

Complaint

Mrs P complains that Advantage Finance Ltd (“Advantage Finance”) unfairly entered into a hire-purchase agreement with her. She’s said that the finance that was unaffordable and this caused ongoing difficulty going forward.

Background

In June 2016, Advantage Finance provided Mrs P with finance for a used car. The purchase price of the vehicle was £9,900.00. Mrs P didn’t pay a deposit and entered into a 48-month hire-purchase agreement with Advantage Finance for the total amount of the purchase.

The loan had interest, fees and total charges of £6,440.44 (comprising of interest of £5,940.44, an acceptance fee of £325 and an option to purchase fee of £175), and the amount to be repaid of £16,340.44 was due to be repaid in 47 monthly instalments of £336.78 followed by a final payment of £511.78.

In June 2024, Mrs P complained to Advantage Finance saying that the agreement was unaffordable and therefore Advantage Finance shouldn’t have entered into it with her. After eight weeks had passed and she had not received a final response, Mrs P referred her complaint to our service.

Mrs P has also complained about the commission Advantage Finance paid the credit broker that introduced her business. We’ve explained that we’re considering Mrs P’s commission complaint separately and so far we’ve only looked at whether Advantage Finance acted fairly and reasonably in agreeing to lend to Mrs P.

When it did issue its final response, Advantage Finance explained that it believed that Mrs P had complained too late. Mrs P’s complaint was subsequently considered by one of our investigators. He reached the conclusion that proportionate checks would not have shown Advantage Finance that it shouldn’t have provided Mrs P with the finance. So he 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. Advantage Finance 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 Advantage Finance 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 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 this resulted in ongoing financial difficulty.

I'm therefore satisfied that Mrs P's complaint is one about the overall fairness of the lending relationship between her and Advantage Finance. I acknowledge Advantage Finance 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 Advantage Finance, 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 (Advantage Finance) 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 Advantage Finance's decision to lend to Mrs P, or its later actions resulted in the lending relationship between Mrs P and Advantage Finance 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 Advantage Finance 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, Advantage Finance didn't then somehow remove the unfairness this created.

I'll now turn to whether Advantage Finance 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 Advantage Finance's decision to enter into the hire-purchase agreement with Mrs P fair and reasonable?

Advantage Finance says it agreed to Mrs P's application after Mrs P provided details of her income which was verified using copies of bank statements. It says it also carried out credit searches on Mrs P which showed that she had defaulted accounts recorded against her.

Nonetheless, in Advantage Finance's view, when reasonable repayments to the credit commitments Mrs P already had are combined with estimates of her living costs and then deducted from her income, she had enough left over to be able to make the monthly repayments to this agreement.

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 Advantage Finance and Mrs P have said.

The first thing for me to say is that while I accept that Advantage Finance carried out a credit check, I'm not persuaded that Advantage Finance's checks went far enough. In my view, given the amount of the monthly payment, the adverse information on the credit check and the length of time the agreement was due to run for, I think that Advantage Finance needed to take further steps to ascertain Mrs P's living costs for its checks to have been proportionate here.

I can't see that Advantage Finance did this. So I'm not satisfied that its checks before lending were proportionate in this instance.

As previously explained, Advantage Finance's failure to carry out proportionate checks isn't on its own sufficient for me to conclude that the relationship between Advantage Finance 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 Advantage Finance's checks.

This will only be the case should it be clear that Advantage Finance 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 Advantage Finance.

As Advantage Finance had them, I've considered the bank statements Mrs P provided in order to determine her actual living costs at the time. And having done so, I'm satisfied that the bank statements Mrs P provided do appear to show that when her committed regular living expenses are added to what Advantage Finance 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 appreciate that Mrs P says that she shouldn't have been lent to because she was borrowing money from her father. But even if this was the case, this wouldn't have shown up in the credit checks. Furthermore, having considered the bank statements, it's not immediately clear to me that they show Mrs P was borrowing funds.

I'm also mindful that Mrs P's most recent submissions are being made in support of a claim for compensation and at the time of the application at least, Mrs P would have wanted the car. So, in my view, any explanations she would likely have provided to Advantage Finance 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.

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.

As this is the case, I've not been sufficiently persuaded that Advantage Finance would have declined to lend if it had tried to ascertain Mrs P's living expenses from the bank statements it obtained, rather than relying on estimates. So I've not been persuaded that it was unfair for Advantage Finance to lend to Mrs P.

Overall and bearing in mind everything I've set out, I don't find that the lending relationship between Mrs P and Advantage Finance was unfair to Mrs P. I've not been persuaded that Advantage Finance 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 Advantage Finance treated Mrs P unfairly in any other way either.

So 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 23 September 2025.

Jeshen Narayanan
Ombudsman