

Complaint

Mr D complains that Advantage Finance Ltd (“Advantage Finance”) unfairly entered into a hire-purchase agreement with him.

He’s said that the finance was unaffordable which resulted in the lending relationship between him and Advantage Finance being unfair to him.

Background

In June 2016, Advantage Finance provided Mr D with finance for a used car. The purchase price of the vehicle was £12,000.00. Mr D paid a deposit of £2,000.00 and entered into a 60-month hire-purchase agreement with Advantage Finance for the remaining £10,000.00 he required.

The loan had interest, fees and total charges of £9,750.00 (made up of interest of £9,250.00, an acceptance fee of £325 and a £175 option to purchase fee) and the balance to be repaid of £19,950.00 (which does not include Mr D’s deposit was due to be repaid in 59 monthly repayments of £326.25 followed by a final payment of £501.25.

In January 2024, Mr D complained to Advantage Finance saying that it shouldn’t have entered into this hire-purchase agreement with him, as it ought to have realised that it was unaffordable and this resulted in the lending relationship between him and Advantage Finance being unfair to him.

Advantage Finance didn’t uphold Mr D’s complaint as it considered that the complaint was made too late. Mr D remained dissatisfied and referred his complaint to our service.

Mr D’s complaint was considered by one of our investigators. She reached the conclusion that proportionate checks would not have shown Advantage Finance that it shouldn’t have entered into the hire-purchase agreement with Mr D. So she didn’t think 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.

Basis for my consideration of this complaint

There are time limits for referring a complaint to the Financial Ombudsman Service. Advantage Finance has argued that Mr D's complaint was made too late because he complained more than six years after the decision to provide the finance as well as more than three years after he ought reasonably to have been aware of his cause to make this complaint.

Our investigator explained why Mr D's complaint was one alleging that the relationship between him and Advantage Finance was unfair to him as described in s140A of the Consumer Credit Act 1974 ("CCA"). She also explained why this complaint about an allegedly unfair lending relationship had been made in time.

Having carefully considered everything, I've decided not to uphold Mr D's complaint. Given the reasons for this, I'm satisfied that whether Mr D's complaint was made in time or not has no impact on that outcome.

I'm also in agreement with the investigator that Mr D's complaint should be considered more broadly than just the lending decision. I consider this to be the case as Mr D has not only complained not about Advantage Finance's decision to lend to him, but he's also alleged that the decision to lend resulted in the lending relationship between him and Advantage Finance being unfair to him going forward.

I'm therefore satisfied that Mr D's complaint is one about the overall fairness of the lending relationship between him and Advantage Finance. I acknowledge Advantage Finance still may not agree we can look Mr D's complaint, but given the outcome I have reached, I do not consider it necessary for me to make any further comment, or reach any findings on these matters.

In deciding what is fair and reasonable in all the circumstances of Mr D's case, I am required to take relevant law into account. As, for the reasons I've explained above, I'm satisfied that Mr D's complaint can be reasonably interpreted as being about the fairness of the lending relationship between him and Advantage Finance, relevant law in this case includes s140A, s140B and s140C of the CCA.

S140A says that a court may make an order under s140B if it determines that the relationship between the creditor (Advantage Finance) and the debtor (Mr D), arising out of a credit agreement is unfair to the debtor because of one or more of the following, having regard to all matters it thinks relevant:

- any of the terms of the agreement;
- the way in which the creditor has exercised or enforced any of his rights under the agreement;
- any other thing done or not done by or on behalf of the creditor.

Case law shows that a court assesses whether a relationship is unfair at the date of the hearing, or if the credit relationship ended before then, at the date it ended. That assessment has to be performed having regard to the whole history of the relationship. S140B sets out the types of orders a court can make where a credit relationship is found to be unfair – these are wide powers, including reducing the amount owed or requiring a refund, or to do or not do any particular thing.

Given Mr D's complaint, I therefore need to think about whether Advantage Finance's decision to lend to Mr D, or its later actions resulted in the lending relationship between

Mr D and Advantage Finance being unfair to Mr D, such that it ought to have acted to put right the unfairness – and if so whether it did enough to remove that unfairness.

