

## **The complaint**

Mr M complains that Specialist Motor Finance Limited (SMF) irresponsibly granted him a hire purchase agreement that he couldn't afford to repay.

## **What happened**

In January 2018 Mr M acquired a vehicle financed by a hire purchase agreement from SMF. Mr M was required to make 54 monthly repayments of £197.82 with an option to purchase fee of £10. The total amount repayable under the agreement was £10,692.28. Mr M believes SMF failed to complete adequate affordability checks. Mr M says that if it had it would've been clear that the agreement wasn't affordable.

SMF disagreed. It said it carried out an adequate creditworthiness assessment which relied on the information supplied by Mr M, and the information obtained via credit reference agencies. It stated that Mr M had a history of four defaults, two of which were satisfied at the point of sale, and six credit items, five of which were up to date.

Our Investigator recommended that the complaint should be upheld. They thought SMF's checks weren't proportionate given the defaulted accounts and that had it completed proportionate checks it would have likely found the agreement was unaffordable for Mr M.

Mr M agreed, but SMF failed to provide a response. As such the complaint has been referred for an Ombudsman to issue a final decision on the matter.

## **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 decision 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.

The Financial Conduct Authority (FCA) was the regulator when Mr M took out his agreement with SMF. Its rules and guidance obliged SMF to lend responsibly. SMF needed to take reasonable and proportionate steps to assess whether a borrower could afford to meet its repayments in a sustainable manner over the lifetime of the agreement. This was set out in its Consumer Credit Sourcebook (CONC).

CONC 5.3.1(G) stated that:

- 1. In making the creditworthiness assessment or the assessment required by CONC 5.2.2.2R (1), a firm should take into account more than assessing the customer's ability to repay the credit.*
- 2. The creditworthiness assessment and the assessment required by CONC 5.2.2.2R (1) should include the firm taking reasonable steps to assess the customer's ability to meet repayments under a regulated credit agreement in a sustainable manner*

*without the customer incurring financial difficulties or experiencing significant adverse consequences.*

Repaying debt in a sustainable manner meant being able to meet repayments without undue difficulty - using regular income, avoiding further borrowing to meet payments and making timely repayments over the life of the agreement without having to realise security or assets (CONC 5.3.1G (6)).

The FCA didn't specify what exact level of detail was needed to carry out an appropriate assessment. But it did say that the level of detail depended on the type of credit, the amount of credit being granted and the associated risk to the borrower relative to the borrower's financial situation (CONC 5.2.4G (2)).

So, I'd expect a lender to require more assurance the greater the potential risk to the borrower of not being able to repay the credit in a sustainable way. I'd expect a lender to seek more assurance the lower a person's income, the higher the amount of credit being applied for and the longer the term of the agreement. It is from this standpoint and criteria that I've approached my decision.

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

1. *Did SMF complete reasonable and proportionate checks to satisfy itself that Mr M would be able to repay his loan without experiencing significant adverse consequences?*
  - *If so, did it make a fair lending decision?*
  - *If not, would those checks have shown that Mr M would've been able to do so?*
2. *Did SMF act unfairly or unreasonably in some other way?*

*Did SMF complete a reasonable and proportionate affordability check?*

I'm not satisfied that SMF gathered a reasonable amount of information from Mr M about his expenditure prior to approving the finance. SMF's searches found that Mr M was left with around £279 in disposable income after factoring in his reported income of £1,200. But its credit check data showed that Mr M had four defaults, two of which were still being repaid. This demonstrated that Mr M had previously failed in his obligations on several accounts. And so, it would have been proportionate to ask Mr M about his actual expenditure at the time, to ensure that his financial situation had improved and that he could repay the loan sustainably.

I want to be clear that I've considered SMF's position about the type of checks that it did complete. And I understand that it felt none of the searches it completed demonstrated any risk of financial stress. However, considering the circumstances already mentioned I'm not satisfied that these checks adequately gathered a proportionate amount of information. SMF was lending Mr M a significant amount of money which required payments over four and a half years. Its checks failed to answer how much Mr M actually had left to spend from his income after existing commitments.

