

Complaint

Mr C complains that The Funding Corporation ("TFC") unfairly entered into a hire-purchase agreement with him. He's said that the finance was unaffordable which resulted in ongoing difficulty and culminated in an existing creditor obtaining a County Court Judgment ("CCJ") against him.

Background

In March 2015, TFC provided Mr C with finance for a used car. The limited information available from the time suggests that the purchase price of the vehicle was £8,995.00. Mr C paid a deposit of £250 and entered into a 49-month hire-purchase agreement with TFC for the remaining £8,795.00 he required for the purchase.

The loan had interest, fees and total charges of £7,776.05 (made up of interest of £7,321.00 an admin fee of £250 and an option to purchase fee of £195) and the balance to be repaid of £16,561.00 (which does not include Mr C's deposit) was due to be repaid in a first repayment of £250, followed by 47 monthly repayments of £335.75 and then a final payment of £530.75.

In the middle of 2023 Mr C attempted to obtain the details of his agreement with TFC. And in January 2024, Mr C complained telling TFC that it shouldn't have entered into this hire-purchase agreement with him, as it ought to have realised that it was unaffordable and this resulted in ongoing difficulty which culminated in an existing creditor obtaining a CCJ against him.

TFC did not uphold Mr C's complaint as it considered that Mr C complained too late. Mr C's complaint was considered by one of our investigators. He eventually reached the conclusion that proportionate checks would not have shown TFC that it shouldn't have entered into the hire-purchase agreement with Mr C. So he didn't think that Mr C's complaint should be upheld.

Mr C 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. TFC has argued that Mr C's complaint was made too late because he complained more than six years after the decision to provide the finance as well as more than three years after he ought reasonably to have been aware of his cause to make this complaint.

Our investigator explained why it was reasonable to interpret Mr C's complaint as being one alleging that the relationship between him and TFC was unfair to him 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 Mr C's complaint. Given the reasons for this, I'm satisfied that whether Mr C's complaint was made in time or not has no impact on that outcome.

I'm also in agreement with the investigator that Mr C's complaint should be considered more broadly than just TFC's lending decision. I consider this to be the case as Mr C has not only complained about TFC's decision to lend to him but has also alleged that making the repayments resulted in him experiencing ongoing difficulty and culminated in a CCJ being obtained against him.

I'm therefore satisfied that Mr C's complaint can therefore reasonably be interpreted as a complaint about the overall fairness of the lending relationship between him and TFC. I acknowledge TFC still may not agree we can look Mr C'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 Mr C's case, I am required to take relevant law into account. As, for the reasons I've explained above, I'm satisfied that Mr C's complaint can be reasonably interpreted as being about the fairness of the lending relationship between him and TFC, 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 (TFC) and the debtor (Mr C), 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 Mr C's complaint, I therefore need to think about whether TFC's decision to lend to Mr C, or its later actions resulted in the lending relationship between Mr C and TFC being unfair to Mr C, such that it ought to have acted to put right the unfairness – and if so whether it did enough to remove that unfairness.

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

I'll now turn to whether TFC acted fairly and reasonably when entering into the hire-purchase agreement with Mr C.

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 Mr C's complaint.

I think that it would be helpful for me to set out that we consider what a firm did to check whether payments 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 the lender 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 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 the 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 in determining Mr C's complaint.

Was TFC's decision to enter into a hire-purchase agreement with Mr C fair and reasonable?

TFC hasn't been able to provide any information on the checks that it carried out or what any information it gathered said about Mr C's circumstances at the time that it lent to him. Bearing in mind the length of time that has passed, I don't consider this to be surprising. Nonetheless, as I've not been provided with this information, I'm not in a position to be able to say that TFC did carry out reasonable and proportionate checks before lending to Mr C.

As I've not been persuaded that TFC carried out reasonable and proportionate checks in March 2015, I've gone on to, as best as possible, recreate what such checks are likely to have shown using the information Mr C has now been able to provide us with.

Bearing in mind Mr C appears to have had at least one default registered against him at the time of his application, the duration of the agreement and the amount of the monthly

payment, I would have expected TFC to have had a reasonable understanding about Mr C's income, existing credit commitments and his regular living expenses.

That said, I don't think that TFC having such an understanding of Mr C's circumstances would have made a difference here. I say this because when what I've been able to discern as Mr C's living expenses are added to his active credit commitments and then deducted from his income, he, at the time at least, appears to have enough left over to repay this agreement.

I appreciate that Mr C says that his actual circumstances at the time were worse than what the information provided shows. I'm sorry that Mr C found it difficult to make his payments and that he did have a CCJ obtained against him. Furthermore, I note that Mr C has said that he shouldn't have been lent to because he'd previously defaulted on credit and had taken payday loans.

However, there isn't a prohibition on lending to an applicant that has previously defaulted on credit or that has borrowed from payday, or payday type lenders. So I don't think that Mr C's defaulted account or any payday lending meant that Mr C shouldn't have been lent to. Furthermore, while I accept that a creditor went on to obtain a CCJ against Mr C, I don't think that TFC could be expected to know that this would happen either.

I also have to keep in mind that Mr C's most recent submissions are being made in support of a claim for compensation and at the time of the application at least, Mr C believed it to be a reasonable time to purchase a new vehicle. Therefore, any explanations Mr C would have provided at the time are more likely to have been with a view to persuading TFC to lend to him rather than highlighting any unaffordability.

So I think it unlikely that Mr C would have volunteered that his expenditure rendered the monthly payments unaffordable, particularly as TFC wasn't required to request the bank statements Mr C has now provided, in the first place.

Finally, it may also help for me to explain that it is only fair and reasonable for me to uphold a complaint in circumstances where I can see that any credit provided was unaffordable. And I'm afraid that the information Mr C has provided does not clearly and incontrovertibly support what he has said about the monthly payments being unaffordable for him at the outset.

Overall while I've not seen enough to be satisfied that TFC's checks before entering into this hire-purchase agreement with Mr C did go far enough, I've nonetheless not been persuaded that reasonable and proportionate checks would have prevented TFC from providing these funds, or entering into this agreement with Mr C.

In these circumstances, I don't find that the lending relationship between Mr C and TFC was unfair to Mr C. I've not been persuaded that TFC created unfairness in its relationship with Mr C by irresponsibly lending to him when it entered into this hire-purchase agreement with him. And I don't find TFC treated Mr C unfairly in any other way either based on what I've seen.

So having considered everything, while I can understand Mr C's sentiments and appreciate why he is unhappy, I'm nonetheless not upholding this complaint. I appreciate that this will be very disappointing for Mr C. But I hope he'll understand the reasons for my decision and that he'll at least feel his concerns have been listened to.

My final decision

My final decision is that I'm not upholding Mr C's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 4 August 2025.

Jeshen Narayanan
Ombudsman