

Complaint

Mrs B complains that Family Finance Limited (trading as “Family Finance”) unfairly entered into hire-purchase agreements with her. She’s said that the agreements were unaffordable and this caused her ongoing difficulties which left her mentally and financially drained.

Background

Mrs B entered into two separate hire-purchase agreements with Family Finance. The details regarding the individual agreements are as follows.

The first agreement

In August 2015, Family Finance provided Mrs B with finance for a used car. The purchase price of the vehicle was £8,600.00. Mrs B paid a deposit of £99 and entered into a 49-month hire-purchase agreement with Family Finance for the remaining £8,501.00 she needed.

The loan had interest, fees and total charges of £6,502.28 (made up of interest of £5,749.28 an arrangement fee of £299, an optional to purchase fee of £169 and a shortfall settlement waiver fee of £303.11) and the balance to be repaid of £15,021.39 (which does not include Mrs B’s deposit) was due to be repaid in 48 monthly instalments of £303.11 followed by a final payment of £472.11. This agreement was settled in May 2017 with some of the proceeds from the second agreement.

The second agreement

In May 2017, Family Finance provided Mrs B with finance for a second time. The purchase price of the car on this occasion was £8,052.57. Mrs B didn’t pay a deposit and entered into a 61-month hire-purchase agreement with Family Finance for the entire amount.

The loan had interest, fees and total charges of £7,996.89 (made up of interest of £7,981.89 and an option to purchase fee of £15) and the balance to be repaid of £16,049.46 was due to be repaid in 60 monthly instalments of £262.86 followed by a final repayment of £277.86.

In January 2024, Mrs B complained to Family Finance that it shouldn’t have provided either of these agreements to her as they were unaffordable.

Family Finance’s investigation

Family Finance did not uphold Mrs B’s complaint. It believed that Mrs B’s complaint was made too late. When responding to our request for its file on Mrs B’s complaint, Family Finance reiterated Mrs B had complained too late.

Our investigation

Mrs B’s complaint was considered by one of our investigators. He reached the conclusion that proportionate checks would not have shown Family Finance that it shouldn’t have

entered into the hire-purchase agreements on either occasion. So he didn't recommend that Mrs B's complaint be upheld.

Mrs B 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. Family Finance has argued that Mrs B's complaint was made too late because she complained more than six years after the decision to provide each of the finance agreements.

Our investigator explained why it was reasonable to interpret Mrs B's complaint as being one alleging that the relationship between her and Family Finance was unfair to her as described in s140A of the Consumer Credit Act 1974 ("CCA"). He 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 Mrs B's complaint. Given the reasons for this, I'm satisfied that whether Mrs B's complaint about the hire-purchase agreements were made in time or not has no impact on that outcome.

I'm also in agreement with the investigator that Mrs B's complaint should be considered more broadly than just the lending decisions. I consider this to be the case as Mrs B has not only complained not about the respective decisions to lend but has also alleged that the unaffordable finance agreements caused her ongoing difficulties which left her mentally and financially drained.

I'm therefore satisfied that Mrs B's complaint can reasonably be interpreted as a complaint about the overall fairness of the lending relationship between her and Family Finance. I acknowledge Family Finance may still not agree that we can look Mrs B'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 Mrs B's case, I am required to take relevant law into account. As, for the reasons I've explained above, I'm satisfied that Mrs B's complaint can be reasonably interpreted as being about the fairness of the lending relationship between her and Family 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 (Family Finance) and the debtor (Mrs B), 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 Mrs B's complaint, I therefore need to think about whether Family Finance's decisions to lend to Mrs B, or its later actions resulted in the lending relationship between Mrs B and Family Finance being unfair to Mrs B, such that it ought to have acted to put right the unfairness – and if so whether it did enough to remove that unfairness.

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

I'll now turn to whether Family Finance acted fairly and reasonably when entering into the hire-purchase agreements with Mrs B.

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 Mrs B's complaint.

I think that it would be helpful for me to set out that we consider what a firm did to check whether loan payments 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 for a lender to decide which checks it wishes to carry out, although we can form a view on whether we think what was 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 a lender did enough to establish whether the repayments to an agreement was affordable, this doesn't on its own mean that a complaint should be upheld. We would usually only go on to uphold a complaint in circumstances where 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 kept this in mind when deciding Mrs B's complaint.

Was Family Finance's decision to enter into the first hire-purchase agreement fair and reasonable?

Family Finance says it agreed to Mrs B's first application after she provided details of her monthly income. It says it also carried out credit searches on Mrs B. In its view, when reasonable repayments to all of Mrs B's expenses and living costs were deducted from her income, Mrs B had £1,000.00 a month left over to be able to make her monthly repayments. It has also referred to Mrs B signing a declaration of affordability confirming this.

On the other hand, Mrs B has said that she had been in financial difficulty for some time and she couldn't afford the payments that she agreed to.

I've thought about what the parties have said.

Family Finance hasn't been able to provide any details on what it found out about Mrs B's circumstances as a result of the credit checks that it carried out. Given this application took place almost a decade ago, I don't think that this lack of information is unreasonable. Therefore, I've not drawn any adverse conclusions as a result of Family Finance not being able to provide this.

