Financial Ombudsman Service

The complaint

Miss A is complaining that Specialist Motor Finance Limited (SMF) shouldn't have lent to her – she says they were irresponsible in doing so. Miss A brought her complaint to us via a representative, but for ease I've written as if we've dealt directly with her.

What happened

In February 2022, Miss A took out a hire purchase agreement with SMF to finance the purchase of a vehicle. She paid no deposit and borrowed £15,298 – the cash price of the car. The agreement required Miss A to make 59 monthly repayments of £447.72, followed by a final instalment of £457.72 (including a £10 option to purchase fee). The total amount she'd have to pay to SMF was £26,873.20.

In February 2023, Miss A complained to SMF, saying that she thought SMF had failed to conduct appropriate checks before lending to her. She said she had a number of active credit agreements at the time of the lending as well as defaulted accounts and a County Court Judgement (CCJ) against her.

In response, SMF said when she'd applied, Miss A told them she earned £2,300 net monthly income, was co-habiting, and lived in mortgaged accommodation. They said they verified her income but didn't explain how. And they said they'd checked her partner's credit file to find out the amount of the mortgage, and used statistical data to estimate her non-discretionary expenditure. SMF added that they'd carried out a credit check before lending to Miss A, but as they specialise in providing credit to people who've previously experienced financial difficulty, some level of missed payments on credit wouldn't be a reason for them to decline an application.

SMF went on to explain how they'd calculated that the loan was affordable for Miss A – saying they'd factored in her credit commitments. They said the maximum monthly payment they would have allowed Miss A was £527 so the actual repayments of £458 were within her capacity.

Miss A was unhappy with SMF's response and brought her complaint to our service, where one of our investigators looked into it. SMF provided some more information about the affordability checks they had done but our investigator upheld the complaint, saying she thought SMF hadn't done enough to check that the lending was affordable for Miss A.

Miss A wasn't happy with our investigator's proposed redress. And SMF didn't agree with our investigator's assessment of Miss A's income and expenditure at the time of the lending. So the complaint was passed to me for a decision.

I issued a provisional decision on 14 December 2023, proposing not to uphold Miss A's complaint. I didn't receive a response from either party. In my provisional decision, I said:

> *"The Financial Conduct Authority (FCA) sets out in a part of its handbook known as CONC what lenders must do when deciding whether or not to lend to a consumer. In summary, a firm must consider a customer's ability to make repayments under the agreement without having to borrow further to meet repayments or default on other*

obligations, and without the repayments having a significant adverse impact on the customer's financial situation.

CONC says a firm must carry out checks which are proportionate to the individual circumstances of each case.

<u>Did SMF carry out proportionate checks?</u>

SMF said they carried out the following checks:

- *reviewed Miss A's credit file;*
- *used current account turnover analysis and other checks from one of the credit reference agencies to verify that Miss A hadn't overstated her income; and*
- *used statistical data to estimate Miss A's cost of living and hence disposable income. SMF added that they then cap this figure depending on various factors and in Miss A's case it was capped at their maximum rental for the tier, which was £527.*

Whether or not these checks were proportionate depends on various factors, including the size and length of the loan, the cost of credit, and what SMF found. With an interest rate of around 28%, the cost of credit was significant, and the term of the loan was five years. So I'd expect the checks to be thorough.

SMF said they verified Miss A's income as £2,300 per month, took her monthly credit payments figure of £354 from her credit file and estimated her cost of living expenditure as £909. They said these estimates were based on data from a credit reference agency, the Office for National Statistics, and industry publications. They added that they'd checked the monthly mortgage payments for Miss A's property by looking at her partner's credit file, and their estimate for housing was higher than the actual mortgage payments.

