DRN-4522239

The complaint

Ms H complains that Specialist Motor Finance Limited (SMF) irresponsibly agreed to a loan she couldn't afford.

Ms H is represented by a third party but for ease of reading I will only refer to Ms H in my decision.

What happened

In January 2018 Ms H entered into a Hire Purchase agreement with SMF for a car with a cash price of £8,995, with added interest and charges the total amount to be repaid was £16,307.80. Payable by 59 monthly instalments of £271.63, and a final payment of £281.63.

Ms H said she'd had to take out further lending to meet her credit commitments. And SMF should have seen the loan wasn't affordable as she was consistently using her overdraft. She complained to SMF.

SMF said they'd used statistical data in checking Ms H's income and expenditure. And these showed she'd sufficient disposable income to sustain her repayments. They also said Ms H had maintained her repayments and they hadn't evidenced any financial difficulty.

Ms H wasn't happy with SMF's response and referred her complaint to us.

Our investigator said given Ms H credit history, the amount and repayment period of the loan SMF should have done further checks to establish whether the loan was affordable. He said if they had they'd have seen that Ms H wouldn't have been able to sustain the repayments without further financial difficulty. He said SMF should:

- Refund any payments Ms H made in excess of £8,995, representing the original cash price of the car. And they should add 8% simple interest per year from the date of each overpayment to the date of settlement.

- Remove any adverse information recorded on Ms H's credit file regarding the agreement.

SMF didn't respond to our investigator's outcome, so Ms H's complaint has been referred to an ombudsman to decide.

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.

I've considered the relevant rules, guidance and good industry practice when someone complains about irresponsible and/or unaffordable lending. There are two overarching questions I need to consider in order to decide what's fair and reasonable in all of the circumstances of the complaint. These are:

1. Did SMF complete reasonable and proportionate checks to satisfy themselves that Ms H would be able to repay the credit in a sustainable way?

a. if so, did SMF make a fair lending decision?

b. if not, would reasonable and proportionate checks have shown that Ms H could sustainably repay the borrowing?

2. Did SMF act unfairly or unreasonably in some other way?

The Consumer Credit Conduct of Business sourcebook (CONC) requires SMF to carry out a reasonable assessment of whether Ms H could afford to repay the loan in a sustainable manner. This is sometimes referred to as an "affordability assessment" or "affordability check".

The affordability checks should be "borrower-focused", meaning SMF need to think about whether repaying the loan sustainably would cause difficulties or adverse consequences for Ms H. Basically it's not enough for SMF to only think about the likelihood of Ms H being able to pay them back (credit risk) they must also consider the impact of repayment on Ms H herself (affordability risk).

There's no set list for what reasonable and proportionate checks are. But I'd expect lenders to consider the specific circumstances of the loan application. What constitutes a proportionate affordability check will generally depend on several factors such as the specific circumstances of the borrower, their financial history, current situation and whether there are any indications of vulnerability or financial difficulty.

SMF said they assessed Ms H's affordability by using statistical data based on her age and postcode. They estimated her cost of living to be £297.67, rent £284.00 with monthly credit commitments of £76.85 using credit reference data. Using her net monthly income of £1,783.00 they calculated she'd disposable income of £1,124.48. They said they also considered Ms H's credit history which they said showed she'd six active credit items, all of which were up to date, three defaults and three settled credit items. SMF said this showed Ms H had sufficient income to sustain her monthly commitments.

SMF said they'd based their lending decision on statistical data and credit reference agencies' information. SMF haven't been able to show the full credit report they relied on, but they have said the report showed Ms H had three defaults. One of which I can see was around three months prior to the agreement. So, I agree with our investigator it wasn't reasonable to rely on an estimate of Ms H's living costs given the increased indebtedness, monthly payments, and the time the agreement was due to run for. As Ms H had recently defaulted on an account, and the amount of the default was low so I think this should have led SMF to do more to verify Ms H's actual financial situation.

This doesn't automatically mean SMF shouldn't have lent to Ms H as I need to consider whether these checks would have shown that the repayments were unaffordable for her – or in other words that she lost out because of SMF's failure to complete proportionate checks. I can't be sure exactly what SMF would have found out if they'd asked. In the absence of anything else, I think it would be reasonable to place significant weight on the information set out in Ms H's bank statements.

I've reviewed bank statements covering a period of three months leading up to Ms H applying for and being granted the finance. CONC 5.2A.12 says the lender "….*must consider the customer's ability to make repayments under the agreement…. without the customer having to borrow to meet the repayments".* And if SMF had seen Ms H's bank statements they would have seen that Ms H was consistently using her overdraft to meet her credit commitments before she entered into this agreement. And remained so even after her monthly salary was credited to her account. I can see that Ms H's rent was around £400, more than the £284 used by SMF in their assessment. And that Ms H's average monthly income across the three months was £1,728 and she'd regular monthly commitments of around £1,400 (inclusive of rent). So, Ms H had a disposable income of around £328, much less than the £1,124.48 SMF said she had. And once the monthly repayment of around £271 was considered I think this would have shown SMF, if they'd checked Ms H's bank statements that they shouldn't have agreed to the lending as they should have seen that Ms H wouldn't have been able to sustain the repayments without borrowing further.

Putting things right

As I don't think SMF ought to have approved the lending, I don't think it's fair for them to be able to apply any interest or charges under the agreement. So, Ms H should only have to pay the original cash price of the car, that being £8,995.

My final decision

I uphold this complaint. And ask Specialist Motor Finance Limited to:

- Refund any payments Ms H has paid over the cash price of £8,995. And they should add to this *8% simple interest from the date of overpayment to the date of settlement. And

- Remove any adverse information recorded to Ms H's credit file about this agreement.

*HM Revenue & Customs requires Specialist Motor Finance Limited to take off tax from this interest. Specialist Motor Finance Limited must give Ms H a certificate showing how much tax they've taken off if Ms H asks for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms H to accept or reject my decision before 31 January 2024.

Anne Scarr
Ombudsman