DRN-4392213

The complaint

Miss D is complaining that Specialist Motor Finance Limited (SMF) shouldn't have lent to her – she says they were irresponsible in doing so. Miss D 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 May 2017, Miss D took out a hire purchase agreement with SMF to finance the purchase of a vehicle. She paid no deposit and borrowed £4,478 – the cash price of the car. The agreement required Miss D to make one payment of £250, 59 monthly repayments of £146.33, and a final instalment of £341.33. The total amount she'd have to pay to SMF was £9,224.80.

In April 2023, Miss D complained to SMF, saying that she thought SMF had failed to conduct appropriate checks before lending to her.

In response SMF said when she'd applied, Miss D told them she earned £1,200 net monthly income, was single, and lived in rented accommodation. They said they verified her income using one of the credit reference agencies and used statistical data to estimate her non-discretionary expenditure. They said they calculated her disposable income was £149 per month so the loan repayments of £146.33 were affordable for her. SMF added that they'd carried out a credit check before lending to Miss D, but as they specialise in providing credit to people who've previously experienced financial difficulty, some level of missed payments on a credit file wouldn't be a reason for them to decline an application.

SMF said Miss D had made her first six months' repayments on time and then unfortunately had an accident in which the car had been written off. They said that between the insurance payments and Miss D's payments the account had been overpaid by around £100 and offered Miss D a refund of £125.

Miss D was unhappy with SMF's response and brought her complaint to our service, where one of our investigators looked into it. Our investigator thought the complaint should be upheld, saying that SMF's checks seemed to show the loan was unaffordable for Miss D.

SMF didn't respond to our investigator's view so the complaint's been passed to me for a decision.

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.

Having done so, I'm upholding Miss D's complaint for broadly the same reasons as our investigator – I'll explain why below.

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.

SMF said they reviewed Miss D's credit file and carried out an income and expenditure assessment using her stated income and estimates of her expenditure using statistical data and details from her credit file.

Looking at the credit report they reviewed, SMF would have seen that Miss D had missed a number of payments on two unsecured loans. Both loans were taken out towards the end of 2015 and one defaulted in February 2017. The other was still active but the credit report suggests Miss D had missed six monthly payments. So although Miss D had managed to maintain monthly payments of £180 on a different two-year loan from March 2014, it appears that Miss D might have been in some financial difficulties by the time of her application.

SMF said they verified Miss D's income and estimated that her non-discretionary expenditure would be around £888 per month. And they took her monthly credit commitments figure of £163 from her credit file. Deducting those figures from her monthly income suggested her disposable income was around £149 per month.

It's not clear whether SMF's estimate of non-discretionary expenditure includes car insurance, road tax and fuel. If it doesn't then the repayments of £146 per month were clearly unaffordable for Miss D. But even if it does, SMF's income and expenditure assessment suggested Miss D would have less than £3 each month after paying all her credit commitments and non-discretionary expenditure.

Given the agreement was for five years, I'm not satisfied it would be sustainable for Miss D to have less than £3 per month to cover emergencies and unexpected expenditure. So on that basis SMF shouldn't have lent to Miss D.

Putting things right

As I don't think SMF should have approved the loan, I don't think it's fair for them to charge any interest or other charges under the agreement. SMF should therefore only retain the original cash price of the car, being £4,478.

To settle Miss D's complaint, SMF should do the following:

- Refund all the payments they've received in excess of £4,478, adding 8% simple interest per year from the date of each overpayment to the date of settlement.
- Remove any adverse information recorded on Miss D's credit file regarding the agreement.

If SMF consider tax should be deducted from the interest element of my award they should provide Mrs B a certificate showing how much they've taken off so that Mrs B can reclaim that amount, assuming she is eligible to do so.

My final decision

As I've explained, I'm upholding Miss D's complaint. Specialist Motor Finance Limited need to take the steps outlined above to settle the matter.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss D to accept or reject my decision before 11 January 2024.

Clare King
Ombudsman