done proportionate checks.

As I’ve explained above, I’m aware Miss B’s income was less than the figure of £1,500 per month that was provided to AFL but I can’t say AFL should have done more to check her income.

Turning to Miss B's expenditure, her credit report shows a loan with repayments of £177 per month and a credit card with a balance of £1,635 per month. In order to repay the credit card balance within a reasonable timeframe, Miss B would need to have been making payments of at least 5% of this balance – around £80 per month. So her total credit commitments were around £257 per month.

Miss B's bank statements support the figures she gave us for rent, utilities and council tax, and for her phone and internet costs. She was also paying £13 per month for a TV licence. So Miss B's regular expenditure, including credit commitments, was around £870 per month. Adding on the payments under this agreement takes that figure to £1,130 per month, leaving around £370 per month to cover food and fuel. I'm aware Miss B was also making payments out of her account in relation to the third-party income coming into her account. But on balance I don't think it's likely she'd have disclosed this to AFL. So I'm inclined to say if AFL had done proportionate checks they'd have come to a similar figure and been able to fairly decide to lend to Miss B.

Did AFL act unfairly in any other way?

Part of Miss B's complaint was that AFL hadn't acted with forbearance and due consideration when she fell into arrears. So I've looked carefully at the notes of contact between AFL and Miss B and listened to the calls between her and AFL.

Having done so, I can't say AFL treated Miss B unfairly. They allowed her a payment holiday early on in the agreement and checked with her that she was ready to increase her payments after the holiday to catch up. Miss B seemed eager to pay down the arrears and get the agreement back on track rather than concerned about affordability.

In January 2021, Miss B told AFL she and her partner had split up and she no longer had any use for the van or the means to pay for it. She asked for options in relation to ending the agreement and AFL explained that she could voluntarily surrender (VS) or voluntarily terminate (VT) the agreement and provided quotes. In response, Miss B said she'd decided to keep the van and continue to pay for it – but she asked for her options again in October 2021. AFL again provided her with options on VS or VT. They then checked the status of the vehicle and found it had been registered with Miss B's former partner, rather than in her name.

AFL told Miss B that she needed to be the registered keeper, and the van needed to remain at her address. Miss B made the required changes with the DVLA but then in February 2022 it became apparent that she didn't have the vehicle and might struggle to get hold of it. Eventually Miss B was able to recover the vehicle from her former partner and the VT went ahead.

From everything I've seen, I think AFL treated Miss B with forbearance and consideration. In registering the vehicle to her partner, Miss B had broken the terms of the agreement, and AFL simply explained to Miss B that she needed to sort this out – they didn't seek any compensation for breach of contract.

Conclusion

In summary, I don't think AFL's decision to lend to Miss B was unreasonable. And I think they treated Miss B fairly during the course of the relationship. I haven't seen anything else to suggest that the relationship between Miss B and AFL was unfair – so I'm not intending to uphold the complaint.

AFL didn't reply to my provisional decision. But Miss B did. In summary she made the following comments:

- It was contradictory to say that AFL ought to have carried out further checks, but then say I didn't think AFL should have done more to check her income.
- The fact that AFL's figure for Miss B's income was incorrect confirms their checks were insufficient.
- I shouldn't have knowingly used an incorrect figure for Miss B's monthly income in calculating her disposable income. If I used Miss B's actual monthly income, it would demonstrate that the agreement wasn't affordable.

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've not been persuaded to change my mind. I'll explain why.

Miss B says her income wasn't £1,500 per month – and so I shouldn't have used that figure in calculating her disposable income. But my role isn't to decide whether the agreement was affordable for Miss B at the time of the lending decision. Instead, it's to decide whether AFL ought to have discovered that it was unaffordable.

As I explained in my provisional decision, Miss B told AFL that her net monthly income was £1,500 per month. And AFL were able to verify that income using an automated CRA facility. CONC explicitly allows a firm to use this sort of information to verify income – it states: *“For the purposes of considering the customer's income... it is not generally sufficient to rely solely on a statement of current income made by the customer without independent evidence (for example, in the form of information supplied by a credit reference agency...)”*.

Although I said that Miss B's credit card arrears should have led AFL to carry out more checks, this was in relation to Miss B's expenditure – for which AFL had arrived at an estimate using statistical data. This data is not related to an individual, so is far more open to potential inaccuracies than income verification. Although AFL's income verification was automated, it was also personalised - the CRA facility generally looks at a combination of current account turnover data and previously verified application data for an individual.

AFL was able to verify Miss B's income as £1,500 per month because she had at least this amount coming into her current account each month. There's no reason the automated check should have identified that some of the income wasn't hers, and I can't say AFL should have identified this. In summary, I remain satisfied that AFL did enough to check Miss B's income.

I still think AFL should have done more to check Miss B's expenditure as their assessment was based on local averages rather than Miss B's own circumstances. But, as I set out in my provisional decision, I don't think that would have changed the outcome and I'm satisfied AFL would have been able to fairly decide to lend to Miss B.

My final decision

As I've explained above, I'm not upholding Miss B's complaint about Advantage Finance Limited. Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 30 July 2024.

Clare King
Ombudsman