

The complaint

Mr C has complained that Specialist Motor Finance Limited (“SMF”) was irresponsible when it agreed car finance for him on 23 June 2015.

Mr C has brought his complaint to this Service through a representative but, for simplicity, I will refer to him throughout.

What happened

SMF agreed a hire-purchase agreement for Mr C, through an intermediary, in order for him to acquire a car. Under the hire-purchase agreement SMF would own the car unless Mr C opted to purchase it at the end of the agreement. In the meantime, until the finance was repaid, Mr C was, in essence, paying for the use of it.

The cash price of the car was £7,820 and Mr C paid a deposit of £200. He borrowed the balance of £7,620 which, plus £8,627 interest and charges, came to £16,247. This was to be repaid by an initial instalment of £250, followed by 59 instalments of £263 and then a final instalment of £458. The credit agreement was for a total of £16,447 – the deposit of £200 plus £16,247. (I’ve rounded all figures to the nearest pound for simplicity.)

Mr C says that he needed to buy a car for work and family purposes but that the agreement was never fully explained to him and he struggled to meet his repayments. Mr C says the correct checks were not carried out before the credit was agreed. He also complains about the actions of SMF after he told it he was in financial difficulty in early 2019.

Mr C says he was never really in a position to be able to make his repayments but that he managed to do so for a time. It seems Mr C started having difficulty sustaining his repayments during 2017 and by the time he spoke to SMF about it in early 2019 he’d been charged over ten unpaid direct debit fees along with other collection fees.

One of our investigators looked into Mr C’s complaint and found that SMF was irresponsible when it agreed credit for him. They recommended that SMF should refund any payments Mr C made above the purchase or cash price of the car, plus compensatory interest, and that he should keep the car.

SMF disagreed with this recommendation and said that its affordability checks didn’t suggest that Mr C would have problems meeting his repayments. It pointed out that Mr C had managed to do so, with an occasional late payment, for almost two years before his circumstances changed.

The complaint then came to me, as an ombudsman, to resolve. I issued my provisional decision on 5 November 2020 explaining my provisional findings and why I thought Mr C’s complaint should be upheld. Mr C accepted my provisional decision but I have not had a response from SMF, beyond acknowledging receipt and asking for more time to respond. SMF didn’t explain why it could not respond within the month. This final decision on the matter has been issued a week after that deadline.

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.

As before, I have also taken into account the law, any relevant regulatory rules and good industry practice at the time.

Neither party has provided any further comment or new information for me to consider and, altogether, I've found no reason to depart from my provisional findings and I am upholding Mr C's complaint. I appreciate that this will be very disappointing for SMF and I hope the below explanation makes it clear why I have come to this final conclusion.

As I'd set out in my provisional decision, Mr C's finance was agreed when the Financial Conduct Authority (the FCA) was the regulator for consumer credit. The FCA's rules and guidance obliged SMF to lend responsibly. As set out in its Consumer Credit Sourcebook (CONC – the specialist source book for consumer credit-related activities) this meant that SMF needed to take reasonable and proportionate steps to assess whether or not Mr C could afford to meet the hire- purchase payments in a sustainable manner over the lifetime of the agreement.

CONC 5.3.1G stated that:

1. *In making the creditworthiness assessment or the assessment required ... 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 ... 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 out of normal income while meeting other reasonable commitments; without having to borrow further to meet these repayments; without having to realise security or assets (CONC 5.3.1G - 6) or without incurring or increasing problem indebtedness (ILG 4.3).

(The Office of Fair Trading – OFT – was the previous regulator and it produced a document entitled 'Irresponsible Lending Guidance' which the FCA referenced in its consumer credit handbook. CONC 5.3.1G – 6 specifically referenced ILG 4.3).

Neither the law nor the FCA specified what level of detail was needed to carry out an appropriate assessment or how such an assessment was to be carried out in practice. The FCA said that the level of detail would depend on the type of product, the amount of credit being considered, the associated cost and risk to the borrower relative to the borrower's financial situation, amongst other factors.

As set out in CONC, the risk to the borrower directly relates to the particulars of the lending and the circumstances of the borrower. In other words the assessment needs to be borrower-focussed. It is not an assessment of the risk to the lender of recouping its money, but of the risk to the borrower of incurring financial difficulties or experiencing significant adverse consequences as a result of the decision to lend.

