

The complaint

Mrs M complains about how Specialist Motor Finance Limited (SMF) treated her, when she encountered financial difficulties with a hire purchase agreement.

What happened

In November 2018, Mrs M says she was asked by her ex-partner, who I'll call 'A', to help him get finance for a car. Mrs M says A told her he needed a car to get to work, so she agreed to take out a hire purchase agreement with SMF, in her name. As part of their arrangement, it was planned for A to make payments to Mrs M on a monthly basis.

By the end of 2018, Mrs M says she and A had separated, after she had cause to involve the police due to A's abusive behaviour towards her. Mrs M says she contacted SMF and told them about the nature of the separation. She also says she told SMF she couldn't afford the repayments, as A wasn't contributing towards them.

A few months later, the agreement entered into arrears and Mrs M made contact with SMF to try and sort things out. During her discussions with SMF, Mrs M decided to voluntarily surrender the car and gave SMF A's address so they could collect it. Once the car was in SMF's possession, they arranged for it to be sold at auction.

The sale of the car reduced the outstanding amount owed under the hire purchase agreement. But, this still left a balance that SMF held Mrs M responsible for.

Over the next few years, Mrs M made repayment arrangements with SMF and then with a recovery agent, after the account was sold on. However, in July 2021 Mrs M raised a complaint with SMF and said they hadn't checked that she was able to afford the hire purchase agreement when they gave it to her in 2018. Mrs M also complained that SMF hadn't helped her, when she made them aware of her personal circumstances in early 2019.

In their response to Mrs M's complaint, SMF said they had completed proportional checks to make sure Mrs M was able to meet the repayments due under the agreement. They also said they weren't aware of Mrs M's financial circumstances prior to July 2019. Mrs M didn't accept SMF's response and brought her complaint to us.

One of our investigators looked into Mrs M's case and found that SMF hadn't treated Mrs M fairly. Although she concluded SMF had carried out proportional affordability checks on Mrs M's application, she said SMF should have offered Mrs M further help in January 2019.

The investigator asked SMF to refund any interest and charges added to the balance of the hire purchase agreement from January 2019 onwards. She also asked SMF to remove any adverse information recorded about the agreement and to pay Mrs M £200 for the distress and inconvenience she had been caused.

Mrs M accepted the investigator's conclusions, but SMF didn't respond. So, Mrs M's case has been passed to me to make a final decision.

I sent Mrs M and SMF my provisional decision on this case, on 3 July 2023. I explained why I think the complaint should be upheld. A copy of my provisional findings is included below:

This case is about a hire purchase agreement in Mrs M's name taken out with SMF, which is a regulated financial product. As such, we are able to consider complaints about it.

Mrs M has previously raised concerns with SMF about the nature of A's involvement in the application for the finance and the confusion caused when Mrs M was given a balance of the account. These concerns were looked into by SMF in March 2020, quite some time before Mrs M approached our service. So, to be clear, I haven't considered those concerns here.

Instead, I've thought about the complaint raised by Mrs M about SMF's affordability assessment and when she says she told them about her difficult personal circumstances in January 2019.

The affordability of the agreement

We've set out our general approach to complaints about unaffordable or irresponsible lending - including the key rules, guidance and good industry practice - on our website. And I've referred to this when deciding Mrs M's complaint.

Having carefully thought about everything, I think the key questions to ask here are:

Did SMF complete reasonable and proportionate checks to satisfy themselves that Mrs M would be able to make repayments due under the agreement in a sustainable way?

- If so, did it make a fair lending decision?*
- If not, would those checks have shown that Mrs M would've been able to do so?*

SMF provided this agreement under the authorisation and regulation of the Financial Conduct Authority ("FCA"). The rules and regulations in place required SMF to carry out a reasonable and proportionate assessment of Mrs M's ability to make the repayments under this agreement.

This assessment is sometimes referred to as an "affordability assessment" or "affordability check". The checks had to be "borrower" focused – so SMF had to think about whether making repayments sustainably would cause difficulties or adverse consequences for Mrs M.

In practice this meant that SMF had to ensure that making the payments under the agreement wouldn't cause Mrs M undue difficulty or adverse consequences. In other words, it wasn't enough for SMF to simply think about the likelihood of it getting their money back, they had to consider the impact of the repayments on Mrs M.

Checks also had to be "proportionate" to the specific circumstances of the application for the agreement. In general, what constitutes a proportionate affordability check will be dependent upon a number of factors including – but not limited to – the particular circumstances of the consumer (e.g. their financial history, current situation and outlook, and any indications of vulnerability or financial difficulty) and the amount, type and cost of credit they are seeking.

