DRN-4630402

## The complaint

Mrs E is complaining that Specialist Motor Finance Limited (SMF) shouldn't have lent to her – she says they were irresponsible in doing so. Mrs E is represented in her complaint, but for ease I've written as if we've dealt directly with her throughout.

## What happened

In August 2018, Mrs E took out a hire purchase agreement with SMF to finance the purchase of a vehicle. She part-exchanged a current vehicle to fund the deposit of £600 and borrowed £11,390 – the cash price of the car was £11,990. The agreement required Mrs E to make 59 monthly repayments of £290.40, and a final instalment of £300.40. She made all her payments on time and settled the agreement early, in December 2021.

In May 2023, Mrs E complained to SMF, saying that she thought SMF had failed to conduct appropriate checks before lending to her and the lending was unaffordable.

In response SMF said when she'd applied, Mrs E told them she earned £1,588 net monthly income, was married, and was a homeowner. They said they'd verified her income automatically, used statistical data to estimate her non-discretionary expenditure, and used credit reference agency (CRA) data to estimate her monthly credit commitments. From these figures they calculated Mrs E had disposable income of £886.61 per month so considered the loan repayments to be affordable for her. SMF added that although they could see from Mrs E's credit file that her mortgage payments were higher than they'd estimated, they didn't think this made any difference to the overall affordability of the agreement.

Mrs E was unhappy with SMF's response and brought her complaint to our service, where one of our investigators looked into it. Our investigator thought that SMF hadn't done proportionate checks and if they had, they wouldn't have been able to fairly decide the agreement was affordable for Mrs E. So our investigator upheld the complaint.

Mrs E accepted our investigator's view. SMF asked for some of the evidence our investigator had relied on but then provided no further comments. Because they haven't accepted the view, the complaint needs a decision and has been passed to me.

## 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 Mrs E's complaint for broadly the same reasons as our investigator. I'll explain more below.

The Financial Conduct Authority (FCA) sets out in a part of its handbook known as CONC what lenders must do when deciding whether or not to lend to a consumer. In summary, a firm must consider a customer's ability to make repayments under the agreement without having to borrow further to meet repayments or default on other obligations, and without the repayments having a significant adverse impact on the customer's financial situation.

CONC says a firm must carry out checks which are proportionate to the individual circumstances of each case.

*Did SMF carry out proportionate checks?*

SMF said they reviewed Mrs E's credit file and verified her income. And they estimated her disposable income using estimates of her expenditure based on statistical data and details from her credit file. Whether or not these checks were proportionate depends on factors like the size and term of the loan, and what SMF found. Under the agreement, Mrs E needed to pay SMF over £18,000, over a five-year period. So it was important that the checks were thorough.

In relation to income, Mrs E told SMF she earned £1,588 per month and it appears SMF verified this using an automated check – they've noted an income confidence factor in the agreement notes. So I'm satisfied SMF did enough to check Mrs E's income.

In relation to expenditure SMF said they used statistical data to estimate Mrs E's non-discretionary expenditure. CONC allows a firm to use statistical data unless it has reasonable cause to suspect that the customer's non-discretionary expenditure is significantly higher than that described in the data.

Looking at the credit report they reviewed, SMF saw that Mrs E had one credit card account with current arrears – she'd missed three payments and the balance was nearly £1,750. Although the credit report also showed Mrs E was keeping up with her mortgage payments, utilities, and payments on a second, relatively small, credit card balance, these arrears should have caused concern and prompted SMF to do more checks. They should have done more to understand Mrs E's spending and why she'd recently missed several payments against her credit card.

*If SMF had done proportionate checks, what would they have found?*

A proportionate check would have involved SMF finding out more about Mrs E's expenditure to determine whether she'd be able to make repayments in a sustainable way.

I've looked at Mrs E's bank transaction listing for the three months leading up to her application to SMF. I'm not saying SMF needed to obtain this information as part of their lending checks. But in the absence of other information it provides a good indication of Mrs E's financial circumstances at the time the lending decision was made.

The transaction listing shows both Mrs E and her husband's income, and all of their household outgoings. It shows they were spending £1,085 each month on their mortgage, around £360 on council tax, water and utilities, around £200 on insurances, and around £250 on media and telecommunications. They also had memberships and subscriptions totalling around £60 per month, paid an average of around £70 per month in bank fees, and paid an average of £40 per month in relation to school costs. This totals around £2,065.

It's likely if SMF had asked Mrs E she'd have told them she was responsible for around half of the household expenditure and SMF would therefore have included around £1,030 for these committed costs in an income and expenditure assessment.

In addition, they'd have needed to include amounts for food and fuel, and for payments to creditors. SMF calculated Mrs E would need to pay her credit card creditors £96 per month – which I'm satisfied is reasonable. They didn't include anything for her overdraft – at the time of the credit check the balance was £160 and they should have included an amount that represented repaying this within a reasonable timeframe. I'd suggest around £8 per month as a minimum.

Adding together the committed costs and credit commitments, together with the monthly repayments for this new agreement suggested Mrs E would have committed monthly expenditure of £1,424. This was before accounting for any food and fuel or other costs of running a vehicle such as road tax and maintenance. SMF would have found Mrs E had around £160 left from her income to cover these costs and so I'm satisfied they wouldn't have fairly been able to decide the agreement was affordable.

## Putting things right

As SMF shouldn't have approved the loan, it's not fair for them to charge any interest or other charges under the agreement. But Mrs E has had the full benefit of use of the car so it's fair she pays the cash price of it.

In summary, SMF should do the following to settle Mrs E's complaint:

- refund all the payments Mrs E has made (including the part-exchange allowance) in excess of £11,990, adding 8% simple interest per year from the date of each overpayment to the date of settlement; and

- remove any adverse information recorded on Mrs E's credit file regarding the agreement.

If SMF consider tax should be deducted from the interest element of my award they should provide Mrs E a certificate showing how much they've taken off so that Mrs E can reclaim that amount, assuming she is eligible to do so.

## My final decision

As I've explained, I'm upholding Mrs E's complaint. Specialist Motor Finance Limited need to take the steps outlined above to settle the matter.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs E to accept or reject my decision before 10 June 2024.

Clare King
**Ombudsman**