DRN-4508939

The complaint

Mr B complains that Specialist Motor Finance Limited (SMF) acted irresponsibly when agreeing to a loan he couldn't afford.

What happened

In March 2022 Mr B acquired a car when he entered into a Hire Purchase agreement with SMF. The cash price of the car was £15,499 with added interest and charges the total amount repayable was £20,230.84 payable in 35 monthly instalments of £561.69, and a final payment of £571.69. Mr B said he already had two loans and five credit cards at the time he entered into the agreement. He said if SMF had carried out sufficient checks on his financial situation they would have seen the loan wasn't affordable for him. And having the loan has worsened his financial situation and affected his health. He complained to SMF.

SMF said their checks had been proportionate and reasonable. They assessed Mr B to have £3,000 a month in income. And by using statistical data they assessed his outgoings to be £1,728..53 which meant Mr B had a disposable income of £1,271. 47. So after the new loan amount was taken into account Mr B had a net disposable income of £709.68. SMF said they also checked Mr B 's credit history and found all of his active accounts were being well managed and he didn't have any defaults or court judgements. They said they'd made a fair lending decision as the loan was affordable for Mr B.

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

Our investigator said SMF should have looked further into Mr B's financial situation as his credit commitments showed he'd taken out two unsecured personal loans the month prior to the agreement which had increased Mr B's indebtedness. Our investigator said that this would have shown that Mr B's average monthly salary was far lower than that used by SMF in their assessment. And said this showed the lending wasn't affordable for Mr B. To put things right he said SMF should:

- Refund any payments Mr B has made in excess of £15,499, representing the original cash price of the car. And they should add 8% simple interest per year* from the date of each overpayment to the date of settlement.

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

SMF didn't agree. They said the investigator's assessment was flawed as he'd only considered Mr B's testimony for his annual income. And hadn't adjusted for his reduced outgoings as at the time of the lending Mr B was living with his parents. And if he had it could be seen that the lending was still affordable. SMF asked 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.

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 B 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 B 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 B 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 B. Basically it's not enough for SMF to only think about the likelihood of Mr B being able to pay them back (credit risk) they must also consider the impact of repayment on Mr B herself (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 used statistical data to estimate Mr B's expenditure and assessed his cost-of-living costs including rent to be £1,077.40. They said they saw that Mr B's monthly credit commitments were £651.13. Mr B had said his monthly income was £3,000 which meant he'd a disposable income of £1,271.47. They considered this was sufficient to sustain the new monthly commitment of £561.79.

SMF also considered Mr B's credit report. SMF haven't been able to show the full credit report they relied on, but they have said the report showed Mr B had 10 active accounts which were all up to date. But I can see this also showed Mr B had the previous month taken out two unsecured personal loans totalling around £11,000. And that Mr B had struggled previously in sustaining repayments as there had been defaults in his credit history. I agree with our investigator it wasn't reasonable to rely on an estimate of Mr B's living costs given the substantial increased indebtedness he'd taken on and the total amount repayable under this agreement. So, I don't think the checks SMF carried out were reasonable and proportionate.

This doesn't automatically mean SMF shouldn't have lent to Mr B 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 B’s bank statements.

Mr B has provided details of two bank accounts that he had. And I can see his salary being paid in for January 2022, £1,885.63 and February 2022, £2,710.04. Mr B has also said he was unemployed between October and December 2021. So, his average income across the two months was around £2,300, less than the £3,000 SMF used in their assessment. If they’d seen Mr B’s actual income, using their assessment for his cost of living and credit commitments, Mr B would have been left with around £571, after the new repayment was considered, he’d only have had around £10 in disposable income. On this basis the loan wasn’t affordable.

SMF has said that they’d taken Mr B’s existing car loan into account but as this was shortly to end, Mr B would have been in a better financial situation as his credit commitments would have been around £328. And that he was living with family so the rent they’d allowed would have also reduced to around £200 making the loan affordable for him.

I can see from Mr B’s statements that he paid £470 for a mortgage, £100 to a debt collector, and he’d two credit cards, two unsecured loans and a mail order account. Taking 5% as a minimum repayment for the available credit on the credit cards and mail order account to sustainably repay any outstanding balances. And the repayments for the unsecured loans Mr B had credit commitments of around £468. He also had an existing car loan for around £323, with a remaining balance of around £1600, so approximately another five months repayments. In total his commitments were £1,361, leaving Mr B around £939, after the new car payment is taken into account Mr B would have had around £377 for his day to day living costs, food, utilities, car insurance, car tax and petrol.

But CONC 5.2A.12 says

“The firm must consider the customer’s ability to make repayments under the agreement:…… .3) without the customer having to borrow to meet the repayments;

I can see from Mr B’s bank statements that he was regularly making repayments to his credit card accounts, several times a month. And I can also see several cash advance payments being paid into his bank accounts from his credit card accounts. There are also several payments paid in and payments sent to, a variety of named people some of which are titled *“loan*”. Mr B has said he’d borrowed from family to help manage his credit commitments. I think the statements show Mr B was manging his finances predominately by borrowing from other credit facilities or family and friends. And as outlined above Mr B was also paying a debt collector.

Overall, I think this shows Mr B was struggling financially. With the recent two new loans totalling around £11,000, Mr B’s indebtedness had increased significantly and adding the new agreement to this I think worsened Mr B’s already difficult financial situation. So, I think if SMF had carried out further checks around Mr B’s finances I don’t think they would have lent to him. As I think when the other “*loan”* payments and the high cost credit card advances were taken into account it would have been seen that the loan wasn’t sustainable without further borrowing.

Putting things right

I can see that the agreement has been settled. But as I don’t think SMF should have lent to Mr B, he shouldn’t have to pay more than the cash price of the car - £15,499.

My final decision

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

- Refund any payments Mr B has made in excess of £15,499, representing the original cash price of the car. And they should add 8% simple interest per year* from the date of each overpayment to the date of settlement.

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

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 7 February 2024.

Anne Scarr
Ombudsman