

Complaint

Mr W complains that Specialist Motor Finance Limited (“SMF”) unfairly entered into a hire-purchase agreement with him. He’s said that he had many other debts at the time which left him unable to make the monthly payments to this agreement.

Background

In July 2019, SMF provided Mr W with finance for a used car. The amount lent was £12,752.00. The loan had interest, fees and total charges of £6,139.28, and the total amount to be repaid of £18,891.28 was due to be repaid in 47 monthly instalments of £393.36 followed by a final instalment of £403.36.

Mr W’s complaint was considered by one of our investigators. He didn’t think that SMF 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.

SMF needed to make sure that it didn’t lend irresponsibly. In practice, what this means is that SMF needed to carry out proportionate checks to be able to understand whether any lending was sustainable for Mr W before providing it.

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.

SMF says it agreed to this application after Mr W provided details of his monthly income. It says it also carried out credit searches on Mr W which did show three defaulted accounts, two of which it considered to be historic and some outstanding balances. But when the amount owing plus a reasonable amount for Mr W’s living expenses were deducted from his monthly income the monthly payments were still affordable.

On the other hand, Mr W says his existing commitments meant that these payments were unaffordable and there was no way he was going to be able to maintain them.

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

The first thing for me to say is that much like our investigator, I don't think that the checks SMF carried out did go far enough. I don't think it was reasonable to rely on an estimate of Mr W's living costs given there was some adverse information on his credit file, even if SMF considered two of the defaults to be historic.

As SMF didn't carry out sufficient checks, I've gone on to decide what I think SMF is more likely than not to have seen had it obtained further information from Mr W. Bearing in mind, the length of time of the agreement and the amount of the monthly payment, I would have expected SMF to have had a reasonable understanding about Mr W's regular living expenses as well as his income and existing credit commitments.

The information Mr W has provided does appear to show that when his committed regular living expenses and existing credit commitments were deducted from his monthly income, he did have the funds, at the time at least, to sustainably make the repayments due under this agreement.

I accept that the real reason for Mr W's inability to make his payments to this agreement wasn't due to his existing credit commitments or his living expenses. But what I need to think about here is what did SMF need to do in order to answer the questions its initial checks left unanswered – in other words, what were Mr W's actual regular living expenses (bearing in his credit commitments were already validated by the credit search and there's an acceptance his income was correct)? – given this was a first agreement and Mr W was being provided with a car rather than cash.

Bearing in mind checking bank statements wasn't the only way for SMF to have found out more about Mr W's actual living costs – it could have obtained copies of bills or other evidence of payment etc – I don't think that proportionate checks would have extended into obtaining the bank statements Mr W has now provided us with. So I don't think that SMF could reasonably be expected to have known about the nature and extent of Mr W's additional spending, or that he was borrowing from family as he says.

Overall and having carefully considered everything, while I don't think that SMF's checks before entering into this hire purchase agreement with Mr W did go far enough, I'm satisfied that carrying out reasonable and proportionate checks won't have stopped SMF from providing these funds, or entering into this agreement.

So I'm satisfied that SMF didn't act unfairly towards Mr W when it agreed to provide the funds. And I'm not upholding this complaint. I appreciate that this will be disappointing for Mr W. But I hope he'll understand the reasons for my decision and at least consider that his concerns have been listened to.

SMF made an offer of £1,500.00 in its final response. Despite being chased by our investigator to confirm this, SMF hasn't confirmed its position in relation to whether its offer remains available for Mr W to accept. In any event, if Mr W does wish to accept the offer, this is something that he'll need to discuss with SMF directly, as I've not upheld his complaint.

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 27 November 2023.

Jeshen Narayanan
Ombudsman