

Complaint

Mr P 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 June 2019, Advantage Finance provided Mr P with finance for a motorcycle. The purchase price was £3,989.00. Mr P didn’t pay a deposit and entered into a hire-purchase agreement with Advantage Finance for the entire amount.

The loan had interest, fees and charges of charges of £3,477.24 (made up of interest of £2,952.24, an acceptance fee of £325 and an option to purchase fee of £200) and a 48-month term. This meant that the total amount to be repaid of £7,466.24 (not including Mr P’s deposit) was due to be repaid in 47 monthly instalments of £151.38 followed by a final monthly instalment of £351.38.

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

Mr P 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 P’s complaint.

Having carefully considered everything, I’ve decided not to uphold Mr P’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 P 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 P provided details of his monthly income and which it cross checked against information provided by credit reference agencies on the amount of funds that went into Mr P's main bank account each month. Advantage Finance says it also carried out credit searches on Mr P which did show some previous difficulties with credit in the form of defaulted accounts, although it considered these to be historic, and Mr P did not have any county court judgements ("CCJ") recorded against him.

In Advantage Finance's view, when the amount due on Mr P's existing credit commitments plus an estimated amount for Mr P's living expenses, based on statistical data, were deducted from his monthly income the monthly payments were still affordable. On the other hand, Mr P 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 P 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 P, given Mr P's previous difficulty with credit. In my view, even though it may have considered these historic, nonetheless the defaulted accounts recorded against Mr P suggested that he fell outside the profile 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 P's actual regular living costs. That said, I don't think that Advantage Finance obtaining further information on Mr P's actual living costs would have made a difference to its decision to lend in this instance.

I say this because when Mr P's actual discernible living expenses are used, instead of the statistical data Advantage Finance relied on, and then added to his active credit commitments and then finally deducted from his declared income, he appears to have enough left over to repay this agreement. This is even allowing for any short term loans to be cleared in the first couple of months of the agreement.

So I think that Advantage Finance obtaining further information is likely to have led it to conclude that when Mr P's regular living expenses and existing credit commitments were deducted from his declared 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 P's actual circumstances at the time might have been worse than what I've seen here. For example, I've seen both Mr P and our investigator have referred to the fact that Mr P's actual income was lower than the amount that he declared to Advantage Finance. Indeed they both appear to have relied on this lower income figure when disagreeing what a proportionate check is likely to have shown.

However, I'm mindful that Mr P appears to have told Advantage Finance that his income was higher than the actual amount he was receiving at the time of his application. Advantage Finance didn't simply rely on what Mr P said and cross checked his declaration against information from credit reference agencies on the total amount of funds going into his main account.

I don't agree that this cross-checking amounts to verification in the way that Advantage Finance is suggesting. Nonetheless, as the information from the credit reference agencies indicated that Mr P's declaration was plausible, I'm satisfied that Advantage Finance was entitled to rely on it. And I don't think that it would now be fair and reasonable for me to instead use the lower income amount Mr P now wants me to use.

I've also noted that Mr P has referred to his gambling. It's also possible – but by no means certain – that Advantage Finance might have decided against lending to Mr P had it known about this. That said, I can't see that Advantage Finance did know actually about this. Furthermore, what I need to think about here is what were Mr P's actual committed living expenses – given this was a first agreement and Mr P was being provided with a motorcycle, which he would not be able to gamble, rather than cash.

In my view, proportionate checks certainly wouldn't have gone into the level of granularity whereby Advantage Finance ought reasonably to have realised that Mr P was gambling. I say this particularly bearing in mind that the low monthly payments required on this agreement, mean that obtaining bank statements would stretch far beyond what it would have been reasonable and proportionate for Advantage Finance to do this instance.

I also have to consider the Mr P's submissions in the context that they are now being made in support of a claim for compensation. Whereas at the time of sale, at least, Mr P clearly wanted the car he had chosen and it's fair to say that any explanations he would have provided would have been with a view to persuading Advantage Finance to lend rather than highlighting the agreement was unaffordable.

Therefore, I think that it is unlikely – and certainly less likely than not – that Mr P would have disclosed any gambling at the time, or that Advantage Finance would have been in a position to know about this. I think this is particularly the case in circumstances where the available information indicates that Mr P appears to have made an over inflated declaration of income to begin with.

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 P 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 P. So I'm satisfied that Advantage Finance didn't act unfairly towards Mr P when it accepted his application.

In reaching my conclusions, I've also considered whether the lending relationship between Advantage Finance and Mr P might have been unfair to Mr P 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 P 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 P's complaint. I appreciate that this will be disappointing for Mr P. 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 P's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 4 December 2024.

Jeshen Narayanan
Ombudsman