

The complaint

Mrs J, who is represented by a third party, complains that Advantage Finance Limited ('Advantage') irresponsibly granted her a hire purchase agreement she couldn't afford to repay.

What happened

In April 2017, Mrs J acquired a used car financed by a hire purchase agreement from Advantage. Mrs J was required to borrow £6,578, to be repaid by 59 monthly repayments of £213.72 followed by a final payment of £388.72. The total repayable under the agreement was £12,998.20.

Mrs J complained to Advantage that it had agreed to provide her with finance under the terms of the agreement without carrying out reasonable and proportionate checks to ensure the finance would be affordable. As a result, her financial situation worsened.

Advantage said we couldn't look at the complaint as it had been made too late under our time limit rules. It also said that in any event it was satisfied that the loan was affordable for Mrs J.

Mrs J was unhappy with Advantage's response, so she referred her complaint to our service.

One of our investigators looked into it. She agreed that the complaint was out of time under the rules. But she also thought that Mrs J's complaint could be interpreted as being about an unfair credit relationship as described in Section 140A of the Consumer Credit Act 1974 (s140) which is in time under the rules. But she didn't think Advantage had acted unfairly or unreasonably by approving the finance agreement.

As Mrs J doesn't agree, her complaint has been passed to me for a final 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.

We've explained how we handle complaints about unaffordable and irresponsible lending on our website. And I've used this approach to help me decide Mrs J's 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 it was reasonable to interpret the complaint as being about an unfair relationship as described in Section 140A of the Consumer Credit Act 1974, and why this complaint about an allegedly unfair lending relationship had been referred to us in time.

Seeing as I've decided not to uphold Mrs J's complaint and, given the reasons for this (which I'll go on to explain), whether Mrs J referred her complaint about the decision to agree credit happened more than six years ago in time or not has no impact on that outcome. Like our

investigator, I think Mrs J's complaint should be considered more broadly than just the decision to provide the finance, given that she has complained not just about the decision to lend but also the impact this had on him over the course of her relationship with Advantage. Mrs J's complaint in this respect can therefore reasonably be interpreted as a complaint about the fairness of her relationship with Advantage. I acknowledge that Advantage may still not agree we can look at this complaint, but given the outcome I have reached, 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 Mrs J's complaint can be reasonably interpreted as being about the fairness of her 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 (Mrs J), 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 their 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 Mrs J has complained about, I therefore need to think about whether Advantage's decision to lend to Mrs J or its later actions created unfairness in the relationship between her and Advantage, such that it ought to have acted to put right the unfairness – and if so whether it did enough to remove that unfairness.

Mrs J's relationship with Advantage is therefore likely to be unfair if it didn't carry out proportionate affordability checks, where 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 will therefore first look at the checks Advantage carried out and then look at what was shown in those checks.

Did Advantage carry out reasonable and proportionate checks to satisfy itself that Mrs J was in a position to sustainably meet the repayments that were due under the agreement?

When assessing affordability, there isn't a set list of checks that Advantage needed to complete, but they needed to be borrower focussed and proportionate to things like the type of lending, the cost of the lending as well as the amount, and the period of time over which Mrs J would need to make repayments.

Before granting the finance, I think Advantage gathered a reasonable amount of evidence and information from Mrs J about her ability to repay. I say this because Advantage carried out checks that included reviewing the information in her application and verifying her

income by relying on contract information as well as copy payslips. Mrs J said she was earning around £1,060 in net income per month. Advantage was able to identify Mrs J's occupation and her monthly income and also her residential status.

Advantage also carried out a credit check to establish how Mrs J was managing her existing credit commitments. Advantage found no evidence of Mrs J having been in recent financial difficulties as there were no recent adverse markings on her file such as repeated missed payments or any defaults. However, two county court judgments were noted from more than 22 months before the agreement, plus an earlier default. But the subsequent credit history didn't suggest that Advantage needed to carry out a further review before deciding whether to lend to Mrs J.

As part of its affordability assessment, Advantage also used statistical data to work out what her typical monthly committed expenditure was likely to be.

However, just because I think Advantage carried out proportionate checks, it doesn't automatically mean it made a fair lending decision. So, I've thought about what the evidence and information showed.

Did Advantage go on to make a fair lending decision?

Advantage thought Mrs J's essential monthly spending would be around £500, leaving her with enough disposable income – around £560 - to meet the cost of the new agreement. On that basis, she'd be able to afford the new agreement and would be left with around £350.

Those representing Mrs J say that Advantage didn't take note of overdraft interest and returned payments. They also disagree with the figures Advantage relied on when estimating her monthly spending. Whilst I'm not suggesting that Advantage's calculations were correct in every respect, Advantage was entitled to rely on the information provided to it by credit reference agencies and to use statistical information to work out Mrs J's expenditure. I still think, broadly speaking, they gave a good enough indication that the new agreement was likely to be affordable. And from what it saw there wasn't enough to prompt Advantage to carry out further checks before offering the finance. So I'm in broad agreement with what our investigator has said. And the further comments that have since been made don't change my finding that Advantage made a fair lending decision.

To be clear, I'm not suggesting that there wouldn't be months when Mrs J might find herself to be financially stretched and having to be extra-careful with her finances. But on the basis that she would continue to manage her finances without taking on further credit commitments or raising her levels of non-essential spending – which I think was a reasonable expectation for Advantage to have based on what it had already seen - the new loan was likely to be affordable for her.

It follows that I think, based on what the checks showed, Advantage made a fair lending decision.

Did Advantage act unfairly in any other way?

Finally, I've seen that Advantage took steps to reach out and offer support to Mrs J when she had issues with meeting her repayments. I've also seen that Advantage tried to accommodate her and keep her advised of the options available to her if she was continuing to have difficulty with meeting them. So I can't reasonably make a finding that Advantage acted unfairly or unreasonably towards Mrs J.

To summarise, taking all the information and evidence I've seen into account, I don't consider there is enough to show that the agreement may have been unaffordable for Mrs J. I don't think Advantage created unfairness in its relationship with Mrs J by lending to her irresponsibly. And I don't find Advantage treated her unfairly in any other way either based on what I've seen.

It follows that I'm not persuaded that Advantage acted unfairly in approving the finance.

My final decision

For the reasons I've given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs J to accept or reject my decision before 27 April 2026.

Michael Goldberg

Ombudsman