Given the size of the lending, the monthly repayments, the length of agreement and the information in Mr M's credit file, I think it would have been proportionate for SMF to have enquired about Mr M's specific expenditure – including costs such as food, petrol, utilities and housing. Without knowing what his regular committed expenditure was SMF wouldn't have got a reasonable understanding of whether the agreement was affordable for his specific circumstances.

As SMF don't appear to have sought a reasonable understanding of Mr M's total committed expenditure, I don't think it carried out reasonable and proportionate affordability checks before lending. SMF needed to do more in the circumstances before agreeing to lend. Without knowing what his regular committed expenditure was, SMF wouldn't have got a reasonable understanding of whether the agreement was affordable for him.

I'm satisfied SMF didn't complete proportionate affordability checks, but this doesn't automatically mean it failed to make a fair a lending decision.

*Would reasonable and proportionate checks have shown that Mr M could sustainably repay the borrowing?*

I can't say exactly what further questions or evidence SMF would have asked for had it sought to adequately verify Mr M's committed expenditure. So, in the absence of anything else, I've reviewed copies of Mr M's bank statements in the three months leading up to the application as well as the existing credit file information that was available at the time.

I want to be clear that I'm not suggesting SMF were required to check his bank statements specifically, but I'm satisfied that these give me a good indication of what information it would have likely found out about his financial circumstances had it completed reasonable and proportionate affordability checks.

These statements reveal that Mr M's monthly income averaged at around £1,700, consisting of his wage, overtime payments and transfers from his partner. His average monthly expenditure was around £1,270. This includes credit commitments, transfers to his partner for bills and rent, debt management plans, food and petrol. It meant Mr M was left with around £460 in disposable income.

In isolation this would appear to show that the finance agreement was sustainable and affordable for Mr M. However, the statements also show an increasing spend on gambling – around £200 in the first month, £625 in the second and around £770 in the month prior to the sale of the agreement. Mr M was spending an increasing amount on gambling transactions, ultimately around 45% of his guaranteed income. This meant that he was on average left with less than the monthly repayment amount for the agreement. Given the scale of spend on gambling I'm satisfied this element of Mr M's financial situation would have most likely been discovered had proportionate checks been completed.

Given the circumstances, proportionate checks would have shown the agreement wasn't affordable or sustainable for the four and a half years Mr M was expected to maintain payments. Whilst his income was higher than the amount declared to SMF (due to his overtime payments) his expenditure demonstrated that he was increasingly allocating his income towards gambling transactions. Prior to the sale of the agreement, he was left with less than the monthly repayment amount required once these transactions were factored in. I think this demonstrates that he'd likely be unable to sustain the agreement without incurring financial difficulties, and I don't think SMF ought to have approved the lending on that basis.

*Did SMF act unfairly or unreasonably in some other way?*

I'm not persuaded from the submissions made to date that SMF acted unfairly or unreasonably in some other way.

## **Putting things right**

As I don't think SMF ought to have approved the lending, I don't think it's fair for it to be able to charge any interest or charges under the agreement. Mr M has already settled the agreement without returning the vehicle to SMF, so SMF shouldn't be able to retain more than the original cash price of the vehicle, being £5,798.

To put things right Specialist Motor Finance Limited should:

- Refund any payments Mr M has made in excess of £5,798, representing the original cash price of the vehicle. It should add 8% simple interest per year\* from the date of each overpayment to the date of settlement.
- Remove any adverse information recorded on Mr M's credit file regarding this agreement.

\*HM Revenue and Customs requires SMF to deduct tax from the interest payment referred to above. SMF must give Mr M a certificate showing how much tax it's deducted if he asks for one.

## **My final decision**

My decision is that I uphold this complaint and direct Specialist Motor Finance Limited to put things right in the manner set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 27 December 2023.

Paul Clarke  
**Ombudsman**