

## **Complaint**

Mrs D complains that CA Auto Finance UK LTD (at the time trading as “Fiat Financial” Services) unfairly entered into a hire-purchase agreement with her. She’s said that she was provided with finance that was unaffordable and this led to ongoing difficulty with other credit commitments.

## **Background**

In September 2016, Fiat Financial provided Mrs D with finance for a used car. The purchase price of the vehicle was £20,450.00. Mrs D didn’t pay a deposit and entered into a 48-month hire-purchase agreement with Fiat Financial for the entire amount she required.

The loan had interest, fees and total charges of £6,307.00, which was made up of interest of £5,908.00 and an option to purchase fee of £399. So the total amount to be repaid of £26,757.00 was due to be repaid in 47 monthly instalments of £389 followed by an optional final payment of £8,474.00 which Mrs D needed to pay if she wished to keep the car at the end of the term.

In February 2024, Mrs D complained to Fiat Financial saying that the agreement was unaffordable and therefore Fiat Financial shouldn’t have entered into it with her. Fiat Financial didn’t uphold Mrs D’s complaint. Mrs D remained dissatisfied at matters and referred her complaint to our service.

When responding to our request for its file on Mrs D’s complaint, Fiat Financial told us that it believed that Mrs D complained too late. Mrs D’s complaint was subsequently considered by one of our investigators. He reached the conclusion that proportionate checks would not have shown Fiat Financial that it shouldn’t have provided Mrs D with the finance. So he didn’t think that Mrs D’s complaint should be upheld.

Mrs D 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. Fiat Financial has argued that Mrs D'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 D ought reasonably to have been aware of her cause to make this complaint.

Our investigator explained why Mrs D's complaint was one alleging that the relationship between her and Fiat Financial 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 D's complaint. Given the reasons for this, I'm satisfied that whether Mrs D'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 D's complaint should be considered more broadly than just the lending decision. I consider this to be the case as Mrs D has not only complained not about the decision to lend but has also alleged that this resulted in an ongoing financial difficulty and a need to borrow further.

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

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

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

#### *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 D'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, bearing in mind Mrs D's response to our investigator's assessment, which has mainly focused on showing that Fiat Financial's checks were insufficient, I think it is important for me to explain that even where we conclude 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 recreated check clearly shows that the repayments in question were unaffordable.

I've kept this in mind when deciding Mrs D's complaint.

#### *Was Fiat Financial's decision to enter into the hire-purchase agreement with Mrs D fair and reasonable?*

Fiat Financial says that Mrs D's application was manually underwritten. It says it also carried out credit searches on Mrs D which showed that she didn't have any significant adverse

information – such as county court judgments (“CCJ”) or defaulted accounts recorded against her.

It also says that it found out that Mrs D was settling a loan which had monthly payments of £209, had monthly mortgage payments of £482 and was on the electoral register. Although it appears to have noted that Mrs D had missed utility payments around 5 months prior to this application. Nonetheless, in Fiat Financial’s view, the information gathered meant that it was reasonable for it to conclude that the monthly payments were affordable for Mrs D.

On the other hand, Mrs D has said that the repayments were unaffordable for her and this led to ongoing financial difficulty.

I’ve thought about what Fiat Financial and Mrs D have said.

The first thing for me to say is that while I accept that Fiat Financial carried out a credit check, I’m not persuaded that Fiat Financial’s checks went far enough. In my view, given the amount of the monthly payment, the fact that there were missed utility payments on the credit check, I think that Fiat Financial needed to take further steps to ascertain Mrs D’s income as well as her living costs for its checks to have been proportionate here.

I can’t see that Fiat Financial did this. So I’m not satisfied that its checks before lending were proportionate in this instance.

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

This will only be the case should it be clear that Fiat Financial 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 Fiat Financial. Given the circumstances here, I would have expected Fiat Financial to have had a reasonable understanding about Mrs D’s regular living expenses as well as her income and existing credit commitments.

While I’ve looked at the bank statements Mrs D 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 Fiat Financial was not required to review Mrs D’s bank statements prior to lending.

In any event, the bank statements provided do not clearly show me that the monthly payments to this agreement were unaffordable. I appreciate that Mrs D 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 and in circumstances where she was making all bill payments for the household.

Nonetheless at the time of the agreement Mrs D was presented as cohabiting with a mortgage. Equally, while I accept the possibility Mrs D was making all payments and she provided a statement from her ex-husband stating that she was solely responsible for the household bills, this does not alter the fact that the mortgage was joint and therefore Mrs D was not solely responsible. It therefore doesn’t automatically follow that Fiat Financial would have known that the monthly payments to the agreement were unaffordable, if it had asked Mrs D more about her living costs.

I'm also mindful that Mrs D's most recent submissions are being made in support of a claim for compensation and at the time of the application at least, Mrs D would have wanted the car that she had chosen. So, in my view, any explanations she would likely have provided to Fiat Financial at the time are more likely to have been with a view to persuading it to lend her, whereas now she's trying to show that the agreement was unaffordable. This is important because the statements for one of the accounts that Mrs D has provided did show a significant surplus balance in the month prior to this hire-purchase application being made.

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 D could not make the monthly payments to this agreement in a sustainable manner.

As this is the case, I've not been sufficiently persuaded that Fiat Financial would have declined to lend if it had found out the further information that I think it needed to here. So I've not been persuaded that it was unfair for Fiat Financial to lend to Mrs D.

In reaching my conclusions, I've noted what Mrs D has said about having been refused finance, by a different lender, to purchase a brand-new car from the same motor dealer. However, there doesn't appear to be any dispute that this earlier application wasn't made to Fiat Financial. Equally, as each lender has its own criteria for determining whether to lend to a customer, it doesn't follow that Fiat Financial should automatically have declined Mrs D's application simply because another lender had declined to lend on a different vehicle.

Bearing in mind, I don't find that the lending relationship between Mrs D and Fiat Financial was unfair to Mrs D. I've not been persuaded that Fiat Financial created unfairness in its relationship with Mrs D 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 Fiat Financial treated Mrs D unfairly in any other way either.

Overall and having considered everything, while I can understand Mrs D's sentiments and appreciate why she is unhappy, particularly as I've agreed Fiat Financial hasn't shown its checks were proportionate, I'm nonetheless not upholding this complaint. I appreciate that this will be very disappointing for Mrs D. 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**

For the reasons I've explained, my final decision is that I'm not upholding Mrs D's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs D to accept or reject my decision before 14 July 2025.

Jeshen Narayanan  
**Ombudsman**