Nonetheless, without any sort of breakdown of how Family Finance arrived at Mrs B having a monthly disposable income of £1,000.00, it's difficult for me to conclude that that the checks it carried out before providing this agreement were reasonable and proportionate. This is especially given the total amount of the credit and the monthly payment that was due on this hire-purchase agreement.

As Family Finance should have done more, I've gone on to decide what I think Family Finance is more likely than not to have seen had it done that here. Given the circumstances here, I would have expected Family Finance to have had a reasonable understanding about Mrs B's regular living expenses as well as her income and existing credit commitments.

Mrs B has been able to provide payslips from around the time she took the agreement. Having considered these statements, it looks like the income declared on the customer affordability declaration form is broadly correct.

Mrs B has been unable to provide copies of her bank statements from the time. However, she has been able to provide a credit report from 2021 which has some information on her credit commitments in 2015. Mrs B has also provided a series of emails which show that she had a history of payday and high-cost loans and also some emails suggesting that she may have entered into a debt management plan as a result of them.

I've carefully considered the information Mrs B has supplied. Having done so I'm satisfied that the information provided does show that Mrs B did take out a significant amount of payday and high-cost loans in 2013 and 2014. However, it's clear that there is substantially less of this type of borrowing in 2015 and certainly around the time this agreement was taken.

It is possible that Mrs B's borrowing of this type of credit had reduced because Mrs B went into some kind of a debt management arrangement in 2015. I can see a couple of payments to a company associated with this type of work in 2015. But I don't know if a formal plan was set up for Mrs B at this stage. All I know is that she was asked to set up a standing order. And I don't know whether it was running at the time of this agreement. Indeed, any plan or

other significant payday or high-cost lending isn't showing on the credit report Mrs B has provided to us.

This could be because of the length of time that had passed by the time Mrs B obtained this credit report. However, my experience of cases in this area has shown me that many payday and high cost lenders did not report to multiple credit reference agencies in around this time. Bearing in mind all of this, it's difficult for me to reach the conclusion that Family Finance will have been aware of what Mrs B has told us, especially as I've not been provided with anything that suggests it was provided with copies of the emails Mrs B has now provided me with. Furthermore, without anything to show how long any debt management plan went on for (and bearing in mind the fact that it would, had it existed, covered short term loans and therefore wouldn't have gone on for an extended period), it's difficult for me to reach the conclusion that this made the monthly payments to this loan unaffordable.

I say this while also mindful that I've not seen anything to show that Mrs B had living expenses of an amount, which if they were combined with the amount of the payments on the payment requested by the debt management company, had Mrs B gone on to make them, that clearly make the monthly repayments for this agreement unaffordable. This is also in circumstances where Mrs B signed a customer affordability declaration, which amongst other things, states that she was living at home with parents and making no rent payments or other bill payments.

I appreciate that Mrs B may feel that it is unreasonable and unfair to expect her to show that this loan was unaffordable in circumstances where she is now being expected to provide information which she doesn't have and cannot reasonably be expected to have. But I also have to take into account that Family Finance isn't required to have retained all of this information either and as this is the case, I have to decide the complaint on what I have before me.

Bearing in mind everything that's been provided, I've not been provided with sufficient information and evidence to be persuaded that reasonable and proportionate checks would have prevented Family Finance from entering into this hire-purchase agreement with Mrs B in August 2015.

As this is the case, I've not been persuaded that Family Finance's decision to enter into a hire-purchase agreement with Mrs B in August 2015 was unfair, or that it resulted in unfairness going forward either.

Did Family Finance act fairly and reasonably when agreeing to enter into the second hire-purchase agreement with Mrs B?

Family Finance says it agreed to Mrs B's second application after she once again declared details of her income. This time Family Finance verified Mrs B's declaration of income with a copy of a payslip which she was asked to provide. Family Finance has supplied a copy of that payslip. It also says that it once again carried out credit searches on Mrs B and this time it has been able to provide us with a copy of search results.

The credit search showed that Mrs B had no county court judgments recorded against her. Although I can see four defaulted accounts. There were two defaulted accounts showing from 2014 and the other two were from just over a year prior to this application. Furthermore, three of the four defaults had been satisfied.

It's also fair to say that Mrs B's payment record on her active credit, including her existing hire-purchase agreement with Family Finance, was reasonable. This was because Mrs B

never had more than a single missed payment recorded on an account and relatively quickly brought the respective account up to date afterwards.

Family Finance has supplied a further customer affordability declaration which Mrs B signed as part of this application. This declaration once again states that Mrs B lives with her parents and pays no rent. A figure of £113 is recorded for Mrs B's other expenditure. I accept that this isn't a case where Family Finance simply relied on what Mrs B had told it – after all it had requested a payslip from Mrs B and carried out a credit check. However, for reasons I'll explain, I don't think that it was reasonable to rely on Mrs B's declaration of expenditure at this stage and this is notwithstanding the fact that Mrs B may have been living with parents.

