

Complaint

Mr D complains that Stellantis Financial Services UK Limited (trading as “Vauxhall Finance”) unfairly entered into a conditional sale agreement with him.

The finance was provided under the GMAC trading name and so for the sake of clarity, I’ve referred to GMAC throughout the course of this decision.

Mr D has said that the repayments were unaffordable and so GMAC shouldn’t have entered into the agreement with him.

Background

In April 2015, GMAC provided Mr D with finance for a used car. The purchase price of the vehicle was £11,495.00. Mr D paid a deposit of £850 and entered into a 60-month conditional sale agreement with GMAC for the remaining £10,645.00 he needed to complete the purchase.

The loan had total charges of £2,799.60 (made up of interest of £2,501.60, an initial arrangement fee of £149 and final arrangement fee of £149) and the balance remaining to be repaid of £13,444.66 was due to be repaid in a first monthly payment of £368.11 followed by 58 monthly instalments of £219.11 and then a final payment of £368.11.

As I understand it, after taking a couple of temporary payment breaks due to the pandemic, Mr D settled the finance in November 2020. In February 2024, Mr D complained that the agreement had been unaffordable for him.

Mr D’s complaint was considered by one of our investigators. She reached the conclusion that GMAC hadn’t done anything wrong or treated Mr D unfairly. So she didn’t recommend that Mr D’s complaint should be upheld.

Mr D 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 D’s complaint.

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

GMAC needed to take reasonable steps to ensure that it didn’t lend irresponsibly. In practice, what this means is that GMAC needed to carry out proportionate checks to be able to understand whether any lending was sustainable for Mr D 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.

I kept this in mind when deciding Mr D's complaint.

GMAC hasn't provided us with an explanation of what it was that it learnt about Mr D, or provided any of the data that it relied upon to determine that the payments to this agreement were affordable for him. Indeed, it hasn't even told us what it typically did to assess that an agreement was affordable for a borrower either. So I don't actually know what it was that GMAC relied upon to reach the conclusion that this agreement was affordable for Mr D.

As GMAC has not provided sufficient information to satisfy me that it did take reasonable steps to understand whether Mr D could afford the monthly payments, I'm not satisfied that it did complete fair, reasonable and proportionate affordability checks before entering into this conditional sale agreement with Mr D.

As proportionate checks weren't carried out before this agreement was entered into, I can't say for sure what they would've shown. So I need to decide whether it is more likely than not that a proportionate check would have told GMAC that it was unfair to enter into this agreement with Mr D on the basis that he wouldn't be able to afford the monthly payments.

Given the amount borrowed, the monthly payments and the length of the agreement, in order for GMAC's checks to have been proportionate, I think that it would have had to have an understanding of Mr D's income, his payments to existing creditors and his regular living costs. I want to be clear in saying that this isn't the same as saying that GMAC had to obtain bank statements in order to verify all of this as how it found out about this information was down to it.

In order to try and get an understanding of what a proportionate check is likely to have shown GMAC, I've considered the information Mr D has provided. Having done so, it does appear to show that when Mr D's discernible committed regular living expenses and existing credit commitments were deducted from the amount he received each month, he did have the funds, at the time at least, to sustainably make the repayments due under this agreement.

I appreciate that Mr D says that his situation at the time was worse than what the information provided shows. He has said that not all of the credits going into his account were his, he's also unhappy at some of the amounts used for his credit commitments and he's referred to his gambling.

The first thing to say is that Mr D has reached a conclusion on his ability to make his payments based on a forensic analysis of all of his expenditure. This is not what GMAC was required to do at the time.

So I don't think that GMAC would have known about Mr D's existing credit increasing in the way that he says it did. This is particularly as I haven't been provided with an indication of what a credit check carried out at the time would more likely than not have shown

Furthermore, having looked at the bank statements Mr D has provided, it's fair to say that the real reason he might have found it difficult to make his payments to this agreement isn't due to his existing credit commitments or his living expenses. And that this is readily apparent when the bank statements Mr D has provided are considered. It's also possible – but by no means certain – that GMAC might have taken a different decision had it seen these bank statements at the time.

But what I need to think about here is what did GMAC is likely to have known if it had carried out proportionate checks, not what it would have known if it had reviewed his bank statements. In other words, what was Mr D paying to his credit commitments and his regular living expenses – given this was a first agreement and Mr D was being provided with a car rather than cash.

Bearing in mind checking bank statements wasn't the only way for GMAC to have found out more about Mr D's actual living costs – it could have obtained copies of bills or other evidence of payment etc – I don't think that proportionate checks would have extended into obtaining the bank statements provided. For the sake of completeness, it's difficult for me to accept that Mr D would have proactively decided to disclose this information either.

So while I sympathise with the difficulty Mr D may have had, nonetheless I don't think that GMAC could reasonably be expected to have known about the nature and extent of Mr D's gambling at the time. Furthermore, as Mr D was being provided with an asset rather than cash, which he would not have been able to gamble, I also think that this limits the relevance of his gambling in this instance.

Overall and having carefully considered everything, while I've not been persuaded that GMAC carried out proportionate checks before entering into this conditional sale agreement with Mr D, I'm nonetheless satisfied that carrying out reasonable and proportionate checks won't have stopped GMAC from providing these funds, or entering into this agreement with Mr D. So I'm satisfied that GMAC didn't act unfairly towards Mr D when it agreed to provide the funds.

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

However, for the reasons I've explained, I don't think GMAC irresponsibly lent to Mr D 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. So I'm not upholding this complaint.

I appreciate that this will be very disappointing for Mr D. But I hope he'll understand the reasons for my decision and that he'll at least feel his concerns have been listened to.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 24 February 2025.

Jeshen Narayanan
Ombudsman