

The complaint

Miss S complains that Specialist Motor Finance Limited (SMF) acted irresponsibly in agreeing to lending she couldn't afford.

What happened

In July 2019 Miss S entered into a Hire Purchase agreement with SMF when she acquired a car. The cash price of the car was £4,890, Miss S made a deposit of £500. And after interest and charges were added the total amount repayable was ££7,845.60 over 60 months in monthly instalments of £122.26. Miss S said she struggled to meet her monthly repayments. She complained to SMF.

SMF said they'd carried out reasonable and proportionate checks that showed Miss S had sufficient disposable income to sustain her repayments. They said Miss S had struggled at times when she changed the frequency of her repayments. And when her employed hours had reduced during the pandemic. They said Miss S had settled her agreement in May 2023.

Miss S wasn't happy with SMF's response and referred her complaint to us.

Our investigator said SMF should have done further checks to establish Miss S' financial situation. And if they had they would have seen that the lending wasn't affordable for her. To put things right she asked SMF to:

- Refund any payments, including the £500 deposit that Miss S had made in excess of £4,390, the capital amount. They should add 8% simple interest per year* from the date of each overpayment to the date of settlement. And
- Remove any adverse information recorded on Miss S' credit file regarding the agreement

SMF didn't accept or reject our investigator's outcome so Miss S' complaint has been referred to 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.

Having done so I'm upholding this complaint I'll explain why.

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 Miss S 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 Miss S could sustainably repay the borrowing?

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

Regulations in place at the time SMF lent to Miss S required them to carry out a reasonable assessment of whether she 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 Miss S. In other words, it wasn’t enough for SMF to think only about the likelihood that they would get their money back without considering the impact of repayment on Miss S herself.

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.

So, I’ve considered whether SMF in lending to Miss S had been thorough in the checks they made. And whether they’ve taken all these factors into account in deciding to lend to her.

Miss S applied for the lending in July 2019. SMF said Miss S said she was co-habiting and living with her parents. They said they verified her income as £1,300 a month. All her credit commitments were up to date, and she didn’t have any defaults of county court judgements (CCJ). They said they assessed Miss S as having day to day living costs of £675.24 and credit commitments of £414.98. They also added a discretionary amount of £25. So, they said Miss S had £184.78 available income which SMF said was sufficient to sustain her new loan amount of £122.26 each month. SMF said they’d made this assessment using Miss S’ application and a combination of data sourced from Credit Reference Agencies (CRA), Office of National Statistics (ONS), and industry publications.

I can see from the information provided by the CRA that Miss S had taken out an unsecured loan in April 2019 for £9,668 payable over 60 months. And a couple of other recent short term unsecured loans.

There are factors which could influence how detailed a proportionate check should be for a given loan application. For example:

- the consumer’s income (reflecting that it could be more difficult to make any loan repayments to a given loan 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 amount from a particular level of income); and
- the longer the term of the loan (reflecting the fact that the total cost of the credit is likely to be greater and the consumer is required to make payments for an extended period).

Miss S’ income was relatively low, and given she’d recently taken out a loan for £9,668, the addition of a car loan further increased her indebtedness, added to which both loans were for a period of 60 months, so a longer term. So, I agree with our investigator that SMF

should have done more to establish an accurate picture of Miss S' financial situation, rather than their reliance only on statistical data given the level of indebtedness.

As previously mentioned, there isn't a set list of checks that a lender should do. And I'm not saying SMF needed to ask for bank statements to verify Miss S' income and expenditure. But for us it's probably the most efficient way to work out whether the lending was affordable.

Miss S has provided her bank statements for the three months leading up to the agreement, April, May and June 2019. I can see from these that her income varied from £1,300.25, to £1,202.20 to £1,091.67, an average across the three months of £1,198.04 less than the income used by SMF in their assessment. This alone, when using the day to day living costs and credit commitments used by SMF would reduce Miss S' disposable income to £82, less than the new loan amount of £122.26.

I can also see from Miss S' bank statements that she was also making regular gambling transactions. Over the three months prior to lending Miss S spent on average around £1,000 a month.

So, having carefully considered everything, I think that SMF should have checked further into Miss S' financial situation and if they had this would have alerted to them that Miss S wasn't able to sustainably make the payments to this agreement. So, I don't think the loan was sustainable and it was irresponsible of SMF to lend to her.

Putting things right

Where a business has done something wrong, our service usually aims to put the consumer back in the position they would have been in had the incident not occurred. But, in cases where a business has lent irresponsibly, this isn't entirely possible – as the lending provided cannot be undone.

Miss S has settled the agreement with SMF. So to put things right Specialist Motor Finance Limited should:

- Refund any payments made by Miss S in excess of the cash price of £4,890, which includes the £500 deposit Miss S paid. Adding *8% simple interest per year from the date of payment to the date of settlement. And
- Remove any adverse information from Miss S' credit file about this agreement.

My final decision

I uphold this complaint. And ask Specialist Motor Finance Limited to put things right as outlined above.

*HM Revenue & Customs require Specialist Motor Finance Limited to take off tax from this interest. Specialist Motor Finance Limited must give Miss S a certificate showing how much tax they've taken off if Miss S asks for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 15 January 2024.

Anne Scarr
Ombudsman