

Complaint

Mr W complains that CA Auto Finance UK LTD (at the time trading as “Fiat Financial” Services UK Ltd) unfairly entered into a hire-purchase agreement with him. He’s said the agreement was unaffordable and so he shouldn’t have been accepted for it.

Background

In January 2015, Fiat Financial provided Mr W with finance for a used car. The cash price of the vehicle was £8,117.19. Mr W didn’t pay a deposit and entered into a 48-month hire-purchase agreement with Fiat Financial for the entire £8,117.19.

The loan had interest, fees and total charges of £2,412.35 (made up of interest of £2,062.35 and an option to purchase fee of £350) So the total amount to be repaid of £10,529.54 was due to be repaid in 47 monthly instalments of £179.82 followed by an optional final monthly payment of £2,078.00, which Mr W had to pay if he wished to keep the car.

Mr W’s complaint was considered by one of our investigators. He didn’t think that Fiat Financial had done anything wrong or treated Mr W unfairly. So he didn’t recommend that Mr W’s complaint should be upheld. Mr W 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.

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 W’s complaint.

Having carefully thought about everything I’ve been provided with, I’m not upholding Mr W’s complaint. I’d like to explain why in a little more detail.

Fiat Financial needed to make sure that it didn’t lend irresponsibly. In practice, what this means is that Fiat Financial needed to carry out proportionate checks to be able to understand whether Mr W could make his payments in a sustainable manner before agreeing to lend to him. And if the checks Fiat Financial carried out weren’t sufficient, I then need to consider what reasonable and proportionate checks are likely to have shown.

Our website sets out what we typically think about when deciding whether a lender’s checks were proportionate. 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.

Fiat Financial says it agreed to this application after it completed an income and expenditure assessment on Mr W. During this assessment, Fiat Financial says it carried out credit searches on Mr W which showed no significant adverse difficulties with credit in the form of defaults or County Court Judgments ("CCJ"). Furthermore, it says that the low amount of credit which it saw Mr W did have was relatively well maintained.

As I understand it, it considered that when the amount Mr W already owed plus a reasonable amount for Mr W's living expenses, based on average data, were deducted from what it considered his monthly income to be, the monthly payments for this agreement were affordable. On the other hand, Mr W says that these payments were unaffordable.

I've thought about what Mr W and Fiat Financial have said.

The first thing for me to say is that I don't think that the checks Fiat Financial carried out did go far enough. In my view, given I can't see that Fiat Financial validated Mr W's income, I think that it needed to take further steps to validate this as well as get an appreciation of Mr W's actual living costs.

As Fiat Financial didn't carry out sufficient checks, I have gone on to decide what I think Fiat Financial is more likely than not to have seen had it obtained further information from Mr W. Given the circumstances here, I would have expected Fiat Financial to have had a reasonable understanding about Mr W's regular living expenses and his income as well as his existing credit commitments (which it already had).

I've considered the information Mr W has provided us with. And having done so, this information does appear to show that when Mr W's committed regular living expenses and existing credit commitments are deducted from his income, he did have the funds, at the time at least, to sustainably make the repayments due under this agreement.

I accept that Mr W's actual circumstances at the time were worse than what the information I think that Fiat Financial ought to have obtained, shows. I know that Mr W has referred to his gambling. I also accept that if Fiat Financial had known about this as Mr W appears to be saying it should have it is possible, but by no means certain, that it may have reached a different decision on lending to him.

But the truth is, I don't think that reasonable and proportionate checks would have extended into obtaining bank statements here. Indeed, it's worth noting that Mr W took steps to separate out his gambling from his main day to day activities. So it isn't simply the case that Fiat Financial would have realised the extent of Mr W's gambling if it asked for his main bank account statements.

In my view, delving into the detail of statements for multiple bank accounts, which I consider is the only way Fiat Financial would have found out about Mr W's gambling, in this way simply isn't commensurate with a proportionate check, for a loan with monthly payments of the amount required, given the circumstances here.

As this is the case, I don't think that Fiat Financial did anything wrong when deciding to lend to Mr W. In my view, it carried out proportionate checks and reasonably relied on what it found out which suggested the repayments were affordable and even if it had done more, I don't think that this would have resulted in it making a different decision.

Finally, I've thought about what Mr W has said about being pressured to accept this loan, by the dealership that supplied the vehicle to him. I understand that Mr W already had a car at the time of this purchase – indeed he's referred to the payments he was making in his

submissions. In these circumstances, I can't see what pressure Mr W could possibly have felt to make this additional purchase.

In any event, I can't see how Fiat Financial would have been aware of any pressure which Mr W was under. So it's unclear what Mr W expects Fiat Financial to have done and more importantly why he has made this aspect of his complaint to Fiat Financial and not the supplying dealer, when it is the party that is able to respond to Mr W's allegations.

Furthermore, while I've seen that Mr W says that he can't remember the terms being explained, I'm not surprised this is the case, as this all happened almost a decade ago. That said, the terms I've set out in the background section of this decision are taken directly from the credit agreement which Mr W signed and which I'm therefore satisfied he was aware of even if he no longer remembers this. As Mr W chose to enter into this agreement in the full knowledge of its terms, I can only assume that he was happy to contract with Fiat Financial on this basis.

In reaching my conclusions, I've also considered whether the lending relationship between Fiat Financial and Mr W might have been unfair to Mr W under section 140A of the Consumer Credit Act 1974 ("CCA").

However, for the reasons I've explained, I don't think Fiat Financial irresponsibly lent to Mr W or otherwise treated him unfairly in relation to this matter. I haven't seen anything to suggest that section 140A CCA or anything else would, given the facts of this complaint, lead to a different outcome here. And I'm not upholding this complaint.

This means I've not been persuaded that Fiat Financial acted unfairly towards Mr W when it lent to him and I'm not upholding the complaint. I appreciate that this will be very disappointing for Mr W. 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 W's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 16 December 2024.

Jeshen Narayanan
Ombudsman