Even for the same customer, a proportionate check could look different for different applications. In light of this, I think that a reasonable and proportionate check ought generally to have been more thorough when:

- the lower a customer's income (reflecting that it could be more difficult to make any*

repayment 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); and*
- the longer the term of the agreement (reflecting the fact that the total cost of the credit is likely to be greater and the customer is required to make payments for an extended period).*

There may also be other factors which could influence how detailed a proportionate check should've been for a hire purchase application – including (but not limited to) any indications of borrower vulnerability and any foreseeable changes in future circumstances. So, I've carefully thought about all of the relevant factors in this case.

In Mrs M's case she was given a loan under a hire purchase agreement for £4,000 with monthly payments of £144.81 over three years. Inclusive of an option to buy payment of £10, the total amount payable by Mrs M to SMF was £5,223.16.

SMF have told us that they looked at Mrs M's payslips, her existing borrowing commitments and her borrowing history, when she applied for the hire purchase agreement. SMF also say they looked at a general cost of living index, to work out if Mrs M had an appropriate amount of disposable income to meet the repayments of the loan.

We've not seen Mrs M's payslips, but I've reviewed several of her bank account statements from the end of 2018. Having done so, I can see that Mrs M's income reflects the amount used by SMF, to start their affordability checks.

The bank account statements also show that on the whole, Mrs M operated the account well, with little sign of financial strain. So, I don't think there was any significant indicator to SMF that she was in financial difficulty. I acknowledge where Mrs M has told us that she was receiving some financial help from her employer, but I don't think this was obvious to SMF at the time.

Additionally, Mrs M was receiving payments into her account from A, to contribute to their regular outgoings. And while SMF wouldn't have seen this, as they didn't request Mrs M's bank account statements, I think it further supports the argument that her income was more than sufficient to cover her essential expenditure. I also think there was sufficient disposable income remaining to cover the proposed monthly payment to SMF.

I accept that the tool SMF used to form a general view of Mrs M's financial circumstances, was not an exact and true reflection. However, I've considered the regular monthly repayments Mrs M made at the end of 2018 and what we know about her income. Having done so, I think SMF's findings that Mrs M had sufficient disposal income was fair and reasonable.

SMF have told us that during their check, they found that Mrs M didn't have any accounts in default and all of her borrowing was well ran and up to date. So, I've looked at a report Mrs M has provided from a credit reference agency, to see if that is supported. After considering that report, I agree with SMF's position, in that Mrs M's borrowing history matches their findings from 2018.

In all the circumstances, I think SMF gathered relevant and proportional information to show that Mrs M was able to make the payments due under the hire purchase agreement in a sustainable way. Overall, I'm persuaded that SMF made a fair lending decision when they provided the borrowing to Mrs M.

Mrs M's personal circumstances

Mrs M has also complained that SMF didn't treat her fairly when she told them about her personal circumstances in January 2019. She says she separated from A, because he became physically abusive towards her. And that the result of this made her vulnerable, both with her wellbeing and her financial situation.

The guidance about supporting vulnerable customers which was available to SMF at the time, was The FCA's 'Occasional Paper No. 8 – Customer Vulnerability'. This was published in February 2015 and aimed to increase understanding around good practice for dealing with vulnerable consumers.

The guidance explained:

“A vulnerable consumer is someone who, due to their personal circumstance, is especially susceptible to detriment, particularly when a firm is not acting with appropriate levels of care”

Under 'Examples of risk factors for vulnerability' it says:

“change in circumstances (e.g. job loss, bereavement, divorce)”

So, it follows that I'm satisfied Mrs M's circumstances had at least one of the risk factors for 'vulnerability'. I'm satisfied SMF would've been aware of this when she first discussed her financial difficulties and as the situation developed to the point SMF took back Mrs M's car.

There are a number of requirements set out by the Financial Conduct Authority ('FCA') in the Principles for Business handbook (PRIM). PRIM 2.1.1 6 sets out that:

“A firm must pay due regard to the interests of its customers and treat them fairly”

The FCA also sets out responsibilities in the Consumer Credit Sourcebook (CONC). CONC 7.3.4 sets out:

“A firm must treat customers in default or arrears difficulties with forbearance and due consideration”

CONC 7.3.5 goes on to give some examples of treating a consumer with 'forbearance':

“considering suspending, reducing, waiving or cancelling any further interest or charges”

Or:

“allowing deferment of payment of arrears”

“accepting token payments for a reasonable period of time in order to allow a customer to recover from an unexpected income shock”

From looking at SMF's contact with Mrs M, I can see that the assistance they offered to her, was talk to her about ending the contract through voluntary surrender and to look to agree a repayment plan. SMF also passed the outstanding balance of the account to a recovery agent in August 2019.

I don't think it was likely that Mrs M would have wished to have kept the car, given her financial position, the difficulty getting the car back from A and that she chose to voluntary

surrender the agreement anyway. And I think it's fair for Mrs M to pay for the cost of the car financed by the hire purchase agreement.

