DRN-4415958

The complaint

Mr N complains that Specialist Motor Finance Limited (SMF) didn't carry out sufficient checks before agreeing to a loan he said he couldn't afford.

What happened

In December 2021 Mr N acquired a car when he entered into a Hire Purchase agreement with SMF. Mr N said his main source of income was from a benefit payment. But he'd recently started his own business and was hopeful of starting to get an income form this. He said he was looking at acquiring the car and was interested in seeing how much this would cost. He said he was persuaded to apply for a loan and was told income would be stated as a salary and not benefits. The cash price of the car was £8,693 with added interest and charges the total amount repayable was £13,756.12. This was repayable in 56 monthly instalments of £241.16 and a final payment of £251.16. Mr N said he'd struggled to meet the monthly repayments and said SMF should have checked his financial situation as he'd been in an Individual Voluntary Arrangement (IVA). He complained to SMF.

SMF said Mr N had given his monthly income as £1,800 which they said they verified through a credit reference agency (CRA). They'd also used data from CRA's and the Office for National Statistics (ONS) to assess Mr N's expenditure. They said they assessed his day to day living costs to be £889.58, and his credit commitments to be £558.76. This meant after the new loan was considered Mr N had a disposable income sufficient to maintain his repayments.

Mr N wasn't happy with SMF's response and referred his complaint to us.

Our investigator said SMF hadn't done enough checks before agreeing to lend to Mr N as she could see that Mr N had struggled previously in maintaining his credit commitments. And considering the increase in Mr N's indebtedness she said they should have dome more to establish Mr N's financial situation. And after reviewing Mr N's bank statements she said he didn't have enough disposable income to sustain the agreement repayments. She said SMF should:

- Calculate how much Mr N has paid in total and deduct £2,700 for fair usage. If Mr N has paid more than the fair usage figure, they should refund any overpayments, adding 8% simple interest per year* from the date of payment to the date of settlement.

- Remove any adverse information recorded on Mr N's credit file regarding the

agreement.

- If there were any arrears after the settlement has been calculated, they should arrange an affordable repayment plan. And treat Mr N with forbearance and due consideration.

SMF asked for the evidence the investigator had based her assessment on which was sent to them. As SMF hasn't responded to accept or reject our investigators outcome, Mr N's complaint has been referred for an ombudsman to decide.

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.

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I've considered the relevant rules, guidance and good industry practice when someone complains about irresponsible and/or unaffordable lending. There are two overarching questions I need to consider in order to decide what's fair and reasonable in all of the circumstances of the complaint. These are:

1. Did SMF complete reasonable and proportionate checks to satisfy themselves that Mr N would be able to repay the credit in a sustainable way?

a. if so, did SMF make a fair lending decision?

b. if not, would reasonable and proportionate checks have shown that Mr N could sustainably repay the borrowing?

2. Did SMF act unfairly or unreasonably in some other way?

The Consumer Credit Conduct of Business sourcebook (CONC) requires SMF to carry out a reasonable assessment of whether Mr N could afford to repay the loan in a sustainable manner. This is sometimes referred to as an "affordability assessment" or "affordability check".

The affordability checks should be "borrower-focused", meaning SMF need to think about whether repaying the loan sustainably would cause difficulties or adverse consequences for Mr N. Basically it's not enough for SMF to only think about the likelihood of Mr N being able to pay them back (credit risk) they must also consider the impact of repayment on Mr N himself (affordability risk).

There's no set list for what reasonable and proportionate checks are. But I'd expect lenders to consider the specific circumstances of the loan application. What constitutes a proportionate affordability check will generally depend on several factors such as the specific circumstances of the borrower, their financial history, current situation and whether there are any indications of vulnerability or financial difficulty.

SMF said they carried out credit searches on Mr N which showed some outstanding balances. But when the amount Mr N already owed plus a reasonable amount for living expenses, based on statistical data, were deducted from his monthly income the monthly payments were still affordable. They said they were also satisfied that the monthly payments were less than the maximum amount they'd determined to be affordable for him based on his income.

But from what SMF did obtain about Mr N's circumstances I don't think it was reasonable to proceed with the payments being affordable simply on the basis that they took up less than 25% of his income. Other factors should be considered such as is the borrower's income low, the amount lent high, or over a longer period of time. And whether the borrower had an impaired credit history – which would suggest the lender needed to know more about a prospective borrower's ability to repay. I can see that the agreement was over 57 months, and that the summary report provided by SMF about Mr N's credit history showed a payment arrangement. So, I don't think the checks SMF did were proportionate or reasonable as I think they needed to verify Mr N's expenditure.

This doesn't automatically mean SMF shouldn't have lent to Mr N as I need to consider whether these checks would have shown that the repayments were unaffordable for him – or in other words that he lost out because of SMF's failure to complete proportionate checks. I can't be sure exactly what SMF would have found out if they'd asked. In the absence of anything else, I think it would be reasonable to place significant weight on the information set out in Mr N's bank statements.

Mr N has provided three months bank statements prior to the lending, which have been sent to SMF on their request. These show that Mr N's average income, comprising in the main benefit payments and a small income from his new business averaged around £1,888. And his outgoings for his day to day living costs covering his rent, food, utilities, insurance, mobile phone, petrol, car tax, and his credit commitment for an unsecured loan averaged around £1,748, which would have left Mr N with a disposable income of around £140. As his repayment under the finance agreement was around £241, I think this shows the lending was unaffordable.

Putting things right

I can see that the car has been returned to SMF and sold. And that there is an outstanding balance. As I don't think SMF should have lent to Mr N he should be refunded the repayments he's made. But Mr N did have use of the car for around 18 months, and this should be taken into account. I'm not persuaded the monthly repayments of £241.16 to be 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 N'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. Our investigator considered fair usage to be £150 a month, which over 18 months equates to £2,700, which I think is fair and reasonable.

My final decision

I uphold this complaint. And ask Specialist Motor Finance Limited to:

- Calculate how much Mr N has paid in total and deduct £2,700 for fair usage. If Mr N has paid more than the fair usage figure, they should refund any overpayments, adding 8% simple interest per year* from the date of payment to the date of settlement.

- Remove any adverse information recorded on Mr N's credit file regarding the agreement.

- If there are any arrears after the settlement has been calculated, they should arrange an affordable repayment plan. And treat Mr N with forbearance and due consideration

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 27 January 2024.

Anne Scarr
Ombudsman