

## **The complaint**

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

Mr O is represented by a family member but for ease of reference I have referred to Mr O throughout this decision.

## **What happened**

In January 2019, Mr O acquired a used car financed by a hire purchase agreement from SMFL. A deposit of £750 was paid and Mr O was required to make 59 monthly repayments of around £383. The total repayable under the agreement was around £23,766.

Mr O says that SMFL didn't complete adequate affordability checks. He says he was initially refused finance but then contacted to say that finance was available. He says he told the dealer his income fluctuated and says that if adequate checks taken place SMFL would have seen the agreement wasn't affordable. SMFL didn't agree. It said that it carried out a thorough assessment which included asking Mr O for personal details and credit information. It said using the information provided relevant credit checks took place to assess Mr O's credit worthiness and based on the results his application was approved.

Our investigator recommended the complaint be upheld. She thought SMFL ought to have realised the agreement wasn't affordable to Mr O.

SMFL didn't respond to our investigator's view and so this case has been passed to me, an ombudsman, to issue 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.

SMFL will be familiar with all the rules, regulations and good industry practice we consider when looking at a complaint concerning unaffordable and irresponsible lending. So, I don't consider it necessary to set all of this out in this decision.

SMFL says that it carried out credit checks to assess Mr O's credit worthiness. However, it hasn't provided a copy of the credit check it completed. I've therefore relied on a copy of the credit file supplied by Mr O. While the report provided is from August 2022, I think this gives a good indication of what SMFL would likely have seen. At the time of the application it shows that Mr O has defaulted on two credit card accounts four months earlier (total default amount around was £11,000). He also had other credit card accounts and a loan outstanding. He did have another hire purchase agreement, but it appears this was settled as part of this agreement. I think the defaulted accounts ought to have indicated that Mr O was likely to be struggling financially. It therefore would have been proportionate for SMFL to have got a more thorough understanding of Mr O's financial circumstances before lending.

While it appears that SMFL asked Mr O about his income I do not have evidence that it carried out any verification before approving the finance. Given the overall size of the borrowing, the monthly repayments and the term of the agreement, and noting the information in Mr O's credit file, I think it would have been proportionate for SMFL to have done so. I also do not have evidence that SMFL ask Mr O about his expenditure. Without knowing what Mr O's regular committed expenditure was SMFL wouldn't have got a reasonable understanding of whether the agreement was affordable or not. It therefore didn't complete proportionate checks.

I think it would have been proportionate for SMFL to have found out more about Mr O's committed expenditure. I can't be sure exactly what SMFL would have found out if it had asked. In the absence of anything else, I think it would be reasonable to place significant weight on the information contained in Mr O's bank statements as to what would most likely have been disclosed.

I've reviewed three months of bank statements leading up to the lending decision. These show that Mr O was paying a total of around £800 towards his committed living expenditure including credit commitments, insurance, subscriptions, interest charges (Mr O was operating in his overdraft) and food and travel costs. If Mr O's income had been verified this would have been seen to fluctuate over the three months leading up to the agreement with an average monthly income of around £840. While I note this average income figure includes a low amount for December, Mr O says he explained his income fluctuated and given the term of the agreement, SMFL needed to ensure that Mr O would be able to make his monthly repayments for the duration. Based on these amounts, Mr O didn't have enough disposable income to afford the additional borrowing. SMFL therefore didn't act fairly by approving the finance.

### **Putting things right**

As I don't think SMFL ought to have approved the lending, it should therefore refund all the payments Mr O has made, including any deposit. However, Mr O did have use of the car for around eight months, so I think it's fair he pays for that use. But I'm not persuaded that monthly repayments of around £383 are a fair reflection of what fair usage would be. This is because a proportion of those repayments went towards repaying interest.

There isn't an exact formula for working out what a fair usage should be. In deciding what's fair and reasonable I've thought about the amount of interest charged on the agreement, Mr O's likely overall usage of the car and what his costs to stay mobile would likely have been if he didn't have the car. In doing so, I think a fair amount Mr O should pay is £200 for each month he had use of the car. This means SMFL can only ask him to repay a total of £1,600. Anything Mr O has paid in excess of this amount should be treated as an overpayment.

To settle Mr O's complaint SMFL should do the following:

- End the agreement.
- Refund all the payments Mr O has made, less £1,600 for fair usage.
  - If Mr O has paid more than the fair usage figure, SMFL should refund any overpayments, adding 8% simple interest per year\* from the date of each overpayment to the date of settlement. Or;
  - If Mr O has paid less than the fair usage figure, SMFL should arrange an affordable and sustainable repayment plan for the outstanding balance.
- Once SMFL has received the fair usage amount, it should remove any adverse information recorded on Mr O's credit file regarding the agreement.

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

As SMFL has transferred the debt to a third party, it should arrange to either buy back the debt from the third party or liaise with them to ensure the redress set out above is carried out promptly.

### **My final decision**

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 O to accept or reject my decision before 12 December 2022.

Jane Archer  
**Ombudsman**