However, bearing in mind SMF's responsibility to treat Mrs M with due consideration and forbearance, I think SMF should have done more to help.

In all the circumstances, I think SMF should have supported Mrs M by keeping the debt with them, where they would have been best placed to work with her vulnerable circumstances. I also think SMF should have looked to suspend the interest and late payment fees from being added to the account, to prevent the overall debt from increasing.

SMF were aware of the very distressing circumstances she has explained and what led to Mrs M taking out the agreement in the first place. So, I think SMF could have prevented a further impact on her financial standing, by showing more forbearance with the details passed onto credit reference agencies.

In light of my findings here, I've gone on to consider when SMF should have taken further steps to help Mrs M.

SMF have sent us their records of contact with Mrs M from November 2018 onwards. I can see from those records that they don't have a note of contact with Mrs M in January 2019. SMF's records show that Mrs M first made them aware of her personal circumstances in July 2019. So, I've thought about what Mrs M has said to decide when SMF could have offered her more support.

Mrs M has told us that she separated from A in late 2018. I acknowledge that it must have been very difficult for Mrs M during this time. And she has sent us an email from a police officer, to show what had happened when her relationship with A had ended. But, that email was sent to Mrs M in June 2019, some months after she says she made SMF aware of her situation.

Additionally, I can see from looking at the statements for the loan, that payments continued to be made until June 2019. I think this shows that Mrs M maintained her commitment to the agreement, after the relationship with A had ended.

After considering all the evidence, on balance I'm not persuaded Mrs M made SMF aware of her circumstances in January 2019. Based on what I've seen, I think it's likely Mrs M made SMF aware of her vulnerabilities in July 2019. So, I think this is when SMF should have offered Mrs M more help and support.

The settlement of this complaint

I've concluded that SMF should have suspended interest and fees in July 2019. Consequently, I think it's fair for SMF to now refund any interest applied to the balance of the loan from July 2019 onwards and to refund the two £12 fees added in July and August 2019.

Given that Mrs M may have made payments towards the loan balance since July 2019, any refund of fees and interest, may mean her account will enter into a credit balance.

If this happens, I think it's fair for SMF to add interest to that balance, at 8% a year simple, calculated from when the credit balance would have been created, to the date of settlement of this complaint. I say this because Mrs M has would have been without the use of any funds paid over and above, what she owes to SMF.

However, it may be that a balance remains owed by Mrs M. In this instance, I remind SMF of

their responsibility to treat Mrs's M's current financial circumstances with due consideration and forbearance. This will mean working with Mrs M to make sure she is able to make affordable repayments to any outstanding debt.

I've also said that SMF could have prevented any negative information from being applied to the information held with credit reference agencies. So, I think it's fair for SMF to remove any adverse information, from the records kept by the credit reference agencies they use, about the hire purchase agreement in Mrs M's name.

Mrs M has told us that due to A's actions, she encountered extreme difficulties at her place of work and feared for her safety. This is in addition to the impact on her financial circumstances and her mental health. But, I agree with the investigator and think Mrs M was caused additional trouble, when she had to explain her situation to the debt recovery agent and where she saw the balance of her loan increasing.

I accept that nearly all of Mrs M's worry in 2018 and 2019, was caused by A. But, I think the distress Mrs M experienced was exacerbated by how SMF treated her. So, I think it's fair for SMF to make a payment to Mrs M to reflect the distress they caused. Having considered everything, I think it's fair for SMF to pay Mrs M £200 for the distress and inconvenience she experienced.

Mrs M responded to the provisional decision and accepted it. SMF didn't respond to the provisional 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.

As Mrs M accepted my findings and SMF didn't make any further comments, I see no reason to depart from the conclusions I reached in my provisional decision.

Putting things right

For these reasons, Specialist Motor Finance Limited should:

1. refund all interest and the two £12 fees applied to the balance of the hire purchase agreement from July 2019 to the date of settlement of this complaint;
2. add interest at a rate of 8% a year simple to any credit balance created after part one of this settlement has been carried out, calculated from when the credit balance would have been created, to the date of settlement of this complaint;
3. remove any adverse information recorded with credit reference agencies about the hire purchase agreement in Mrs M's name; and
4. pay Mrs M £200 for the distress and inconvenience she has experienced.

SMF must pay these amounts within 28 days of the date on which we tell them Mrs M accepts my final decision. If they pay later than this, they must also pay interest on the settlement amount from the date of final decision to the date of payment at 8% a year simple.

If SMF deducts tax from any interest they pay to Mrs M, they should provide Mrs M with a tax deduction certificate if she asks for one, so she can reclaim the tax from the tax

authorities if appropriate.

My final decision

My final decision is that I uphold this complaint and require Specialist Motor Finance Limited to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 18 August 2023.

Sam Wedderburn
Ombudsman