

The complaint

Mr B complains Oodle Financial Services Limited trading as Oodle Car Finance (Oodle) irresponsibly entered into a car finance agreement with him because it didn't carry out appropriate checks to ensure the lending was affordable for him.

What happened

Mr B entered into a hire purchase agreement with Oodle on 31 January 2018 to acquire a used car. The cash price of the vehicle was £11,289 and he made an advance payment of £1,750. Additionally, £3,316.51 was paid towards the settlement of an existing car finance agreement. The total amount payable under the agreement was £16,972.60. He was to pay an initial instalment of £331.21 followed by 58 monthly instalments of £281.21 and a final payment of £331.21,

Mr B is represented in his complaint but for ease of reading, I'll simply refer to Mr B throughout this decision. Mr B complained to Oodle on 29 February 2024. He was concerned Oodle's decision to lend to him had been irresponsible and provided an income and expenditure assessment. This was based on bank statements covering the months leading up to the lending decision. The assessment showed Mr B was left with negative disposable income and Mr B felt proportionate checks ought to have discovered this. He also said there were gambling transactions on the account which ought to have shown he had a problem managing his credit.

Oodle responded to the complaint on 20 March 2024. It said the complaint had been brought too late and wasn't one our service can consider under the complaint handling rules of the Financial Conduct Authority (FCA).

Our Investigator didn't agree with Oodle about the time limits, so went on to consider the complaint. However, he didn't think the complaint should be upheld. Our Investigator felt the checks carried out weren't reasonable or proportionate, but said such checks were likely to have shown the agreement was affordable for Mr B.

Mr B didn't accept our Investigator's view as he felt further checks would have shown the agreement wasn't affordable. He provided a summary of expenses for the three months leading up to the agreement. This showed his total committed expenditure seemed to be £3,068.43 per month (including additional finance costs). He said there were regular payments to a family member in relation to a loan that Mr B's mother-in-law took out on his behalf, meaning it was a committed financial obligation rather than informal payments. So, it should be taken into consideration. He felt his financial obligations were higher than initially considered.

Therefore, the complaint has been passed to me to decide.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and

reasonable in the circumstances of this complaint.

There are time limits for referring a complaint to the Financial Ombudsman Service, and Oodle thinks this complaint was referred to us too late. Our Investigator explained why he didn't think we could look at a complaint about the lending decisions that happened more than six years before the complaint was made. But he also explained why it was reasonable to interpret the complaint as being about an unfair relationship as described in Section 140 of the Consumer Credit Act 1974 (Section 140), and why this complaint about an allegedly unfair lending relationship had been referred to us in time.

For the avoidance of doubt, I agree with our Investigator and think this complaint is one I can consider. I think this complaint can reasonably be considered as being about an unfair relationship as Mr B explained he struggled throughout the agreement to make the repayments, and it impacted his ability to meet his other credit commitments. This may have made the relationship unfair. I acknowledge Oodle doesn't agree we can look at the complaint about the car finance agreement, but as I don't intend to make any award to Mr B, I won't comment on this further.

In deciding what is fair and reasonable I am required to take relevant law into account. Because Mr B's complaint can be reasonably interpreted as being about the fairness of his relationship with Oodle, relevant law in this case includes Section 140A-C.

As explained by our Investigator, Section 140A says that a court may make an order under Section 140B if it determines that the relationship between the creditor (Oodle) and the debtor (Mr 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.

But the case law also says that the court may not make an award for an unfair relationship where the claimant had knowledge of the facts relevant to their claim but substantially delayed making it. So, I've taken this into account when deciding a fair and reasonable outcome for this complaint.

The case law doesn't provide a fixed period that would constitute a substantial delay, but in the case of *Smith v Royal Bank of Scotland Plc* [2023] UKSC 34, the Supreme Court approved the District Judge's comment that a court would be slow to remedy unfairness in a situation where the claimant delayed more than six years after knowing the facts. S.140B 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 what Mr B has complained about I need to consider whether Oodle's decision to lend to him, or its later actions, created unfairness in the relationship between him and Oodle such that it ought to have acted to put right the unfairness – and if so whether it did enough to remove that unfairness.