While I do accept that Mrs B was under a duty to provide honest and accurate information, Family Finance will have seen that Mrs B had previously defaulted on credit commitments. In these circumstances, I think that Family Finance needed to find out more about Mrs B's living commitments. Mrs B's previous default did suggest that her declaration of living expenses required further scrutiny. As this is the case, I've not been persuaded that the checks Family Finance carried out before it entered into the second hire-purchase agreement with Mrs B were reasonable and proportionate.

As Family Finance didn't carry out sufficient checks, I've gone on to decide what I think Family Finance is more likely than not to have seen had it attempted to find out more about Mrs B's living expenses. In order to do this, I've considered the information Mrs B has provided us with. Having done so, I can't clearly see that Mrs B did have committed living expenses such as rent or bill payments, which when added to Mrs B's credit commitments, clearly show that the monthly payments to this hire-purchase agreement were unaffordable.

Having reviewed Mrs B's bank statements, I do have an idea why she might have gone on to find it difficult to make her payments. It's possible – but by no means certain – that Family Finance wouldn't have lent to Mrs B had it seen this information. However, I need to keep in mind that Family Finance did not need to request bank statements from Mrs B. It simply needed to find out whether she was paying more to her living expenses than her signed declaration suggested, in order for its checks to have been proportionate.

I also have to keep in mind that Mrs B's submissions now are being made in support of a claim for compensation. But the question I need to consider and what I need to evaluate is what is more likely than not to have happened at the time had Family Finance carried out further checks. It's fair to say that, at the time at least, Mrs B wanted the car that she had chosen. I've also seen that he's said that he needed a car at the time.

In this context, I think that any explanations she would have provided to Family Finance, at the time, are more likely to have been with a view to persuading it to lend to her, rather than highlighting any unaffordability. Therefore, in circumstances where Mrs B's actual committed living costs do not appear to render the monthly payments unaffordable, I think it unlikely - and certainly less likely than not – that Mrs B would have proactively offered other information, which Family Finance wasn't required to obtain, indicating that there were other reasons she might have difficulty repaying.

So while I accept it's possible that Mrs B's agreement may have gone on to be unaffordable for her because of her additional spending, I don't think that Family Finance could reasonably be expected to know about this.

As this is the case, I don't think that it was unfair for Family Finance to have entered into this second hire-purchase agreement in May 2017, or that it doing so created unfairness.

In reaching my conclusions, I know that Mrs B has provided us with evidence to show that she's had other complaints about different lenders upheld. I can understand why Mrs B might find it strange that she's received different outcomes on complaints which she perceives to be materially the same.

But it's important for me to explain that we consider complaints on an individual basis and looking at the individual circumstances. As I've already explained, what will constitute a proportionate check will very much depend on the particular circumstances of the individual application. A proportionate check, even for the same customer, could look different for different applications.

Furthermore, I'm not bound by the outcomes reached on other case – especially ones that haven't been considered by this service. Ultimately, I'm required to consider the facts and circumstances of a case and reach my own individual conclusions. So the outcomes on Mrs B's other cases cannot and do not bind me into reaching the same conclusion on this case.

That said, with a view to providing some clarity and reassurance to Mrs B, it might help for me to explain that there are some key differences between this complaint and Mrs B's other ones. Having looked at the information Mrs B has provided on her other cases, it's clear that number of times she was lent to played a strong part in determining what the lender ought to have known about her. That sort of, what is known as, repeat lending simply did not take place in this instance.

I also think it's worth pointing out that the conclusions reached on Mrs B other cases was that she couldn't afford her repayments to the credit concerned, not that Mrs B couldn't afford any credit at all, which is the position that I would be placing Mrs B in if I were to also uphold this complaint, simply because of the conclusions reached on her other complaints. I've also already explained what proportionate checks are likely to have required here, what they are likely to have shown and why this is unlikely to have shown that this hire-purchase agreement shouldn't have been provided to Mrs B.

As this is the case, while I'm not required to replicate the outcomes reached on other cases, nonetheless I don't consider that my answer here is incompatible or inconsistent with the answers Mrs B has received on other cases, notwithstanding the differing outcomes.

Overall, and based on the available evidence I don't find that the lending relationship between Mrs B and Family Finance was unfair to Mrs B. I've not been persuaded that Family Finance created unfairness in its relationship with Mrs B by irresponsibly lending to her when it entered into these hire-purchase agreements with her. And I don't find Family Finance treated Mrs B unfairly in any other way either based on what I've seen. So overall and having considered everything, while I can understand Mrs B's sentiments and appreciate why she is unhappy, I'm nonetheless not upholding this complaint.

I appreciate that this will be very disappointing for Mrs B. I note that she's referred to being informed that her claim was valued at being over £19,000.00. However, I think that this was simply information from a claims management company looking to obtain her business. Indeed, I've not seen anything to indicate that this was based on the facts and circumstances of her case as I can't see that this amount even corresponds to the amount of interest Mrs B paid across both agreements. In any event, 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 Mrs B's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 19 March 2025.

Jeshen Narayanan
Ombudsman