

## The complaint

With the help of a professional representative (PR) Mr D complained that Advantage Finance Ltd lent to him irresponsibly. For ease, I'll refer to the actions of the PR as being those of Mr D.

## What happened

On 16 September 2014, Mr D applied for – and accepted – a hire purchase (HP) agreement with Advantage to acquire a car. The terms of the HP were as follows:

Cash price	Deposit	Amount of credit	Term (months)	Monthly repayment	Total payable
£13,196.75	£2,000	£11,196.75	48	£352.01	£19,071.48

Mr D made the first 16 monthly instalments to the HP in full and on time. Following that, his direct debit was unpaid from time to time, but the payment was generally made within a few days. The agreement was paid in full on 29 October 2018.

On 11 July 2024, Mr D complained to Advantage, He said it had failed to carry out an adequate income and expenditure check, and if it had done so it would have seen the HP was unaffordable for him. To resolve his complaint, he asked Advantage to refund all charges and interest he'd paid with compensatory interest on top. He also asked for £100 in compensation for the distress and inconvenience.

Advantage looked into Mr D's complaint and issued a final response letter. It said there was no evidence to support his (PR's) generic complaint letter, but it offered to look at any specific concerns he had. Otherwise, it said he had brought his complaint too late under the complaint handling rules of the Financial Conduct Authority (FCA). Mr D doesn't appear to have provided any further information to Advantage, so it didn't uphold his complaint.

Mr D didn't accept Advantage's response, so he referred his complaint to our service. One of our investigators looked into it and felt it was reasonable to consider the complaint as being about an unfair relationship as described in Section 140A of the Consumer Credit Act 1974 (s.140) and went on to do so. Having considered everything, he felt the HP had been affordable for Mr D at the time he applied for it and Advantage had reached a fair decision to lend to him. Our investigator didn't uphold Mr D's complaint.

Mr D didn't agree with our investigator, so as there was no agreement, the complaint has been referred to me for a decision.

## 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.

There are time limits for referring a complaint to the Financial Ombudsman Service, and Advantage thinks this complaint was referred to us too late. Our investigator explained why

he didn't, as a starting point, think we could look at a complaint about the lending decision that happened more than six years before the complaint was made. But he also explained why it was reasonable to interpret the complaint as being about an unfair relationship as described in s.140, and why this complaint about an allegedly unfair lending relationship had been referred to us in time.

For the avoidance of doubt, I agree with our investigator that I have the power to look at the complaint on this basis. I think this complaint can reasonably be considered as being about an unfair relationship as Mr D says the HP made his financial situation worse as he was being asked to pay more than he could afford. This may have made the relationship unfair. I acknowledge Advantage still doesn't agree we can look at this complaint, but as I don't think it should be upheld, I don't intend to comment on this further.

In deciding what is fair and reasonable I am required to take relevant law into account. Because Mr D's complaint can be reasonably interpreted as being about the fairness of his relationship with Advantage, relevant law in this case includes s.140A, s.140B and s.140C of the Consumer Credit Act 1974.

S.140A says that a court may make an order under s.140B if it determines that the relationship between the creditor (Advantage) and the debtor (Mr 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.

S.140B 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 what Mr D has complained about, I need to consider whether Advantage's decision to lend to him, or its later actions, created unfairness in the relationship between the two such that Advantage ought to have acted to put right the unfairness – and if so whether it did enough to remove that unfairness.

Mr D's relationship with Advantage is therefore likely to be unfair if it didn't carry out proportionate affordability checks and doing so would have revealed its lending to be irresponsible or unaffordable, and if it didn't then remove the unfairness this created somehow.

I think there are key questions I need to consider in order to decide what is fair and reasonable in the circumstances of this complaint:

- Did Advantage carry out reasonable and proportionate checks to satisfy itself that Mr D was in a position to sustainably repay the credit?
- If not, what would reasonable and proportionate checks have shown at the time?
- Did Advantage make a fair lending decision?
- Did Advantage act unfairly or unreasonably towards Mr D in some other way?

Advantage had to carry out reasonable and proportionate checks to satisfy itself that Mr D would be able to repay the credit sustainably. It's not about it assessing the likelihood of it being repaid, but it had to consider the impact of the repayments on him.

There is no set list of checks that it had to do, but it could take into account several different things such as the amount and length of the credit, the amount of the monthly repayments and the overall circumstances of the borrower.

#### Did Advantage carry out reasonable and proportionate checks?

Understandably due to the time elapsed, Advantage hasn't been able to provide everything we'd ordinarily expect to see, but it has provided most of that information. I don't find it surprising it doesn't have everything as businesses are not generally expected to hold information indefinitely and this agreement was applied for almost 10 years before the complaint was raised.

Advantage has provided copies of payslips and identification documents it took at the time as well as the vehicle invoice and credit agreement. It's not been able to provide a copy of the credit file information it saw or its calculation of Mr D's expenditure. That being so, while I've no doubt checks were done, I can't fairly say they were reasonable and proportionate if I don't know what was found.

#### What would reasonable and proportionate checks have shown at the time?

I can't say for sure what Advantage will have found on Mr D's credit file during the application. And a current credit file would be of very limited use as they typically only show information for the last six years. So I don't have enough information to say that Advantage lent to him unfairly due to information on his credit file – we simply don't have the evidence to make such a finding.

I can however, think about what Mr D's income and expenditure may have looked like at the time by looking at his bank statements for a few months prior to the application. Mr D has provided some bank statements from 27 May 2014 to after the HP was taken.

Our investigator has gone into a lot of detail explaining what the statements show. I don't propose to go into so much detail here as this is well known to both parties and I agree with our investigator's analysis. I will say however, that Mr D's account was well run and his income was comfortably enough to cover his committed expenditure including this HP. He did receive several credits from family members, but these were not used in the calculations that were done by our investigator.

So if Advantage needed to go so far as to look at Mr D's bank statements, I think it more likely than not that it would still have agreed to lend to him.

It follows that I think it reached a fair decision to lend, enabling him to acquire a car he needed for his personal use.

#### Did Advantage act unfairly or unreasonably towards Mr D in some other way?

I've carefully read the contact notes Advantage has provided which cover the whole period that the HP was in place. I can see that when Mr D missed a payment (having paid in full and on time for almost 1½ years), Advantage spoke to him and the payment was caught up within a few days. There were occasions where a change in circumstance had led to the payment not being met. In June 2016, Mr D asked for his payment date to be changed and

Advantage facilitated that. I've not seen anything in the notes which makes me think Advantage treated Mr D unfairly in some other way.

**My final decision**

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 21 January 2026.

Richard Hale  
**Ombudsman**