Mr B's relationship with Oodle is therefore likely to be unfair if it didn't carry out reasonable and proportionate affordability checks and doing so would have revealed its lending to be irresponsible or unaffordable, and if it didn't then remove the unfairness this created somehow.

I think there are key questions I need to consider in order to decide what's fair and reasonable:

1. Did Oodle carry out reasonable and proportionate checks to satisfy itself that Mr B was in a position to sustainably repay the credit?
 - If so, did it make a fair lending decision?
 - If not, what would reasonable and proportionate checks have shown at the time?
2. Did Oodle act unfairly or unreasonably towards Mr B in some other way?

Oodle had to carry out reasonable and proportionate checks to satisfy itself that Mr B would be able to repay the credit sustainably. It's not about Oodle assessing the likelihood of being repaid, but it had to consider the impacts of the repayment on him.

There is no set list of checks that it had to do, but it could take into account several different things such as the amount and length of the credit, the amount of the monthly repayments and the overall circumstances of the borrower.

Did Oodle carry out reasonable and proportionate checks to satisfy itself that Mr B was in a position to sustainably repay the credit?

Oodle understood Mr B had a gross annual income of £36,250 and he was in full time employment. He had been in this position for one year and five months. Oodle have also confirmed it completed a credit search and estimated Mr B's expenditure based on data from the Office of National Statistics (ONS). It said this showed the agreement was affordable and sustainable for Mr B.

I've reviewed the credit search which was obtained by Oodle. In respect of his active credit, I can see Mr B had three credit cards, five mail order accounts, a current account with no balance and a communications account. He also had a previous car finance agreement which was being replaced. There had been a previous arrangement to pay on one of the credit cards, but this had been bought up to date with a relatively low balance. Mr B had a balance of around £6,773 in revolving credit and it seemed he was managing the credit he did have. However, I do note he had opened four mail order accounts in November 2017, a credit card in August 2017 and a credit card in May 2017. He also had two unsatisfied defaults which had been reported in October 2015 (£1,299) and March 2014 (£797)

Taking everything into consideration, I think Oodle ought to have asked Mr B specifically about his essential spend rather than relying on statistical data to estimate his expenditure. I think the additional lines of credit taken out in November 2017 ought to have prompted more thorough checks. I am also mindful of the total amount repayable, the duration of the agreement and the size of the monthly repayments. I don't think it was reasonable to rely on ONS data to estimate this in the circumstances.

Would reasonable and proportionate checks have shown Mr B was in a position to sustainably repay the credit?

Although I don't think reasonable and proportionate checks were carried out, this doesn't mean the complaint should automatically be upheld. I now need to consider what I think reasonable and proportionate checks were likely to have shown.

In order to do this, I've considered bank statements for the three-month period leading up to the lending decision. I need to be clear that I don't think Oodle needed to go as far as to obtain bank statements in the circumstances. I think it only needed to have asked Mr B about his essential spend. The statements do provide a good indication of what was likely to have been disclosed at the time. I'm also mindful Mr B wanted to be approved for the lending.

Having considered the statements provided, I can see Mr B handled his finances jointly with his partner. I can see on average £3,288 was paid into the account. This included salary payments and child benefit. I can also see regular weekly payments which totalled around £380. I haven't included these payments when considering the total income because it's not clear exactly what they're for and it doesn't change the outcome of the decision. However, I note they are regular payments and may well have been for contributions towards the household expenditure or other essential costs made out of the account.

In respect of Mr B's expenditure, I note his representatives have carried out their own affordability assessment which it says shows he had a higher expenditure than outlined by our Investigator. However, I understand our Investigator hadn't included food costs or costs towards the car in his expenditure assessment but felt there was sufficient income remaining to cover such expenses. I have considered these costs and his overall expenditure when thinking about what Mr B was likely to have disclosed about his expenditure.

