

Complaint

Mr W complains that Specialist Motor Finance Limited (“SMF”) unfairly entered into a hire-purchase agreement with him. He’s said that the agreement was unaffordable.

Background

In January 2022, SMF provided Mr W with finance for a used car. The cash price of the vehicle was £21,000.00. Mr W paid a deposit of £7,000.00 and entered into a hire-purchase agreement with SMF for the remaining amount to be paid.

The amount lent was £14,000.00. The agreement had interest, fees and total charges of £7,078.40 (made up of interest of £7,068.40 and an option to purchase fee of £10). The total amount to be repaid of £21,078.40 (not including Mr W’s deposit) was due to be repaid by 59 monthly instalments of £351.14 followed by a final monthly instalment of £361.14.

Mr W complained that the agreement was unaffordable and so should never have been provided to him. SMF didn’t uphold the complaint. It said that its checks confirmed that the finance was affordable and so it was reasonable to lend.

Mr W’s complaint was considered by one of our investigators. She didn’t think that SMF had done anything wrong or treated Mr W unfairly. So she didn’t recommend that Mr W’s complaint should be upheld. Mr W disagreed with our investigator and the complaint was passed to an ombudsman for a final decision.

My findings

I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint.

We’ve explained how we handle complaints about irresponsible and unaffordable lending on our website. And I’ve used this approach to help me decide Mr W’s complaint.

Having carefully thought about everything I’ve been provided with, I’m not upholding Mr W’s complaint. I’d like to explain why in a little more detail.

SMF needed to make sure that it didn’t lend irresponsibly. In practice, what this means is that SMF needed to carry out proportionate checks to be able to understand whether any lending was sustainable for Mr W before providing it.

Our website sets out what we typically think about when deciding whether a lender’s checks were proportionate. Generally, we think it’s reasonable for a lender’s checks to be less thorough – in terms of how much information it gathers and what it does to verify that information – in the early stages of a lending relationship.

But we might think it needed to do more if, for example, a borrower’s income was low, the amount lent was high, or the information the lender had – such as a significantly impaired

credit history – suggested the lender needed to know more about a prospective borrower's ability to repay.

SMF says it agreed to this application after Mr W provided details of his monthly income. It says it also carried out credit searches on Mr W which showed eleven active accounts that had been well paid. And while Mr W had had previous difficulties with credit in the form of defaulted accounts these were historic and the credit search showed that the most recent of Mr W's defaults took place some four years prior to this application.

In SMF's view, when payments to the amount Mr W already owed, plus a reasonable amount for his living expenses, were deducted from his monthly income the monthly payments were affordable. On the other hand, Mr W says that these payments were unaffordable and there was no way he was going to be able to maintain them.

I've thought about what Mr W and SMF have said.

The first thing for me to say is that unlike our investigator, I don't think it was reasonable to rely on an estimate of Mr W's living costs given his existing indebtedness, his historic difficulties with credit, as well as the cost of credit and the term of the agreement. In these circumstances, I don't think that SMF's checks did go far enough as I would have expected it to have obtained information on Mr W's actual living costs rather than estimated this.

Ordinarily, where a firm failed to carry out reasonable and proportionate checks before providing credit to a customer, I'd usually go on to recreate reasonable and proportionate checks in order to get an indication of what such checks would more likely than not have shown. However, despite having been given ample opportunity to do so, Mr W has not provided me with anything to show that his actual living costs at the time would have shown that he couldn't have afforded to make his payments.

All Mr W has provided is a copy of his credit file which while it does show me that his circumstances took a turn for the worse in the latter part of 2022, this is a number of months after he entered into this agreement. Furthermore, it doesn't clearly contradict the estimates of Mr W's living expenses that SMF relied on either. So I don't think that the information provided does clearly show that SMF obtaining further information on Mr W's living costs would have led to it deciding against it lending to him.

I accept it's possible that Mr W's circumstances may have been worse than what he's been able to show and worse than he'd let on to SMF. But without clear evidence to show me that this was the case and while I sympathise with the difficulty Mr W went on to experience some time after, I can't reasonably say that proportionate checks would have prevented SMF from lending in this instance.

Overall and having carefully considered everything, while I don't think that SMF's checks before entering into this hire purchase agreement with Mr W did go far enough, I've not been persuaded that carrying out reasonable and proportionate checks would have stopped SMF from providing these funds, or entering into this agreement.

So I'm satisfied that SMF didn't act unfairly towards Mr W when it agreed to provide the funds. And I'm not upholding this complaint. I appreciate that this will be disappointing for Mr W. But I hope he'll understand the reasons for my decision and at least consider that his concerns have been listened to.

Although I'm not upholding Mr W's complaint, I would like to remind SMF of its obligation to exercise forbearance and due consideration now that it has been told more about Mr W's financial position, in the event that an outstanding balance remains to be repaid even though

the car has been returned and Mr W continues having difficulty making payments towards this going forward.

My final decision

My final decision is that I'm not upholding Mr W's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 18 March 2024.

Jeshen Narayanan
Ombudsman