

The complaint

Mr D complains that Specialist Motor Finance Limited (SMF) irresponsibly gave him a hire purchase agreement he couldn't afford.

Mr D is represented in this complaint by a third party. For ease of reference, I'll refer to Mr D directly throughout my decision.

What happened

In May 2021 Mr D acquired a car using a hire purchase agreement from SMF. The cash price of the car was £12,480 and this was financed by the credit agreement. Mr D was required to make 58 monthly repayments of £316.35 and a final payment of £326.35.

In July 2022 Mr D complained to SMF. He said they'd lent to him irresponsibly as his monthly payments weren't affordable, and if they'd done more thorough checks, they would've realised the lending was unaffordable.

SMF sent Mr D their final response to his complaint in August 2022. They said they had completed adequate checks to assess the affordability of the agreement and those checks showed that the agreement was affordable for Mr D. They didn't uphold Mr D's complaint.

Unhappy with this response, Mr D brought his complaint to this service for investigation. He said the monthly payments had made things difficult for him, particularly with the rising cost of living.

Our investigator gave her view that SMF didn't carry out reasonable and proportionate checks, because the checks they did showed that Mr D was in an arrangement to pay on his mortgage, which could indicate some financial hardship, and so they should've completed further checks to satisfy themselves that the lending was affordable for Mr D.

Our investigator asked for bank statements from Mr D to show his financial situation prior to the agreement being entered. Some statements were provided, but our investigator had asked for further statements in order to build a picture of Mr D's finances at the time the agreement was entered. No additional evidence was provided by Mr D.

Our investigator gave her view that, based on the evidence provided, she couldn't say that SMF would've discovered anything in reasonable and proportionate checks that would've caused the agreement to be unaffordable. So, she didn't ask them to do anything more.

Mr D didn't agree and asked for an ombudsman to review his case afresh.

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.

Where evidence is incomplete, inconsistent or contradictory, I reach my view on the balance of probabilities – in other words, what I consider most likely to have happened in light of the available evidence and wider circumstances.

We explain how we handle complaints about irresponsible and unaffordable lending on our website. I've used this approach to help me decide Mr D's complaint.

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 affordable for Mr D before providing it.

In this case, I think there are two overarching questions that I need to answer in order to fairly and reasonably decide Mr D's complaint. These two questions are:

1. Did SMF complete reasonable and proportionate checks to satisfy itself that Mr D would be able to repay his loan sustainably?
 - If so, did it make a fair lending decision?
 - If not, would those checks have shown that Mr D would've been able to do so?
2. Did SMF act unfairly or unreasonably in some other way?

Did SMF complete reasonable and proportionate checks to satisfy itself that Mr D would be able to repay his loan sustainably?

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. I've carefully thought about what this means for Mr D's case.

SMF said they calculated Mr D's affordability by deducting his living expenses and credit commitments from his monthly income. They used payslips provided by Mr D, his credit history and an estimate of his living expenses using statistical data.

I've seen evidence of the credit check completed by SMF. This shows that Mr D had previously defaulted on four arrangements, but these had been settled three or more years before the application. The check also showed that Mr D had an ongoing payment arrangement for his mortgage payments.

Based on what I've seen, I don't think SMF completed reasonable and proportionate checks to satisfy itself that Mr D would be able to repay the loan affordably. I say that because Mr D was in a payment arrangement for his mortgage, suggesting that he may have been experiencing some financial difficulty at the time of applying for the agreement with SMF. So, I think SMF needed to do more than use an estimate of his living expenses to assess Mr D's affordability before granting the lending.

Would checks have shown that Mr D would be able to repay the loan sustainably?

Mr D has provided some bank statements from the time of the agreement being entered. Having reviewed these, I don't think they contain enough information to establish what Mr D's daily living and committed expenditure at the time would have likely been. This is because the bank statements provided show very little committed monthly expenses and

there are transfers of large sums each month from other accounts for which bank statements have not been provided. This means I can't say that the agreement should have been considered unaffordable.

As Mr D hasn't been able to demonstrate that his agreement was unaffordable, I can't reasonably conclude that SMF ought to have known he may have been struggling to make the repayments due under the agreement. Further, SMF have said that Mr D has made his monthly repayments on time and in full, and they've received no contact from him to say he's struggled to make his payments.

Did SMF act unfairly or unreasonably in some other way?

I haven't seen anything to make me think SMF acted unfairly or unreasonably in some other way.

If Mr D is having difficulty with his monthly repayments, he may wish to contact SMF to discuss this. And I'd remind SMF of their obligations to treat him with forbearance and due consideration if he is in financial difficulties.

My final decision

For the reasons set out above, 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 27 September 2023.

Zoe Merriman
Ombudsman