In respect of household expenditure, I think this averaged around £2,029 per month. This includes (but isn't limited to) food costs, utility bills, media, insurance payments, car costs and fixed costs including mortgage payments and direct debits such as payments towards a debt relief company and asset manager.

I've considered the average spend over the three months, although I'd note expenditure at supermarkets in December 2017 seemed to be significantly higher than the previous months. This isn't necessarily unusual given the time of year, but it may mean that some of this spend wouldn't necessarily have been disclosed as being essential at the time. I've not included a previous car finance agreement because this was being replaced. After accounting for these costs, it would leave around £1,259.

I've thought about whether this amount was likely to be sufficient to repay revolving credit (such as credit cards and mail order accounts) and sustainably meet the monthly repayment under the agreement. I've considered the bank statements and what contributions were being made towards credit, as well as what was revealed from the credit search carried out by Oodle. Having thought about everything I've been provided, I'm satisfied it seems there would be sufficient income remaining to make reasonable repayments towards revolving credit and sustainably meet the monthly repayments.

I am mindful Mr B has said he was paying towards a family loan. This may have been disclosed had his committed expenditure been discussed. There are some regular amounts but also some irregular payments to the same person so it's not clear exactly what he was required to pay towards this loan. It also seemed he received some incoming payments from the family member. Nevertheless, he paid an average of around £347 per month. So, averaging all of these payments, I'm satisfied the agreement would still have seemed affordable.

Weighing up all of the information I have, I'm satisfied that it seems reasonable and proportionate checks were more likely than not to have shown the agreement was affordable for Mr B. Additionally, as mentioned above, the statements show other regular incoming payments and a higher spend on food than usual in December 2017. I haven't adjusted for this in the figures outlined above, but I mention it because I think it adds further weight to the conclusion that appropriate checks were likely to have shown this agreement was sustainable and affordable. Mr B also wanted the car at the time, and it is with this in mind that he was likely to have presented his finances.

Moreover, having reviewed Mr B's credit file, I don't think there was anything in the way he was managing his credit which might have led Oodle to have concluded that he wouldn't be able to sustainably afford the repayments. He didn't seem over indebted, and he seemed to be managing the credit he did have. Whilst he had recently opened new lines of credit, this isn't in itself a reason to say Oodle shouldn't have lent particularly where it seemed to be affordable.

In the complaint letter, Mr B's gambling transactions were highlighted as something which ought to have caused Oodle some concern. However, I don't think reasonable or proportionate checks were likely to have discovered these transactions or any other indicators that Mr B might have a problem with gambling.

Overall, I don't think reasonable and proportionate checks were carried out. Oodle ought to have asked Mr B specifically about his essential spend. Had it done so, I think such checks were likely to have shown Mr B could sustainably afford the repayments. There isn't anything in the information I've seen which leads me to conclude Oodle ought not to have lent in the circumstances and that it created unfairness in its lending relationship with Mr B.

Did Oodle act unfairly or unreasonably towards Mr B in some other way?

I've reviewed the transaction history, and I can see Mr B made the scheduled payments under the agreement. I've also considered the contact notes. Having done so, the evidence doesn't suggest Oodle ought to have been aware Mr B might be struggling with the repayments. From the evidence I have, I'm not persuaded Oodle acted unfairly or unreasonably towards Mr B in some other way.

Summary

Overall, and based on the available evidence I don't find that Mr B's relationship with Oodle is or was unfair. It's not clear enough to me that Oodle created unfairness in its relationship with Mr B by lending to him irresponsibly initially, or as Mr B made repayments under the terms of the agreement. I don't find that Oodle treated Mr B unfairly in any other way either based on what I've seen.

My final decision

For the reasons outlined above, I'm not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 18 July 2025.

Laura Dean
Ombudsman