

The complaint

Miss C complains that Specialist Motor Finance Limited ("SMFL") irresponsibly lent to her when she took out a finance agreement with them.

What happened

In April 2015, Miss C acquired a car using a hire purchase agreement with SMFL. The total amount payable under the agreement was £12,668.00. The cash price of the car was £6,010.67 and the interest rate applied to the agreement was 39.9% APR. The term of the agreement was 60 months and after the first repayment of £250, her regular monthly repayments were around £202.05 until a final instalment of £397.05.

Miss C said the interest rate charged and the amount she had to pay was unaffordable and she later fell into arrears.

Miss C didn't feel it was fair that SMFL lent to her and didn't feel they completed the necessary checks before lending to her. Miss C said SMFL didn't ask for evidence of her income and expenditure, copies of wage slips at the time, or bank statements. She said she was just told she was accepted for finance and how much her payments would be per month. Miss C said this has now had an adverse effect on her credit score.

Miss C also said that she communicated with SMFL regularly when she was in arrears to explain she was in financial difficulty and the reasons why, but she said SMFL were unhelpful.

Miss C complained to SMFL in July 2022 and they provided her their final response. Within it, they said Miss C should have got in touch with them when she first realised she was getting into debt with her payments. And as she raised her complaint more than six years since she took out her agreement, and it had also been more than three years since they believed Miss C ought to have brought her complaint, they were unable to consider it. They also said there were eight occasions, starting from December 2015, where payments were missed.

Miss C, unhappy with SMFL's response, referred her complaint to our service. Our service explained that we thought we could look into the complaint and requested SMFL to provide their comments on Miss C's complaint.

Our service asked Miss C for her bank statements and her employer pay slips at around the time the agreement was signed. Unfortunately, due to the length of time that has passed, Miss C hasn't been able to provide them. Instead, Miss C has provided our service with an estimate of what she believed her monthly income and expenditure to have been at around that time. She said she would have received £1,100 per month. Miss C later said she would have received around £1,330 per month after retrieving an email of the job offer she received at the time. Her non-discretionary bills, such as rent and energy bills, she estimated to have amounted to around £845. This meant she would have been left with around £480 per month.

In March 2023, Miss C said she still has possession of the car and there is around £2,000 outstanding to be repaid under the agreement.

Our investigator issued his view and found that SMFL didn't need to take any action. In summary, the investigator thought that there was limited information to determine whether SMFL completed reasonable and proportionate checks to satisfy itself Miss C would be able to repay the agreement in a sustainable way. But, from what he was able to consider, he concluded that he would have liked to see SMFL to have completed more proportionate checks and for them to have obtained a more thorough understanding of Miss C's financial circumstances before lending. The investigator then went on to consider if reasonable and proportionate checks had been completed, what they would have likely shown. He concluded that bank statements would give an accurate account of what Miss C's income and expenditure was and that he couldn't rely on estimates given. As Miss C wasn't able to obtain bank statements, it wasn't possible for him to know what information SMFL would have likely seen about Miss C's circumstances if they had completed proportionate checks. And so, from what has been provided, it didn't tell him the lending was unaffordable to Miss C.

Miss C disagreed with the investigator's findings. And so the complaint has been passed to me to decide. She told our service in August 2023 that she was attempting to contact her bank once again to obtain bank statements which may have been archived due to the time that had passed. Our service gave Miss C until early September 2023 to provide those statements but hadn't done so before the deadline given.

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 not upholding this complaint and I'll explain why below.

We've set out our approach to unaffordable/irresponsible lending complaints on our website – including the key relevant rules, guidance, good industry practice and law. I've considered this approach while deciding Miss C's complaint.

SMFL needed to make sure it didn't lend irresponsibly. This means it needed to carry out proportionate checks to satisfy itself that Miss C could afford to repay the amount it was lending. A proportionate check is dependent on a number of factors including – but not limited to – Miss C's particular circumstances (e.g. her financial history, current situation and outlook, and any indications of vulnerability or financial difficulty) and the amount / type / cost of credit obtained.

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. I've carefully thought about what this means for Miss C's case.