It is important to note here that the FCA didn't, and doesn't, specify exactly how the assessment is to be carried out but the "*extent and scope*" and the "*types and sources of information to use*" needed to be enough to be able to reasonably assess the sustainability of the arrangement for the borrower.

CONC 5.3.1G – 4(b) stated that:

It is not generally sufficient for a firm to rely solely for its assessment of the customer's income and expenditure, on a statement of those matters made by the customer.

In general, 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. So, for example, I'd expect a lender to seek more assurance, potentially by carrying out more detailed checks

- the *lower* a person's income (reflecting that it could be more difficult to make any repayments to a given finance amount from a lower level of income);
- the *higher* the amount due to be repaid (reflecting that it could be more difficult to meet a higher repayment from a particular level of income);
- the *longer* the term of the agreement (reflecting the fact that the total cost of the credit is likely to be greater and the borrower is required to make payments for an extended period).

Bearing all of this in mind, in coming to a decision on Mr C's case, I have considered the following questions:

- did SMF complete reasonable and proportionate checks when assessing Mr C's credit application to satisfy itself that he would be able to meet his repayments in a sustainable way?
- if not, what would reasonable and proportionate checks have shown?
- ultimately, did SMF make a fair lending decision?
- did SMF act unfairly or unreasonably in some other way, for example, how did it treat Mr C when he had difficulty meeting his hire-purchase repayments?

Did SMF complete reasonable and proportionate checks?

SMF says that it asked Mr C about his monthly income when he applied for credit, and he declared it as £1,750. SMF says it used information from a credit reference agency to investigate this figure and found it to be lower, at £1,600. It also checked Mr C's income figure on his bank statement which showed a weekly figure of about £437 and has provided a copy of the statement which covers transactions from the 10th to 12th of June 2015. SMF says it used the lower figure of £1,600 in its affordability assessment.

SMF says that it estimated Mr C's monthly outgoings as a percentage of his income, which came to just over £1,100. The customer notes provided by SMF state that a credit check revealed some small defaults and that Mr C had a credit card in arrears. SMF says it understood he was repaying about £50 towards his existing debts each month and, altogether, Mr C was left with about £450 to meet his monthly hire-purchase payments of £263.

It would seem, on the face of it, that Mr C had enough disposable income to meet his

repayments each month. However, the repayments would take up over 15% of Mr C's (estimated) income each month for five years, a considerable period. And it seems Mr C was having problems meeting his existing debts. So I think SMF ought to have looked into his outgoings in more detail in order to reasonably assess whether or not he would be able to meet his repayments sustainably over the full term of the agreement. And, bearing in mind CONC 5.3.1G-4b, I think it ought to have verified these. I can't see that SMF did this, and so, on this occasion, I don't think the checks it carried out were proportionate.

What would a reasonable and proportionate check have shown? And did SMF make a fair lending decision?

Mr C has explained his financial and personal circumstances at the time and provided some bank statements. To be clear, I'm not suggesting that SMF ought to have looked at Mr C's bank statements (though I understand it did so to check his income) but I think that these, along with Mr C's testimony, are a reasonable way of investigating what SMF was likely to have seen of Mr C's circumstances, had it carried out a proportionate check.

Mr C says that he needed a car for family reasons and explained that his relationship had broken down and he would need to be able to drive to see his children. He also explained that he paid, on average, £200 a month in child maintenance to his ex-partner. Mr C provided figures for his living costs at the time of the agreement inception and I've summarised these below. The estimated amount (excluding child maintenance) comes to £1,230, slightly higher than SMF's estimate.

Rent	£550
Council tax	£130
Utilities	£120
Car tax	£15
Car insurance	£35
Fuel	£80
Food	£160
Clothing & PPE	£50 (needed for work)
Phone and internet	£70 (needed for work)
Accountancy	£19

I can see from Mr C's bank statements that his costs at the time were in fact higher than he remembers, for example he spent about £350 in food shops and establishments in April 2015 and over £450 in May. I can see a direct debit of £225 to a high interest credit card each month and a payment of over £40 to a national debt collector in May. I've noted that Mr C had unpaid direct debits each month and incurred bank charges for these.

Mr C says he paid his rent, council tax and child maintenance in cash – an amount of £880. I don't have any evidence about these payments beyond what Mr C has said. I've noted that he made significantly high cash withdrawals, for example over £1,600 in April and £1,200 in May so I consider that what he's said about these payments to be plausible.

