

Complaint

Miss S complains that Advantage Finance Ltd (“Advantage Finance”) unfairly entered into a hire-purchase agreement with her. She’s effectively said that the payments to the agreement were unaffordable and so it shouldn’t have been provided to her.

Background

In May 2018, Advantage Finance provided Miss S with finance for a used car. The cash price of the vehicle was £11,500.00. Miss S paid a deposit of £2,700.00 and applied for finance to cover the remaining amount of £8,800.00 required to complete her purchase.

As a result she entered into a 60-month hire-purchase agreement with Advantage Finance for £8,800.00. The loan had interest, fees and total charges of £7,760.40 (comprising of interest of £7,260.40, an acceptance fee of £325 and an option to purchase fee of £175), and the total amount to be repaid of £16,560.40 (not including Miss S’ deposit) was due to be repaid in 59 monthly instalments of £273.09 and a final monthly payment of £448.09.

Miss S’ complaint was considered by one of our investigators. She didn’t think that Advantage Finance had done anything wrong or treated Miss S unfairly. So she didn’t recommend that Miss S’ complaint should be upheld.

Miss S disagreed with our investigator and the complaint was passed to an ombudsman for a final decision.

My findings

I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint.

We’ve explained how we handle complaints about irresponsible and unaffordable lending on our website. And I’ve used this approach to help me decide Miss S’ complaint.

Having carefully thought about everything I’ve been provided with, I’m not upholding Miss S’ complaint. I’d like to explain why in a little more detail.

Given Miss S’ response to our investigator’s assessment and her reiteration of what she thinks about the checks that were carried out, I think that it would be helpful for me to set out that we consider what a firm did in order to understand whether the repayments to any credit were affordable (asking it to evidence whatever checks it did) and determine whether this was enough for the lender to have made a reasonable decision on whether to lend.

Generally, we think it’s reasonable for a lender’s checks to be less thorough – in terms of how much information it gathers and what it does to verify that information – in the early stages of a lending relationship.

But we might think it needed to do more if, for example, a borrower’s income was low, the amount lent was high, or the information the lender had – such as a significantly impaired

credit history – suggested the lender needed to know more about a prospective borrower's ability to repay.

That said, I think that it is important for me to explain that our website does not provide a set list of mandated checks that a lender is expected to carry out on every occasion – indeed the regulator's rules and guidance did not and still do not mandate a list of checks to be used. It simply sets out the types of things that a lender could do. It is a for a lender to decide which checks it wishes to carry out, although we can form a view on whether we think what done was proportionate to the extent it allowed the lender to reasonably understand whether the borrower could make their payments.

Furthermore, if we don't think that the lender did enough to establish whether the repayments to a credit agreement were affordable, this doesn't on its own meant that a complaint should be upheld.

We would usually only go on to uphold a complaint in circumstances were we were able to recreate what reasonable and proportionate checks are likely to have shown – typically using information from the consumer – and most importantly this recreated check clearly shows that the repayments in question were unaffordable and had the potential to result in significant adverse consequences for the customer.

I kept this in mind when deciding Miss S' complaint.

Advantage Finance says it agreed to this application after it completed an income and expenditure assessment on Miss S. During this assessment, Miss S provided details of her monthly income which it verified against a copy of a payslip which she was asked to provide.

Advantage Finance says it also carried out credit searches on Miss S which did show she had had previous difficulties with credit, in the form of what it considered to be historic county court judgments), but that she also had low active credit balances. In its view, when the amount Miss S already owed plus a reasonable amount for Miss S' living expenses, based on statistical data, were deducted from her monthly income the monthly payments were affordable. On the other hand, Miss S says she was already struggling at the time and that these payments were unaffordable.

I've thought about what Miss S and Advantage Finance have said.

The first thing for me to say is that I don't think that the checks Advantage Finance carried out did go far enough. Advantage Finance's searches showed that Miss S had had significant difficulties with credit. In my view, although Advantage Finance may have considered these difficulties to have been historic, it still needed to take further steps to verify Miss S' actual living costs, owed in order for its checks to have been proportionate.

As I've explained where a firm didn't carry out sufficient checks (such as Advantage Finance here), it does not automatically mean that a complaint should be upheld, as I still need to consider what reasonable and proportionate checks are likely to have shown. So I've gone on to decide what I think Advantage Finance is more likely than not to have seen had it obtained further information from Miss S.

Bearing in mind, the term of the agreement, Miss S' previous difficulty with credit and weighing these factors against the amount of the monthly payment here, I would have expected Advantage Finance to have had a reasonable understanding about Miss S' regular living expenses as well as her income and existing credit commitments.

I've considered the information Miss S has provided us with. And having done so, this information does appear to show that when Miss S' committed regular living expenses and existing credit commitments are deducted from her monthly income at the time, she did have the funds, at the time at least, to sustainably make the repayments due under this agreement.

I accept that Miss S' circumstances may not be fully reflected by the information which she has provided. I've seen what Miss S has said about going on to have financial difficulty. But bearing in mind what the information provided shows, I'm simply not in a position to agree that this was something that Advantage Finance ought to have realised at the time it was deciding whether to lend.

As this is the case and bearing in mind everything, I don't think that it would have been unfair for Advantage Finance to have concluded that Miss S could make the payments to this agreement, notwithstanding her previous difficulty with credit, had it carried out further checks here.

In reaching my conclusions, I've also considered whether the lending relationship between Advantage Finance and Miss S might have been unfair to Miss S under section 140A of the Consumer Credit Act 1974 ("CCA").

However, for the reasons I've explained, I don't think Advantage Finance irresponsibly lent to Miss S or otherwise treated her unfairly in relation to this matter. And I haven't seen anything to suggest that section 140A CCA or anything else would, given the facts of this complaint, lead to a different outcome here. So I'm not upholding this complaint.

So overall and having carefully considered everything, while I don't think that Advantage Finance's checks before entering into this hire-purchase agreement with Miss S did go far enough, I'm satisfied that carrying out reasonable and proportionate checks won't have prevented Advantage Finance from entering into this agreement with her. I appreciate that this will be very disappointing for Miss S. But I hope she'll understand the reasons for my decision and that she'll at least feel her concerns have been listened to.

My final decision

My final decision is that I'm not upholding Miss S' complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 25 October 2024.

Jeshen Narayanan
Ombudsman