

The complaint

Ms A complains about Hyundai Capital UK Limited trading as Kia Finance's ("HC") decision to lend her.

Ms A has been represented. For clarity, I've only referred to Ms A throughout this decision.

What happened

Ms A entered into a 60-month conditional sale agreement with HC in December 2017 to acquire a used car. The car cost £9,593 and under the agreement, Ms A was required to make 60 monthly payments of £205.67. Interest charges of £2,747.20 were applied to the agreement and the total amount payable under the agreement was £12,340.20.

In November 2023, Ms A complained to HC and said it hadn't carried out sufficient affordability checks at the time of lending to her. She said a review of her bank statements would have shown she had a consistent pattern of financial vulnerability and that she was having to take out loans to pay existing credit.

Ms A referred a complaint to this service as HC didn't issue a response to her complaint. She said to put things right she wanted a full refund of all interest and fees with applicable interest and a payment for the stress and inconvenience caused.

Our investigator looked into the complaint and said he didn't think HC had completed proportionate checks when deciding to lend to Ms A. He said if HC had carried out proportionate checks, it would have seen that Ms A had sufficient disposable income to meet her repayments under the agreement.

Ms A disagreed and reiterated her initial complaint.

As Ms A remains in disagreement, the case 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.

Where evidence is incomplete, inconsistent or contradictory, I reach my view on the balance of probabilities – in other words, what I consider most likely to have happened in light of the available evidence and wider circumstances.

We explain how we handle complaints about irresponsible and unaffordable lending on our website. I've used this approach to help me decide Ms A's complaint.

HC needed to make sure that it didn't lend irresponsibly. In practice, what this means is that HC needed to carry out proportionate checks to be able to understand whether any lending was affordable for Ms A before providing it.

In this case, I think there are two overarching questions that I need to answer in order to fairly and reasonably decide Ms A's complaint. These two questions are:

1. Did HC complete reasonable and proportionate checks to satisfy itself that Ms A would be able to repay her loan sustainably?
 - If so, did it make a fair lending decision?

- If not, would those checks have shown that Ms A would've been able to do so?

2. Did HC act unfairly or unreasonably in some other way?

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've carefully thought about what this means for Ms A's case.

In this case, HC has confirmed it didn't carry out any income or expenditure checks as Ms A's application was automatically accepted on its system. It did carry out a credit check however. This showed that Ms A had eight active accounts, one defaulted account which was recorded 65 months previously and two delinquent accounts which were recorded 51 months previously. It also showed one missed payment in the last six months and listed Ms A's monthly mortgage payments and credit commitment amounts.

Having carefully considered this, I don't think the checks HC carried out were proportionate. I say this because it had information to suggest that Ms A had missed a payment in the previous six months. I think this in itself should have prompted HC to carry out further checks to determine whether it was fair to lend to Ms A. I think it would have been reasonable for it to carry out some further checks to find out what Ms A's income and expenditure was and to satisfy itself that Ms A would be able to make the monthly repayments sustainably.

In light of this, I've gone on to consider what I think proportionate checks would have likely shown.

I've thought about what a proportionate check could look like considering the terms of the agreement. In this case, the agreement was due to last around five years, the purpose of the lending was for an asset and the repayment was around £200. Given the amount of the monthly payments and that the payments were due to last for around five years, I think HC should have also asked for information about Ms A's income and committed non-discretionary expenditure.

We've obtained bank statements which demonstrate Ms A's circumstances at the time she applied for the finance. To be clear, I'm not saying that HC was required to obtain these before lending to Ms A. Instead, I've reviewed the bank statements because I think the information they contain is what is needed to reconstruct what a proportionate check may have looked like. I also accept that if HC had obtained information from Ms A about her income and her expenditure at the time the agreement was taken out, this may have shown something different. However, in the absence of anything else from HC to demonstrate what any other checks would have shown, I think it's reasonable to place considerable weight on the bank statements as an indication as to what Ms A's circumstances likely were at the time.

Having reviewed the bank statements for three months before the lending commenced, they show that the average income into the account from Ms A's wages across the three months was around £3,550. Having calculated Ms A's regular monthly contractual payments, which include, but is not limited to, payments for a mortgage, utilities, communication providers, insurance payments, and other creditors, I can see that Ms A had a disposable income even after the payments owed under the agreement were deducted. The average disposable income, after the payments under the agreement were deducted, was around £1,000.

I note that Ms A was making regular payments to support her child whilst she was studying. However, even after having deducted these payments, there was still a disposable income

remaining. In addition, these amounts varied and they weren't committed non-discretionary expenditure payments that Ms A was required to pay each month.

Ms A has said she was making substantial repayments to her family members. I can see payments on the bank statements to two parties and income from one of these parties. In November 2017, there were no payments made to other parties aside from Ms A's daughter. I don't think there are any consistent payments to other parties over the three-month period prior to the lending being agreed that would have caused any concern to HC.

I've also considered a copy of the credit file that Ms A has sent. This confirms that Ms A had a mortgage that she took out in 2015 and a secondary mortgage that she took out a couple of months before she entered into the agreement with HC. At the time the lending was agreed, Ms A's mortgage payments on both accounts were up to date. There was also a loan which was paid up to date and one missed payment on a credit card three months before the agreement was taken out. The account was brought up to date by the time the agreement with HC was approved. All of the payments that were reported on the credit file were reflected on the bank statements. The credit file Ms A has sent us is consistent with the information obtained by HC when it carried out a credit check prior to lending to Ms A.

Ms A has also said she re-mortgaged her home and received substantial payments in loans. However, the substantial loan Ms A has mentioned isn't reflected on her credit file and the secondary mortgage has been included in the expenditure on the bank statements. It's unclear why loans were taken out, but the bank statements at the time show a significant proportion of it being paid to a third party. There are also no returned direct debits showing on the credit file as Ms A has mentioned.

Overall, I'm satisfied that even if HC had carried out proportionate checks, it would have still been fair and reasonable for it to lend to Ms A. And I think the checks would have shown she was able to make the repayments owed under the agreement sustainably.

Did HC act unfairly or unreasonably in some other way?

Ms A has said as a result of taking out the agreement, she had to take out further credit and she was unable to meet her financial commitments. I can see that Ms A did contact HC on some occasions to explain that she couldn't pay her monthly payment, but the explanations provided were short term payment difficulties, for example having to transfer money to her husband or child or due to an accident. She also had some payment difficulties during the Covid-19 pandemic. But by 2021, she made an overpayment which meant she was in credit under the agreement.

HC was obliged to treat Ms A with forbearance and due consideration if she was in financial difficulties. Having reviewed the history of the account and the notes, I can see when Ms A had payment difficulties, HC responded with forbearance. The account was settled in full in January 2023.

Having carefully considered all this, I'm satisfied that HC treated Ms A with forbearance and due consideration and it didn't act unfairly or unreasonably in any other way.

Finally, I've thought about whether considering this complaint more broadly as being about an unfair relationship under Section 140A of the Consumer Credit Act 1974 ("Section 140A") would lead to a different outcome. However, for the reasons I've already given, I don't think HC lent irresponsibly to Ms A or otherwise treated her unfairly in relation to this matter. I haven't seen anything to suggest that Section 140A would, given the facts of this complaint, lead to a different outcome here. It follows that I'm not asking HC to do anything further.

My final decision

I don't uphold Ms A's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms A to accept or reject my decision before 15 May 2025.

Sonia Ahmed
Ombudsman