In this case, SMFL lent to Miss C in 2015. Limited information has been provided by SMFL, but what they have provided is their account notes for Miss C. Some sections of it are heavily abbreviated, but they still provide a fair outlook of each interaction SMFL held with Miss C or actions taken to her account. On the other hand, limited information has also been

provided by Miss C. Understandably, due to the length of time that has passed since the agreement was taken out, Miss C has had difficulty obtaining her bank statements and her wage slips for April 2015, as well as her credit file showing her circumstances at the time. She also believes SMFL didn't complete the necessary checks before lending to her.

Were reasonable and proportionate checks completed?

The loan was taken out to acquire a car. It is disappointing to see that SMFL hasn't provided any information to show what checks they had relied on in making their lending decision, other than providing a copy of their internal account notes. Recorded for 3 April 2015, the notes say:

"...income confirmed...showing some adverse but nothing large... mainly good credit..."

It isn't clear from this brief note what information or documentation SMFL relied on for their checks, but the note does say "*income confirmed*" which suggests SMFL either relied on some information given to them – whether through a wage slip, for example, or Miss C declaring her income to them at the time. I'm also mindful the note above says Miss C had "*mainly good credit*" – which suggests her credit file was likely reviewed to reach that conclusion.

Thinking about things here, I think SMFL's own comments should have alerted themselves to carry out further checks, as their own notes say their checks show "*some[thing] adverse*". So, I can't fairly conclude reasonable and proportionate checks were completed at the time this loan was approved, as I can't be sure of whether SMFL requested or relied on further information to verify Miss C's income and expenditure.

Would reasonable and proportionate checks have shown that Miss C could repay the agreement in a sustainable way?

To determine what reasonable and proportionate checks might have uncovered, it is important to rely on accurate information from the time the lending decision was made. For example, bank statements and wage slips would show the income Miss C would have received at the time, and regular expenditure and financial commitments she may have also held. This would help determine whether Miss C could repay the agreement in a sustainable way.

Unfortunately, Miss C has been unable to provide these due to the length of time that has passed. Miss C has also, in the absence of bank statements, provided us with estimations of what she believed her non-discretionary outgoings to be, alongside her income. But our service can't consider estimations as we can't verify the accuracy of them.

Taking everything into account here, from the limited information provided by both parties, I can't see anything to suggest that if reasonable and proportionate checks had been completed, that it would have uncovered Miss C wouldn't have been able to repay the agreement in a sustainable way.

Did SMFL act unfairly or unreasonable in some other way?

I've also looked at whether SMFL was aware or ought to reasonably have been aware, that Miss C could be in financial difficulties by reviewing her use of her account. And if so, whether it was appropriate for SMFL to apply any interest, fees and charges.

Once a lender is aware a borrower is experiencing financial difficulty, we would expect it to exercise forbearance and due consideration, in line with its regulatory obligations. Ultimately,

we'd expect a lender to listen to a borrower, get an understanding of their circumstances and then assess the most appropriate way to move forward.

SMFL must also monitor their customer's repayment record and take appropriate action where there are signs of actual or possible repayment difficulties.

I can see from internal notes as well as from what Miss C has told our service that she made SMFL aware of her difficulty to repay some monthly instalments. I can see Miss C made SMFL aware as early as November 2015, due to her taking time off from work. I'm sorry Miss C found herself in financial difficulty. I accept at times Miss C may have had difficulty repaying in some months, highlighted by the fact she says she is in arrears.

In any event though, I can see from internal system notes Miss C told SMFL she was off work due to a health condition. So, while I have sympathy for Miss C being off work, it is likely the reason Miss C was unable to make certain repayments to this agreement was that her circumstances changed as a result of not working. I don't think SMFL could have foreseen Miss C stopping her work and therefore I can't reasonably say that SMFL ought to have realised that this would have impacted on Miss C's finances in the way that it did.

I appreciate my outcome will be very disappointing for Miss C, in itself because she has invested time and energy in pursuing her complaint. She has also explained she is caring for an individual who is currently unwell. But I hope that setting out the reasons as I've done will help explain how I've reached my decision and that she'll at least feel her concerns have been listened to.

My final decision

For the reasons I've explained, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss C to accept or reject my decision before 6 October 2023.

Ronesh Amin
Ombudsman