

Complaint

Mr W complains that Specialist Motor Finance Limited (“SMF”) unfairly entered into a hire-purchase agreement with him. He’s said that he already had several other debts and he was struggling with everyday living expenses.

Background

In June 2019, SMF provided Mr W with finance for a used car. The cash price of the vehicle was £13,064.00. Mr W received a part-exchange allowance of £412,80 for an existing vehicle and entered into a hire-purchase agreement with SMF for the remaining balance to be paid.

The amount lent was £12,651.20 The agreement had interest, fees and total charges of £6,712.40 (made up of interest of £6,702.40 and an option to purchase fee of £10) and the total amount to be repaid of £19,776.40 was due to be repaid in 59 monthly instalments of £322.56 followed by 1 final monthly instalment of £332.56.

Mr W complained that the agreement was unaffordable and so should never have been provided to him. SMF didn’t uphold the complaint. It said that its checks confirmed that the finance was affordable and so it was reasonable to lend.

Mr W’s complaint was considered by one of our investigators. She didn’t think that SMF had done anything wrong or treated Mr W unfairly. So she 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 one defaulted account but that this was historic from five years previously. The credit search also showed six active accounts which were up-to-date. And 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 unlike 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 the information 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.

To be clear I'm not going to carry out a forensic analysis of whether the loan payments were affordable. I'm simply going to consider what SMF is likely to have done if it obtained the missing information I think it should have done here. I say this because 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 it's possible that Mr W's circumstances were worse than he'd let on. For example, I know that he also had a county court judgement ("CCJ") recorded against him. But the CCJ while more recent than the default was still relatively historic. And Mr W had been maintaining payments to another hire-purchase agreement which he was trading in as a result of purchasing this vehicle.

Furthermore, 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 mind 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 any additional spending, or other matters, which are now being highlighted with the benefit of hindsight.

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.

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 8 January 2024.

Jeshen Narayanan
Ombudsman