

The complaint

Mr P complains that Specialist Motor Finance Limited lent to him irresponsibly and without carrying out proper affordability checks.

What happened

In August 2019 Specialist Motor Finance granted Mr P a hire purchase (HP) agreement which was scheduled to be repaid at approximately £512 per month over a term of 60 months. Once the final, slightly higher, repayment had been made, Mr P would be the owner of the car he was buying. I can see that he had some short-lived difficulties making repayments, but ultimately he settled the agreement in 2022.

When assessing the application, Specialist Motor Finance took steps to verify Mr P's income and carried out a credit check before approving the lending.

The investigator thought that Specialist Motor Finance shouldn't have given Mr P this HP agreement, and provided clear reasons as to why. Despite chasing, and allowing it extra time, Specialist Motor Finance hasn't replied to the view at all. So the case has been passed to me for review and 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.

Having done so, I'm going to uphold this complaint broadly for the same reasons as those of the investigator.

Specialist Motor Finance is aware of its obligations under the rules and regulations in place at the time of this lending decision, including the Consumer Credit Sourcebook ("CONC"), so I won't repeat them here. But, briefly, it was required to carry out sufficient checks to ensure that Mr P would be able to repay the borrowing applied for in a sustainable way. As set out in CONC 5.3.1G(2) that means that he could manage the repayments,

"...without...incurring financial difficulties or experiencing significant adverse consequences"

Essentially, he needed to be able to meet his financial commitments and not have to borrow elsewhere to repay Specialist Motor Finance for the HP agreement to be considered affordable and sustainable.

There are two questions I need to consider when deciding this case, which I will deal with separately below.

Did Specialist Motor Finance carry out proportionate checks before granting this HP agreement?

Specialist Motor Finance verified Mr P's income and carried out a credit check when considering his application. Like the investigator, I'm not satisfied that its checks went far enough.

The investigator highlighted the term of the HP agreement being applied for when explaining why he believed more in-depth checks were needed for the assessment to be proportionate. As Mr P needed to be able to make comparatively large repayments (representing a significant proportion of his monthly income) for five years, the investigator thought that Specialist Motor Finance ought to have looked into things in greater depth to understand his financial situation. I agree, and would also highlight that Specialist Motor Finance knew that, with this repayment also in place, Mr P would have to use in excess of 60% of his total monthly income simply to service his unsecured borrowing burden.

Specialist Motor Finance has not responded to say if or why it doesn't accept that its checks weren't proportionate.

What would Specialist Motor Finance have likely found and what ought it to have concluded, had it carried out proportionate checks?

When considering this second question, our service has had the benefit of several months of bank statements to review. I accept that there was and is no requirement on a lender to obtain any particular type of information: they are permitted to source and rely on a range of evidence when assessing affordability, and so Specialist Motor Finance could have opted to gather more information about Mr P's financial position in a range of ways. However, it didn't, and, in the absence of anything else provided, I'm happy to rely on the statements to demonstrate what Specialist Motor Finance would most likely have discovered if it had completed proportionate checks.

The investigator highlighted that Mr P's bank statements showed that he was borrowing very heavily and expensively, and that he was spending unsustainable amounts on gambling.

I agree. The statements show that Mr P was effectively dependent on borrowing and was spending almost all his income servicing debt some months.

So if Specialist Motor Finance had completed proportionate checks in this case, I cannot see how it could have concluded that Mr P would have been able to meet repayments without borrowing elsewhere. That is in direct opposition to the requirements in place for responsible lending at the time. Specialist Motor Finance has not responded to challenge that or explain how its decision was actually compliant with the requirements I've cited. It therefore follows that I uphold this complaint

Putting things right

In order to put things right for Mr P, Specialist Motor Finance must do the following:

A) Specialist Motor Finance must remove all interest, fees and charges from the HP agreement, and treat any repayments made by Mr P as though they had been repayments of the principal on the HP agreement.

B) If this results in Mr P having made overpayments then it must refund these overpayments with 8% simple interest* calculated on the overpayments, from the date the payments were made, to the date the complaint is settled.

C) Whilst I don't think there is any, it must remove any adverse information recorded on Mr P's credit file in relation to this HP agreement.

*HM Revenue & Customs requires Specialist Motor Finance to deduct tax from this interest. It should give Mr P a certificate showing how much tax it's deducted, if he asks for one.

My final decision

For the reasons I've explained, I uphold this complaint and direct 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 Mr P to accept or reject my decision before 14 June 2024.

Siobhan McBride

Ombudsman