Having thought about everything carefully, I think it's likely that SMF would have learnt that Mr C's regular spending was higher than it had estimated and that he was experiencing difficulty meeting his existing debts, had it looked into his spending in greater depth. I think, on balance, SMF would have concluded that Mr C wasn't likely to be able to meet his repayments for further credit in a sustainable manner and would not have agreed to lend to him on this occasion. And so I find that it was irresponsible to have done so.

SMF said that Mr C managed to meet his repayments for about two years with only a couple of late payments, so the finance can't have been unaffordable for him in that time. I can see from the account records that Mr C's direct debit wasn't honoured several times throughout the agreement term and that he incurred fees in June 2016, then on six occasions in 2017, four in 2018 and from February 2019 onwards. The customer notes show that Mr C called to change the direct debit date on many occasions and at least six times before advising SMF of a change of address and job in March 2017.

SMF says that this change in Mr C's circumstances was the reason behind him having difficulty meeting his repayments and that he did not have such difficulty at the point of sale. SMF also said that it specialised in providing finance for customers who may have been through a period of financial detriment and found it difficult to finance a vehicle through other mainstream lenders.

I want to reassure SMF that I have taken these points into consideration in coming to my decision. I have also borne in mind that, as set out in CONC, lenders ought to consider more than just assessing a borrower's ability to repay credit when carrying out a creditworthiness assessment. I can't agree that in this case successfully repaying credit automatically means that Mr C managed to repay it without difficulty. As I've explained above, I think Mr C's financial difficulties were present from the start of the agreement and SMF was likely to have uncovered this through proportionate checks.

Did SMF act unfairly or unreasonably in some other way?

Mr C says that SMF didn't treat him fairly when he missed repayments. As mentioned above, Mr C struggled to meet his repayments on many occasions, either moving or missing his direct debit dates. It seems this came to a head in 2019 resulting in Mr C making a complaint that March. He says that he felt bullied and harassed through countless calls from SMF and that the lender contacted his mother at one point to try to reach him. Mr C also says that the stress of this matter has seriously impacted on his mental health.

I have limited information about the contact between Mr C and SMF. What I can see is that SMF said in its final response: " We recognise that there were attempts to contact a third party which we believed to be your place of employment. We apologise for this oversight and confirm that this number has been removed from our records". I've also noted that SMF asked Mr C to complete an income and expenditure form in early 2019 so it could take appropriate action, and it reminded him of his option to voluntarily terminate the finance agreement or surrender his vehicle.

I want to reassure Mr C that I believe him when he says that he has not had an easy time of it and I'm sorry to hear of his difficulties. I am not concluding that SMF got everything right in its dealings with him after the agreement was put in place. However, I don't have enough information to be able to say that its actions, or lack of appropriate action, caused distress or inconvenience to him to the extent that he should be paid compensation.

Putting things right

As I think the credit was irresponsibly agreed, Mr C shouldn't repay more than the capital amount he borrowed. In other words, he isn't liable for any interest, charges or fees associated with the agreement. To be clear, this includes any unpaid direct debit fees or any charges associated with debt recovery.

We'd expect Mr C to repay the capital he borrowed as he's had the use of these funds or,

in this case, the use of a car in exchange for the funds. This has the effect of reducing the amount Mr C owes under the agreement to the capital borrowed, in other words £7,820 being the cash price of the car, should the agreement have run its course.

The agreement is ongoing and from the information SMF provided, it seems Mr C's account is in arrears. However, I can see from the latest account statement dated 20 November 2019 that the balance on the account is £4,777 and that Mr C had repaid over £11,000 since the agreement started. I am not aware that he has paid anything since but, by my calculation, Mr C has already repaid the cash price of the car. Having considered all the available information, in this case I think it's fair that the car remains with Mr C and ownership of the car transfers to him.

In order to put things right for him, SMF ought to :

- a) End the agreement at no further cost to Mr C; and
- b) Treat all payments, including the deposit and upfront fees, Mr C made as payments towards the cash price of the car; and
- c) Refund any payments Mr C has made above the cash price along with 8% per annum simple interest* from the date of each overpayment to the date of settlement to reflect the fact that he should not have been deprived of these funds; and
- d) Remove all adverse information about the agreement from Mr C's credit file, once settled.

* HM Revenue & Customs requires SMF to take off tax from this interest. SMF must give Mr C a certificate showing how much tax it's taken off if he asks for one.

My final decision

As I've explained, I'm upholding Mr C's complaint about Specialist Motor Finance Limited and require it to put things right for him as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 8 January 2021.

Michelle Boundy
Ombudsman