CONC allows a business to use statistical data when it hasn't got reasonable cause to suspect the statistical data might not be appropriate. But when SMF looked at Miss A's credit file, they'd have seen she had defaulted on six accounts and while some of these defaults were older, one was ten months before her application and one had been just two months prior to her application. They'd also have seen that she had a CCJ from April 2019, and that she had an arrangement to pay in place on one of her accounts. SMF's estimates suggested Miss A had disposable income of over £900 per month – but this isn't consistent with the adverse information on Miss A's credit file.

On balance I'm not satisfied SMF carried out proportionate checks – in the context of the recent defaults I think they should have done more to understand Miss A's expenditure.

<u>If SMF had done proportionate checks, what would they have found?</u>

I've looked at statements for Miss A's bank accounts for the three months leading up to her application to SMF. I'm not saying SMF needed to obtain bank statements as part of their lending checks. But in the absence of other information, bank statements provide a good indication of Miss A's expenditure at the time the lending decision was made.

Looking at these statements, I can see Miss A was paying £572 per month to her father. She's told us this was to repay a loan from him but also said she sold her car in February 2022 to help repay the debt because her father needed the money more quickly. I can see the proceeds from the sale of the car in Miss A's February 2022 bank statements and in March 2022 Miss A paid a lump sum to her father which was less than the proceeds of the sale. The £572 per month doesn't appear to have continued after that. So I'm inclined to say Miss A likely paid off the outstanding amount and would have *known at the time of taking out this agreement that she wouldn't have to continue the £572 per month payments and wouldn't have included them if SMF had asked about her expenditure.*

On the other hand, Miss A was paying £200 per month to another family member – and these payments appear to have continued beyond the date of this agreement. Miss A's explained this was to repay a loan for her studies. I think these payments should be included in an income and expenditure assessment.

At the time, Miss A was also making payments to another individual – she's told us these were in advance for a holiday. This arrangement appears to have been short term, so I don't think SMF would have included these amounts in an income and expenditure assessment.

Miss A was making payments to other creditors as well – around £200 per month which mostly appear to have been to debt recovery companies. And her bank statements evidence around £125 per month of other recurring expenditure – for car insurance, road tax, gym membership and other subscriptions. All of these should be included in an estimate of Miss A's committed and non-discretionary spending.

The bank statements also show that Miss A was making large payments to another credit provider – the amounts varied between £1,000 and £1,500. Miss A's told us that this was her late mother's credit card so she doesn't have access to the statements. I'm inclined to agree with SMF that payments of this size were likely to have been paying off at least a significant proportion of the balance each month. So it's not appropriate to treat these amounts as committed expenditure that Miss A would need to pay.

I haven't seen any evidence of Miss A paying any costs of housing, council tax, utilities, or mobile phone costs. And her bank statements show limited evidence of expenditure on groceries or fuel. It seems likely to me that Miss A was using the credit card to cover some of these costs. So I'm inclined to say at least a proportion of the credit card payments would have been for non-discretionary expenditure.

SMF verified Miss A's income was at least £2,300. The payments which I've explained above should definitely be included in an income and expenditure assessment total £525. And Miss A's repayments under this agreement were around £448 per month. So even if her additional non-discretionary expenditure on the credit card was £1,000 per month, Miss A's total committed and non-discretionary expenditure would have been around £1,975, leaving her with over £300 per month for emergencies and discretionary spending.

I understand Miss A's circumstances have changed significantly since the lending decision, which has made it more difficult for her to make the monthly repayments. But I can't see this was foreseeable for SMF at the time – so it's not reasonable to say they shouldn't have lent to her on that basis.

In summary, although I'm not persuaded SMF's checks were proportionate in the circumstances, I'm inclined to say that if they had done proportionate checks they could reasonably have arrived at the same outcome and decided the loan was affordable for Miss A. So I'm not inclined to uphold her complaint."

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.

Because neither party responded to my provisional decision, my final decision is unchanged from that.

My final decision

I’m not upholding Miss A’s complaint, for the reasons outlined above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Miss A to accept or reject my decision before 12 February 2024.

Clare King
Ombudsman