

Complaint

Mr T complains that Advantage Finance Ltd (“Advantage Finance”) unfairly entered into a hire-purchase agreement with him. He’s said that the monthly payments to this agreement were unaffordable given his circumstances at the time and so he shouldn’t have been lent to.

Background

In September 2018, Advantage Finance provided Mr T with finance for a used car. The purchase price of the vehicle was £4,400.00. Mr T paid a deposit of £200 and entered into a hire-purchase agreement with Advantage Finance for the remaining £4,200.00 he needed to complete his purchase.

The loan had interest, fees and charges of charges of £2,117.29 (made up of interest of £1,617.29, an acceptance fee of £325 and an option to purchase fee of £175) and a 33-month term. This meant that the total amount to be repaid of £6,317.29 (not including Mr T’s deposit) was due to be repaid in 32 monthly instalments of £186.13 followed by a final monthly instalment of £316.13.

Mr T complained that the agreement was unaffordable and so should never have been provided to him. Advantage Finance didn’t uphold the complaint. It said that its checks confirmed that the finance was affordable and so it was reasonable to lend.

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

Mr T 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 Mr T’s complaint.

Having carefully considered everything, I’ve decided not to uphold Mr T’s complaint. I’ll explain why in a little more detail.

Advantage Finance needed to make sure that it didn’t lend irresponsibly. In practice, what this means is that Advantage Finance needed to carry out proportionate checks to be able to understand whether any lending was sustainable for Mr T before providing it.

Our website sets out what we typically think about when deciding whether a lender’s checks were proportionate. 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.

Advantage Finance says it agreed to this application after Mr T provided details of his monthly income which it cross checked against information provided by credit reference agencies on the amount of funds that went into Mr T's main bank account each month. Advantage Finance says it also carried out credit searches on Mr T which did show some previous difficulties with credit in the form of defaulted accounts and county court judgements ("CCJ") recorded against him.

In Advantage Finance's view, when the amount due on Mr T's existing credit commitments plus an estimated amount for Mr T's living expenses, based on statistical data, were deducted from his monthly income the monthly payments were still affordable. On the other hand, Mr T says that these payments were unaffordable and there was no way he was going to be able to maintain them.

I've thought about what Mr T and Advantage Finance have said.

The first thing for me to say is that I don't think that it was reasonable for Advantage Finance to use living costs based on statistical data for Mr T, given Mr T's previous difficulty with credit. In my view, the defaulted accounts and CCJs recorded against Mr T suggested that he fell outside the circumstances of the average borrower, which such statistics were based on.

In these circumstances, I think that Advantage Finance ought to have done more to ascertain Mr T's actual regular living costs. That said, I don't think that Advantage Finance obtaining further information on Mr T's actual living costs would have made a difference to its decision to lend in this instance.

I say this because when Mr T's actual living expenses are added to his active credit commitments and deducted from his income, he, at the time at least, appears to have enough left over to repay this agreement. So I think that Advantage Finance obtaining further information is likely to have led it to conclude that when Mr T's regular living expenses and existing credit commitments were deducted from his monthly income, he did have the funds, at the time at least, to sustainably make the repayments due under this agreement.

I accept it's possible that Mr T's actual circumstances at the time might have been worse than what I've seen here. For example, Mr T says that a number of payments made to friends and family from his account were loan payments. I don't know if it was the case that these payments were to repay loans taken from family and friends. However, the first thing for me to say is that any loans of this type wouldn't have shown on the credit searches Advantage Finance carried out. Secondly, Mr T hasn't been able to provide anything to corroborate the existence of these loans.

Furthermore, I also have to keep in mind that Mr T's most recent submissions are being made in support of a claim for compensation and, at the time at least, he wanted the car he was seeking to purchase. So, in my view, any explanations he would have provided at the time are more likely to have been with a view to persuading Advantage Finance to lend to him, rather than highlighting any unaffordability. I think it is unlikely that Mr T would have

volunteered that he also owed friends and family money in this way, in circumstances where Advantage Finance would have had significant difficulty in uncovering this for itself.

Overall and having carefully considered everything, while I don't think that Advantage Finance's checks before entering into this hire-purchase agreement with Mr T did go far enough, I'm satisfied that carrying out reasonable and proportionate checks won't have stopped Advantage Finance from providing these funds, or entering into this agreement with Mr T. So I'm satisfied that Advantage Finance didn't act unfairly towards Mr T when it agreed to provide the funds.

In reaching my conclusions, I've also considered whether the lending relationship between Advantage Finance and Mr T might have been unfair to Mr T 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 Mr T or otherwise treated him 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.

Overall and having carefully considered everything, I've not been persuaded to uphold Mr T's complaint. I appreciate that this will be disappointing for Mr T. But I hope he'll understand the reasons for my decision and at least consider that his concerns have been listened to.

My final decision

My final decision is that I'm not upholding Mr T's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 1 November 2024.

Jeshen Narayanan
Ombudsman