

The complaint

Mr B, who is represented by a third party, complains that Advantage Finance Limited ('Advantage') irresponsibly granted him a hire purchase agreement he couldn't afford to repay.

What happened

In July 2017, Mr B acquired a used car financed by a hire purchase agreement from Advantage. Mr B was required to borrow £6,290, to be repaid by 35 monthly repayments of £268.20 followed by a single payment of £443.20. The total repayable under the agreement was £10,120.20.

I've seen that Mr B had some payment difficulties with the account from soon after taking it out. The outstanding balance was written off in June 2023.

In October 2024 Mr B complained to Advantage that it had agreed to provide him with finance under the terms of the agreement without carrying out reasonable and proportionate checks to ensure the finance would be affordable. As a result, his financial situation worsened. He also says Advantage relied on the fact that he was desperate for a car. As a result, he says it worsened his overall financial situation.

Advantage said we couldn't look at the complaint as it had been made too late under our time limit rules. It said that its terms and annual statements were enough to let him know he could make a complaint. It also said that Mr B had known it was checking to see if the agreement was affordable when it asked him to provide a copy payslip as part of its checks. So when he got into difficulty with meeting his repayments he knew, or ought to have known, that Advantage might be at least partly responsible for the agreement being unaffordable.

Mr B was unhappy with Advantage's response, so he referred his complaint to our service.

One of our investigators looked into it. She agreed that the complaint was out of time under the rules. But she also thought that Mr B's complaint could be interpreted as being about an unfair credit relationship as described in Section 140A of the Consumer Credit Act 1974 (s140) which is in time under the rules. But she didn't think Advantage had acted unfairly or unreasonably by approving the finance agreement.

As Mr B doesn't agree, his complaint has been passed to me for a final decision.

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.

We've explained how we handle complaints about unaffordable and irresponsible lending on our website. And I've used this approach to help me decide Mr B's complaint.

There are time limits for referring a complaint to the Financial Ombudsman Service, and Advantage thinks this complaint was referred to us too late. Our investigator explained why it was reasonable to interpret the complaint as being about an unfair relationship as described in Section 140A of the Consumer Credit Act 1974, and why this complaint about an allegedly unfair lending relationship had been referred to us in time.

Seeing as I've decided not to uphold Mr B's complaint, and given the reasons for this (which I'll go on to explain), whether Mr B referred his complaint about the decision to agree credit happened more than six years ago in time or not has no impact on that outcome. Like our investigator, I think Mr B's complaint should be considered more broadly than just the decision to provide the finance, given that he has complained not just about the decision to lend but also the impact this had on him over the course of his relationship with Advantage. Mr B's complaint in this respect can therefore reasonably be interpreted as a complaint about the fairness of his relationship with Advantage. I acknowledge that Advantage may still not agree we can look at this complaint, but given the outcome I have reached, I don't intend to 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 Advantage, relevant law in this case includes s.140A, s.140B and s.140C of the Consumer Credit Act 1974.

S.140A says that a court may make an order under s.140B if it determines that the relationship between the creditor (Advantage) 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 their 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.

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 therefore need to think about whether Advantage's decision to lend to Mr B or its later actions created unfairness in the relationship between him and Advantage, 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 Advantage is therefore likely to be unfair if it didn't carry out proportionate affordability checks, where 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 will therefore first look at the checks Advantage carried out and then on to look at what was shown in those checks.

Did Advantage carry out reasonable and proportionate checks to satisfy itself that Mr B was in a position to sustainably meet the repayments that were due under the agreement?

When assessing affordability, there isn't a set list of checks that Advantage needed to complete, but they needed to be borrower focussed and proportionate to things like the type of lending, the cost of the lending as well as the amount, and the period of time over which Mr B would need to make repayments.

Before granting the finance, I think Advantage gathered a reasonable amount of evidence and information from Mr B about his ability to repay. I say this because Advantage carried out checks that included reviewing the information in his application and verifying his income by relying on payslip details. Advantage was also able to identify that Mr B was in full time employment and was a tenant paying rent.

Advantage also carried out a check on his credit history. This showed that Mr B had failed to make payments on other credit, leading to those accounts going into default in 2015 and 2016. Mr B had also received a county court judgment – which had since been paid – in 2012.

It doesn't appear that Advantage took steps to find out more about Mr B's regular expenditure. Without knowing more about Mr B's regular committed expenditure at the time, Advantage wouldn't have got a reasonable understanding of whether the agreement was affordable or not. I think this was especially important given the issues in his recent credit history. Advantage needed to be assured that Mr B was in a position to repay the finance on a sustainable basis over the three-year repayment period.

It therefore didn't complete proportionate checks.

What would reasonable and proportionate checks have shown at the time? Did Advantage reach a fair decision to lend?

I've kept in mind that customers with issues in their credit history form part of Advantage's usual client-stream and is taken into consideration as part of its checks. I've reviewed three months of bank statements prior to the application. I broadly agree with our investigator that these show that Mr B was earning around £400 per week net – which is consistent with what Moneybarn had seen. I've seen there was some variation in his monthly income though, with Mr B receiving around £2,100 in regular income in June 2017. I've not factored in what looks to be a separate large sum he received from his employer which I understand was a loan.

Mr B's regular committed monthly expenditure at the time was around £900. Whilst I can see some household costs and food cost, I can see that other payments were being made to a third party, apparently to fund other household costs. I don't see evidence to show or suggest that Mr B was or was at risk of getting into financial difficulty. Over-reliance on an overdraft facility might point to that, but Mr B only very occasionally dipped into his overdraft.

I therefore agree that the agreement looks likely to have been affordable to Mr B, leaving him with around £6-700 by way of disposable income each month, out of which he would be able to meet the repayments.

I've seen that Mr B has sent in a breakdown of his monthly financial commitments and those representing him have provided some further detail. Whilst I'm grateful for this information, I think Advantage was entitled to rely on the credit check it carried out at the time to establish credit owed elsewhere. I also remain of the view that had Advantage seen better evidence of Mr B's financial commitments, such as his bank statements, it would not have prompted

further enquiry and Advantage would have been likely to reasonably conclude the monthly repayments due under the new agreement to be affordable.

I'm therefore not persuaded that Advantage acted unfairly in approving the finance.

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

Finally, I've seen that Advantage took steps to help and support Mr B when he had some issues with meeting his repayments during the first year. I've seen that Advantage accepted lower payments on a more frequent payment schedule going forwards. During the pandemic, it gave him a one-month payment freeze and offered to extend it by one month. I've also seen that Mr B had a number of other payment issues and that Advantage tried to accommodate him and keep him advised of options, including the possibility of having a payment plan put in place. So I can't reasonably make a finding that Advantage acted unfairly or unreasonably towards Mr B.

For all of the reasons I've given, I therefore don't think Advantage acted unfairly when approving Mr B's finance application.

To summarise, taking all the information and evidence I've seen into account, I don't consider there is enough to show that the agreement may have been unaffordable for Mr B. I don't think Advantage created unfairness in its relationship with Mr B by lending to him irresponsibly. And I don't find Advantage treated him unfairly in any other way either based on what I've seen.

It follows that I'm not persuaded that Advantage acted unfairly in approving the finance.

My final decision

For the reasons I've given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 2 May 2025.

Michael Goldberg

Ombudsman