

The complaint

Mr H complains that Specialist Motor Finance Limited trading as Specialist Motor Finance ("SMF") unfairly entered into a hire purchase agreement with him. He says that due to his personal and financial circumstances at the relevant time the agreement was unaffordable.

What happened

In January 2019 Mr H entered into an agreement with SMF for a used car costing £4,719. Under the terms of the agreement, everything else being equal, Mr H undertook to make 35 monthly payments of £170.87 and 1 monthly payment of £180.87, making a total repayable of £6,161.32 at an APR of 19.8%.

The agreement was settled in April 2022.

Mr H says that SMF didn't complete adequate affordability checks. He says if it had, it would have seen the agreement wasn't affordable. SMF didn't agree. It said it was *"happy that affordability was fully checked and sustainable"*.

Our investigator came to the view that SMF didn't make an unfair lending decision.

Mr H didn't agree with our investigator's view and so his complaint 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.

In this decision I've focussed on what I think are the key issues. Our rules allow me to do this and these rules reflect the informal nature of our service as a free alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual argument (including those made by Mr H following the investigator's view) to be able to reach what I think is the right outcome. I will, however, refer to those crucial aspects which impact my decision.

I would also add I've not carried out a form of compliance check or sought to enforce any rules or guidance. What I've done is looked at everything provided and decided whether Mr H has lost out due to SMF failing to act fairly and reasonably in its dealings with him.

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 H's complaint.

Having carefully thought about everything I've been provided with I'm not upholding Mr H'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 it needed to carry out proportionate checks to be able to understand whether Mr H could make his payments in a sustainable manner before agreeing to lend to him. And if the checks SMF carried out weren't sufficient, I then need to consider what reasonable and proportionate checks are likely to have shown.

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.

The first thing for me to say is that like the investigator I'm not persuaded that the checks SMF carried out went far enough. In my view, I think SMF should have carried out further checks into Mr H's actual circumstances. That said, I don't think that SMF obtaining further information on Mr H's actual income and non-discretionary expenditure would have made a difference to its decision to lend in this instance.

I say this because based on historical bank statements and other information provided by Mr H when his non-discretionary expenditure is deducted from the income he received he appears to have had enough left over to make the repayments to this agreement. And for the avoidance of doubt I can confirm that I'm in broad agreement with the figures quoted by the investigator in their view in this respect.

So I think that SMF obtaining further information is likely to have led it to conclude that when Mr H's non-discretionary expenditure was deducted from his monthly income, he did have the funds, at the time at least, to sustainably make the repayments due under this agreement.

So overall and having carefully considered everything, while I don't think that SMF's checks before entering into this agreement with Mr H did go far enough, I've not been satisfied that doing more would have prevented it from providing these funds or entering into this agreement with him.

Overall I'm therefore satisfied that SMF didn't act unfairly towards Mr H when it lent to him and I'm not upholding Mr H's complaint. I appreciate that this will be very disappointing for Mr H. But I hope he'll understand the reasons for my decision and that he'll at least feel his concerns have been listened to.

I also note that Mr H isn't happy with how SMF dealt with his complaint, including how long it took to issue its final response letter.

Our rules set out the matters that we can look at as being; regulated activities, payment services, lending money, paying money by plastic card, and ancillary banking services. In addition, we can consider complaints about ancillary activities carried on in connection with the above.

The handling of complaints isn't itself a regulated activity. It's something that the regulator requires financial businesses to do. But that isn't enough to make it a regulated activity within the meaning of the rule; that is, one from the list of activities set out in the legislation from which we derive our powers.

We're able to consider concerns about complaint handling in some limited circumstances, for example, if we're upholding the underlying complaint that a consumer believes was mis-handled and the issues with the complaint handling are directly linked, in which case the way the complaint was dealt with would be ancillary to the regulated activity. But a delay in SMF sending its final response letter and the other complaint handling issues raised by Mr H aren't things that are ancillary to a regulated activity, and so I can't comment any further on them.

My final decision

My final decision is I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 11 June 2024.

Peter Cook
Ombudsman