

Complaint

Mrs P complains that RCI Financial Services Limited (trading as “Renault” Finance) unfairly entered into a hire-purchase agreement with her. She’s said that the finance that was unaffordable and this resulted in an unfair lending relationship.

Background

In April 2016, Renault provided Mrs P with finance for a brand-new car. The purchase price of the vehicle was £17,265.00. Mrs P paid a cash deposit of £500 and entered into a 49-month hire-purchase agreement with Renault for the remaining £16,765.00 required to complete the purchase.

The loan had interest, fees and total charges of £3,584.86. So the balance to be repaid of £20,349.85 (which doesn’t include Mrs P’s deposit) was due to be repaid 48 monthly instalments of £230.17 followed by an optional final payment of £9,301.69 which Mrs P had to pay if she decided that she wished to keep the car.

In March 2024, Mrs P complained to Renault saying that the agreement was unaffordable and therefore Renault shouldn’t have entered into it with her. Renault didn’t uphold Mrs P’s complaint. Mrs P remained dissatisfied and referred her complaint to our service.

When it provided its file of papers on the complaint, Renault highlighted the fact that the complaint may have been made too late. Mrs P’s complaint was subsequently considered by one of our investigators. She reached the conclusion that proportionate checks would not have shown Renault that it shouldn’t have provided Mrs P with the finance. So she didn’t think that Mrs P’s complaint should be upheld.

Mrs P 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. Renault has argued that Mrs P’s complaint was made too late because she complained more than six years after its decision to provide the finance as well as more than three years after Mrs P ought reasonably to have been aware of her cause to make this complaint.

Our investigator explained why Mrs P’s complaint was one alleging that the relationship between her and Renault was unfair to her 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 Mrs P's complaint. Given the reasons for this, I'm satisfied that whether Mrs P's complaint about the hire-purchase agreement was made in time or not has no impact on that outcome.

I'm also in agreement with the investigator that Mrs P's complaint should be considered more broadly than just the lending decision. I consider this to be the case as Mrs P has not only complained not about the decision to lend but has also alleged that Renault entering into an unaffordable hire-purchase agreement with her, resulted in an unfair lending relationship.

I'm therefore satisfied that Mrs P's complaint is one about the overall fairness of the lending relationship between her and Renault. I acknowledge Renault may still disagree that we can look Mrs P'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 P's case, I am required to take relevant law into account. As, for the reasons I've explained above, I'm satisfied that Mrs P's complaint can be reasonably interpreted as being about the fairness of the lending relationship between her and Renault, 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 (Renault) and the debtor (Mrs P), 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 P's complaint, I therefore need to think about whether Renault's decision to lend to Mrs P, or its later actions resulted in the lending relationship between Mrs P and Renault being unfair to Mrs P, such that it ought to have acted to put right the unfairness – and if so whether it did enough to remove that unfairness.

Mrs P's relationship with Renault is therefore likely to be unfair if it didn't carry out reasonable and proportionate checks into Mrs P'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, Renault didn't then somehow remove the unfairness this created.

I'll now turn to whether Renault acted fairly and reasonably when entering into the hire-purchase agreement with Mrs P.

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 P'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 it 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 were 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've kept this in mind when deciding Mrs P's complaint.

Was Renault's decision to enter into the hire-purchase agreement with Mrs P fair and reasonable?

Renault says it agreed to Mrs P's application after it carried out credit searches and its systems approved the agreement as being affordable for Mrs P. In its view, this means that it was reasonable to lend. On the other hand, Mrs P has said that the repayments were unaffordable for her and this created an unfair lending relationship.

I've thought about what Renault and Mrs P have said.

Renault has simply described its general process when providing loans. I understand its argument as that its systems would only have approved this agreement if the payments were affordable for Mrs P. So as its systems approved Mrs P's application, the monthly payments must have been affordable for her.