Mr D's relationship with Advantage Finance is therefore likely to be unfair if it didn't carry out reasonable and proportionate checks into Mr D's ability to repay in circumstances where doing so would have revealed the monthly payments to the agreement to have been unaffordable, or that it was irresponsible to lend. And if this was the case, Advantage Finance didn't then somehow remove the unfairness this created.

I'll now turn to whether Advantage Finance acted fairly and reasonably when entering into the hire-purchase agreement with Mr D.

What we consider when looking at complaints about irresponsible or unaffordable lending

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.

I think that it would be helpful for me to set out that we consider what a firm did to check whether repayments to credit were affordable (asking it to evidence what 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 an 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 this clearly shows that the repayments in question were unaffordable.

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

Was Advantage Finance's decision to enter into a hire-purchase agreement with Mr D fair and reasonable?

Advantage Finance says it agreed to Mr D's application after he provided details of his income. It says that it obtained a copy of a payslip to verify Mr D's income and I understand that it will also have carried out credit searches.

In its view, when reasonable repayments to the total amount Mr D owed plus a reasonable amount for Mr D's living expenses were deducted from his monthly income, the monthly payments for this agreement were affordable.

On the other hand, Mr D has said that the finance was unaffordable and this resulted in the relationship between Advantage Finance and him being unfair to him.

I've thought about what Mr D and Advantage Finance have said.

The first thing for me to say is that I've not seen anything to indicate that Advantage Finance was aware of Mr D having defaulted on previous credit agreements or having any County Court Judgments ("CCJ") recorded against him.

In any event, whether or not Mr D had previous adverse information, bearing in mind the total cost of the agreement and the amount of the monthly payments, I would have expected Advantage Finance to have found out about Mr D's actual regular living costs as well as his monthly income and credit commitments. As I can't see that Advantage Finance did this, I don't think that the checks it carried out before providing this finance were reasonable and proportionate.

As Advantage Finance didn't carry out sufficient checks, 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 Mr D. As I've explained, bearing in mind the circumstances here, I would have expected Advantage Finance to have had a reasonable understanding about Mr D's regular living expenses as well as his income and existing credit commitments.

The information Mr D has provided from the time does appear to show that when his discernible committed regular living expenses and the credit commitments Advantage Finance is likely to have known about are deducted from his verified income, he did have the funds, at the time at least, to sustainably make the repayments due under this agreement.

In reaching my conclusions, I've noted that Mr D has now carried out a line-by-line analysis of his bank statements and has reached the view that he didn't have enough left over for emergencies once the payments to this agreement was deducted from his disposable income. The first thing for me to say is that Mr D's analysis has been carried out with the use of bank statements and this includes all of his major expenditure.

In these circumstances, I don't think that the amount Mr D has concluded he had left over means that it was unreasonable for Advantage Finance to have lent to him. This is especially when bearing in mind that Advantage Finance will have known that Mr D was paying a deposit that was greater than six months' worth of monthly payments.

I also have to keep in mind that Mr D's most recent submissions are being made in support of a claim for compensation and any explanations Mr D would have provided at the time are more likely to have been with a view to persuading Advantage Finance to lend, rather than highlighting any unaffordability. So I think it unlikely that Mr D would have volunteered that he had the level of expenditure he's now referring to, particularly as Advantage Finance wasn't required to request bank statements from him in the first place.

Having considered all of this and weighed it up in the round, I don't think that Advantage Finance accepted an application that was obviously unaffordable, or that it ought reasonably to have realised would cause significant harm to Mr D. As this is the case, I don't think that it was unfair for Advantage Finance to have entered into hire-purchase agreement with Mr D, or that it doing so created unfairness.

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 D 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.

In these circumstances, I don't find that the lending relationship between Mr D and Advantage Finance was unfair to Mr D. I've not been persuaded that Advantage Finance created unfairness in its relationship with Mr D by irresponsibly lending to him when it entered into this hire-purchase agreement with him. And I don't find Advantage Finance treated Mr D unfairly in any other way either based on what I've seen.

So overall and having considered everything, while I can understand Mr D's sentiments and appreciate why he is unhappy, I'm nonetheless 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 12 May 2025.

Jeshen Narayanan
Ombudsman