DRN-4641291

The complaint

Miss B, who is represented by a third party, complains that Specialist Motor Finance Limited ("SMFL") irresponsibly granted her a hire purchase agreement she couldn't afford to repay.

What happened

In June 2019, Miss B acquired a used car financed by way of a hire purchase agreement from SMFL. She was borrowing £5,707. Miss B was required to make 59 monthly repayments of £172.31, with a final payment of £182.31. The total repayable under the agreement was £10,348.60.

Miss B says that SMFL didn't complete adequate affordability checks. She says if it had, it would have seen the agreement wasn't affordable. SMFL didn't agree. It said that it carried out an assessment which included verifying her income and checking her credit commitments and expenditure.

Our investigator recommended the complaint be upheld. She thought SMFL didn't do enough to establish that Miss B would be able to repay the agreement sustainably.

As SMFL hasn't responded to our investigator's finding, the complaint has been passed to me for a final 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 upholding this complaint for broadly the same reasons as our investigator. I will explain why.

SMFL will be familiar with all the rules, regulations and good industry practice we consider when looking at a complaint concerning unaffordable and irresponsible lending. So, I don't consider it necessary to set all of this out in this decision. Information about our approach to these complaints is set out on our website.

Miss B provided some information about her income, occupation and residential status when she applied for the finance. SMFL used this to help it to carry out its own checks to see if the repayments under the agreement would be affordable. This included using a credit check to establish what credit commitments Miss B already had in place.

SMFL lends to customers who might have fewer lending options available to them and who might be regarded by other lenders as a higher lending risk. So it says the checks it used are done with these issues in mind. That said, SMFL needed to carry out checks that were enough to establish that the borrowing was likely to be affordable as well as being something that could be repaid sustainably. This was a five year agreement that undoubtedly represented a significant financial commitment for Miss B that she would have to be able to sustainably repay over the whole period.

SMFL's check showed three defaulted credit accounts in the previous three years with the most recent one being in July 2017 for a telecoms account. Miss B was operating six credit accounts, but had had recent problems meeting payments on two of them – a utility account and an unsecured loan. So I think it's quite possible that Miss B was still experiencing a level of financial difficulty at the time of making her application.

SMFL has explained that it verified Miss B's income by using an external data source to assess whether it had been overstated. I can understand that this would have provided a measure of reassurance to SMFL. I have also seen that SMFL calculated Miss B's expenditure using statistical data in order to give typical spending figures based on her age and where she lived. The regulator allows firms like SMFL to use such data unless something shows or suggests that the estimated figures might be inaccurate.

SMFL says it calculated whether Miss B could afford the finance using assumptions it was able to make from its checks. Essentially, SMFL took Miss B's net monthly income and then deducted from that what it understood to be her credit commitments and non-discretionary expenditure – that is, the things aside from credit repayments that Miss B had to meet each month, such as household and transport costs. SMFL was satisfied that her net monthly income was around £1,190, her credit commitments were around £490 and her typical living and housing costs were around £530. This would leave Miss B with around £170 – that is, more or less enough to meet her monthly repayments under the proposed agreement. But what the calculation completely omitted was an allowance for disposable income beyond having to pay for the new agreement. I think this is a serious omission that has a direct impact on the reasonableness of the lending decision.

My role in deciding whether a business makes a fair lending decision is to look at what was taken into account from evidence and information that was available at the time about Miss B's financial circumstances. If, as seems likely from what SMFL found, Miss B had no disposable income available once she was paying for the agreement, then it is difficult to see how the agreement was one that was capable of being repaid sustainably over the full term. I can't see evidence or information to show or suggest that SMFL had made allowance for the costs of running the car, including road tax, insurance and fuel plus the need to service and have repairs carried out from time to time. There's also no allowance for other unexpected expenditure which Miss B could have to find – and it's not unreasonable to assume she might expect to have funds available for occasional leisure spending.

It follows that I think that, based on the calculations I've seen and keeping in mind the length of the agreement, there was a real risk that Miss B's finances could easily become stretched once the agreement started, with Miss B having to face unexpected and unanticipated costs. In short, there was a likelihood that the agreement would become unsustainable. I am therefore satisfied that SMFL didn't act fairly by approving the finance.

Putting things right – what SMFL needs to do

As I don't think SMFL ought to have approved the lending, I don't think it's fair for it to be able to charge any interest or charges under the agreement. Miss B should therefore only have to pay the original cash price of the car, being £5,707. Anything Miss B has paid in excess of that amount should be refunded as an overpayment.

To settle Miss B's complaint SMFL should therefore do the following:

- Refund any payments Miss B has made in excess of £5,707, representing the original cash price of the car. It should add 8% simple interest per year* from the date of each overpayment to the date of settlement.

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

*HM Revenue & Customs requires SMFL to take off tax from this interest. SMFL must give Miss B a certificate showing how much tax it's taken off if she asks for one.

My final decision

I uphold this complaint and direct Specialist Motor Finance Limited to put things right in the manner set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 2 July 2024.
Michael Goldberg
Ombudsman