

Complaint

Mr G complains that Specialist Motor Finance Limited (“SMF”) unfairly entered into a hire-purchase agreement with him. He’s said that the proper checks weren’t carried out and he was provided with finance at a time where he had a gambling addiction.

Background

In January 2020, SMF provided Mr G with finance for a used car. The purchase price of the vehicle was £9,850.00. Mr G didn’t pay a deposit and entered into a 48-month hire-purchase agreement with SMF to fund the transaction.

The amount lent was £9,850.00 The loan had interest, fees and total charges of £5,795.04 (made up of interest of £5,785.04 and an option to purchase fee of £10), and the total amount to be repaid of £15,645.04 was due to be repaid in 47 monthly instalments of £325.73 followed by a final instalment of £335.73.

In April 2023, Mr G complained that the agreement was unaffordable and so should never have been provided to him. SMF said that its checks confirmed that the finance was affordable and so it didn’t think that it had done anything wrong and it was reasonable to lend.

Nonetheless, it said that given Mr G’s position in particular having been made aware of his gambling, it was prepared to end the agreement and let Mr G keep the vehicle as a gesture of goodwill. Mr G remained dissatisfied and referred his complaint to our service. Since then Mr G has repaid the finance.

Mr G’s complaint was considered by one of our investigators. She didn’t think that SMF had done anything wrong or treated Mr G unfairly. So she didn’t recommend that Mr G’s complaint should be upheld. Mr G disagreed and asked for an ombudsman’s 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 G’s complaint.

Having carefully thought about everything I’ve been provided with, I’m not upholding Mr G’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 G 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 G provided details of his monthly income which it cross-checked in information it received from credit reference agencies on the amount going into his main bank account. It says it also carried out credit searches on Mr G which did show a couple of defaulted accounts and some outstanding balances.

But when the amount owing plus a reasonable amount for Mr G's living expenses were deducted from his monthly income the monthly payments were still affordable. On the other hand, Mr G says his existing commitments meant that these payments were unaffordable and there was no way he was going to be able to maintain them. I've thought about what the parties have said.

The first thing for me to say is that unlike our investigator, I don't think that the checks SMF carried out did go far enough. I don't think it was reasonable to rely on an estimate of Mr G's living costs given there was some adverse information on his credit file.

As SMF didn't carry out sufficient checks, I've gone on to decide what I think SMF is more likely than not to have seen had it obtained further information from Mr G. Bearing in mind, the length of time of the agreement and the amount of the monthly payment, I would have expected SMF to have had a reasonable understanding about Mr G's regular living expenses as well as his income and existing credit commitments.

To be clear as SMF took steps to cross-check Mr G's declaration of income against the funds going into his account and this did not indicate Mr G was receiving less funds into his account each month, I'm satisfied that it was entitled to rely on Mr G's declaration of income. Furthermore, the information Mr G has provided does appear to show that when his committed regular living expenses and existing credit commitments were deducted from the amount of the monthly income he declared, he did have the funds, at the time at least, to sustainably make the repayments due under this agreement.

I accept that the real reason for Mr G's inability to make his payments to this agreement wasn't due to his existing credit commitments or his living expenses. And that this is readily apparent when Mr G's bank statements are considered. But what I need to think about here is what did SMF need to do in order to answer the questions its initial checks left unanswered – in other words, what were Mr G's actual regular living expenses (bearing in his income and credit commitments had already been validated against information from credit reference agencies)? – given this was a first agreement and Mr G was being provided with a car rather than cash.

Bearing in mind checking bank statements wasn't the only way for SMF to have found out more about Mr G's actual living costs – it could have obtained copies of bills or other evidence of payment etc – I don't think that proportionate checks would have extended into obtaining the bank statements Mr G has now provided us with. So I don't think that SMF could reasonably be expected to have known about the nature and extent of Mr G's problem gambling at the time. Furthermore, as Mr G was being provided with an asset rather than cash, which he would be able to gamble, I think that this limits the relevance of his gambling 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 G did go far enough, I'm satisfied that carrying out reasonable and proportionate checks won't have stopped SMF from providing these funds, or entering into this agreement with Mr G. So I'm satisfied that SMF didn't act unfairly towards Mr G when it agreed to provide the funds.

I now turn to what Mr G has said about being unhappy at SMF's actions when he got into contact to explain that he was finding it difficult to make his payments. It's clear that a significant amount of correspondence has been exchanged between SMF and Mr G because Mr G was having difficulty making the payments to his agreement. And, in these circumstances, I would expect a lender to exercise forbearance and due consideration in line with its regulatory obligations.

SMF has supplied its contact history between it and Mr G in the period he's been a customer. The first thing to say is that the notes do not show that Mr G mentioned any issue with gambling prior to his gambling. Mr G mentioned issues with being off from work and receiving less commission as a result as the reason for his difficulties. In any event, these records show that there were a number of deferral of fees and well as alternative payment dates set up in an attempt to help Mr G make up his payments.

So I don't agree that SMF didn't make any attempts to help Mr G and I'm satisfied that the available evidence shows that SMF made reasonable steps to exercise forbearance and due consideration in line with its regulatory obligations. Therefore, I've not been persuaded to uphold this aspect of Mr G's complaint either.

Overall and having carefully considered everything Mr G has said, I don't think that SMF acted unfairly or unreasonably towards him. So I'm not upholding this complaint. I appreciate that this will be very disappointing for Mr G as I can clearly see that he clearly feels strongly about his complaint. But I hope he'll understand the reasons for my decision and that he'll at least feel his concerns have been listened to.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 30 April 2024.

Jeshen Narayanan
Ombudsman