

## **The complaint**

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

## **What happened**

In September 2018, Mr L acquired a used car financed by a hire purchase agreement from Specialist Motor Finance. Mr L was required to make 59 monthly repayments of £433.18, with a final optional payment of £443.18 if he wanted to own the car at the end of the agreement. The total repayable under the agreement was £26,000.

In mid-2020 Mr L got into difficulties with meeting his payments under the terms of the agreement. The car was later sold at auction after Mr L voluntarily returned it.

Mr L says that Specialist Motor Finance didn't complete adequate affordability checks. He says if it had, it would have seen the agreement wasn't affordable. Specialist Motor Finance didn't agree. It said that it carried out a thorough assessment which included verifying Mr L's income and reviewing his credit history.

Our adjudicator recommended the complaint be upheld. He thought Specialist Motor Finance ought to have realised the agreement wasn't affordable to Mr L.

As Specialist Motor Finance hasn't provided a formal response to our adjudicator's recommendation, the complaint has been passed to me for a final 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.

Specialist Motor Finance 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.

Specialist Motor Finance hasn't provided a copy of the credit check it completed, although Mr L has obtained a copy of his own credit report which he has shared with us. I've seen that Specialist Motor Finance prepared a summary overview of Mr L's credit commitments at the time. I think this gives some indication of what Specialist Motor Finance would likely have seen. At the time of the application it shows that in the months leading up to the agreement Mr L had been making frequent use of high cost, short term credit. Whilst he was managing his payments towards these reasonably well, he was at the same time also managing a mortgage, several credit cards and unsecured loans alongside them. He had also had three historical credit defaults in the past, although the most recent of these had been in March 2014. On their own I would generally consider these defaults be a lesser concern. But I do think the high level of short-term borrowing in the months leading up to the agreement strongly suggests that Mr L may have been beginning to struggle financially again. Specialist Motor Finance says it based its decision to lend on Mr L sharing all household

costs with his wife and on that basis estimated that he would be left with enough disposable income to meet the monthly payments that would be due under the agreement. Against this background, I think Specialist Motor Finance ought to have carried out more detailed checks.

So I agree that it would have been proportionate for Specialist Motor Finance to have got a more thorough understanding of Mr L's overall financial circumstances before lending.

I think it would have been proportionate for Specialist Motor Finance to have taken better steps to properly verify Mr L's financial circumstances. One way Specialist Motor Finance could have done this was by requesting copies of bank statements. I've reviewed three months of bank statements leading up to the lending decision.

The statements show that Mr L was receiving a net monthly employment income of around £2,700. Mr L told us that whilst his wife paid for petrol, child expenses and shopping, the balance of the household costs, including credit payments, was paid by him. So it's likely that Mr L was having to pay for a level of committed expenditure that was substantially more than the 50% of household expenses that Specialist Motor Finance had assumed for the purposes of assessing Mr L's ability to repay the finance. I've seen that in the two months before the agreement, a total of £1,500 and then £1,350 in sums borrowed was being paid into the account. At the same time Mr L was paying out around £1,400 to cover his mortgage, credit cards and additional short-term borrowing. To summarise, the statements show that a great deal of reliance was being placed on high cost borrowing and I think that supports the fact that Mr L's financial situation was likely to have been already deteriorating before he took out the agreement. Were it not for the additional borrowing that was being taken out in the months before the agreement, Mr L would not have had enough disposable income to be able to meet the monthly repayments that would be due.

I am therefore satisfied that the statements show that Mr L was struggling financially. I don't consider he was in a position to afford the repayments towards the new agreement without getting into further financial difficulty and having to borrow further. Had Specialist Motor Finance completed proportionate checks, I think it's likely it would have discovered this too. It therefore didn't act fairly by approving the finance.

### **Putting things right – what Specialist Motor Finance needs to do**

As I don't think Specialist Motor Finance ought to have approved the lending, it should therefore refund all the payments Mr L has made, including any deposit. However, based on the information we have, Mr L did have use of the car for around 33 months before he returned it – during which time it appears from the available information that 32 payments were made to Specialist Motor Finance - so I think it's fair he pays for that use. But I'm not persuaded that monthly repayments of over £400 a month 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 L'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 L should pay is £300 for each month he had had use of the car. This means Specialist Motor Finance can only ask him to repay a total of £9,600. Anything Mr L has paid in excess of this amount should be treated as an overpayment.

To settle Mr L's complaint Specialist Motor Finance should do the following:

- End the agreement with nothing further to pay.

- Refund all the payments Mr L has made, less £9,600 for fair usage.
  - If Mr L has paid more than the fair usage figure, Specialist Motor Finance should refund any overpayments, adding 8% simple interest per year\* from the date of each overpayment to the date of settlement. Or;
  - If Mr L has paid less than the fair usage figure, Specialist Motor Finance should arrange an affordable and sustainable repayment plan for the outstanding balance.
- Once Specialist Motor Finance has received the fair usage amount, it should remove any adverse information recorded on Mr L's credit file regarding the agreement.

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

### **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 L to accept or reject my decision before 27 July 2023.

Michael Goldberg

**Ombudsman**