I accept that the length of time that has passed since the lending was approved and since the finance was settled means that Renault isn't required to have retained that everything it gathered at the time of Mrs P's application. However, Renault has not only failed to provide the output of what it was that it learnt about Mrs P, or the actual data which it relied upon to

determine that the payments to this agreement were affordable for her, it hasn't referred to what would actually have been considered either.

As this is the case, I don't even know what it was that Renault's systems would have relied upon to reach the conclusion that this agreement was affordable for Mrs P. In these circumstances, I'm simply not in a position to agree that there is sufficient evidence for me to be able to conclude that Renault did take reasonable steps to understand whether Mrs P could afford the monthly payments.

I'm therefore unable to agree that Renault completed fair, reasonable and proportionate affordability checks before entering into this hire-purchase agreement with Mrs P.

As previously explained, Renault's failure to carry out proportionate checks isn't on its own sufficient for me to conclude that the relationship between Renault and Mrs P was unfair to Mrs P. It's only fair and reasonable for me to reach this conclusion and uphold the complaint, in circumstances where I'm satisfied that Mrs P lost out as a result of Renault's checks.

This will only be the case should it be clear that Renault carrying out such checks would have shown it that the monthly payments for this agreement were unaffordable and so it should have decided against lending. I've therefore considered what a proportionate check is more likely than not to have shown Renault.

While I've looked at the bank statements Mrs P has provided in order to do this, I've done this because I'm having to retrospectively determine what a proportionate check is likely to have looked like a number of years after this should have been done. And bank statements have all the information I now need to do this. However, I wish to make it clear that Renault was not required to review Mrs P's bank statements prior to lending to her.

In any event, the bank statements provided do appear to show that when Mrs P's committed regular living expenses are added to what Renault knew about her existing credit commitments and then deducted from the funds she was receiving, there were sufficient funds left over, at the time at least, for her to sustainably make the repayments due under this agreement. I say this in the knowledge that Mrs P's actual living expenses appear to be covered elsewhere.

I appreciate that Mrs P says that she didn't have the disposable income to make the payments to this agreement. However, the figures being put forward now are from an expenditure assessment conducted from bank statements. This is a more granular assessment capturing Mrs P's total expenditure rather than a likely indication of what Mrs P is likely to have declared about her living expenses.

Furthermore, while I've noted what Mrs P has said about being on maternity leave, I also have to consider that Mrs P's submissions are being made in support of a claim for compensation. And at the time of the application at least, Mrs P clearly wanted the car she had chosen and she considered it an opportune time to change her vehicle.

Therefore, in my view, any explanations Mrs P would likely have provided to Renault at the time are more likely to have been with a view to persuading it to lend her, particularly as there isn't anything to indicate that Mrs P declared being on maternity leave at the time, whereas now she's trying to show that the agreement was unaffordable.

Equally, it is only fair and reasonable for me to uphold a complaint in circumstances where I can see that any credit provided was unaffordable. I'm satisfied that the available information does not clearly show me that proportionate checks would have shown that Mrs P could not make the monthly payments to this agreement in a sustainable manner.

For the sake of completeness, I would also add that while this isn't in itself determinative, it's also worth noting that Mrs P made all of her required payments as and when they fell due. I've also not been provided with any evidence of a deterioration in Mrs P's financial position in doing so either. In these circumstances, Mrs P's repayment record and actions tends to support the fact that the monthly payments to this agreement was affordable for her.

Taking all of this into account, I've not been sufficiently persuaded that Renault would have declined to lend if it had the information that I think it needed to here. So I've not been persuaded that it was unfair for Renault to lend to Mrs P.

Bearing in mind everything I've set out, I don't find that the lending relationship between Mrs P and Renault was unfair to Mrs P. I've not been persuaded that Renault created unfairness in its relationship with Mrs P by irresponsibly lending to her when it entered into this hire-purchase agreement with her. And based on what I've seen, I don't find Renault treated Mrs P unfairly in any other way either.

Overall and having considered everything, while I can understand Mrs P'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 P. But 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 P's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 15 July 2025.

Jeshen Narayanan
Ombudsman