DRN-4666249

The complaint

Mr C complains that Specialist Motor Finance Limited (SMF) failed to complete adequate checks prior to approving a Hire Purchase agreement for him. He says had they done, the finance would not have been agreed.

What happened

In August 2018, Mr C acquired a used car, financed through an agreement with SMF. The cash price of the car was £5,770. Mr C was required to make 47 monthly repayments of £169.96 before a final repayment of £179.96 in month 48.

Mr C fell behind with his scheduled repayments on multiple occasions throughout the term of the lending before settling the agreement in December 2022.

In August 2023, Mr C complained to SMF that the finance should not have been approved and that they'd acted irresponsibly by lending to him.

SMF didn't uphold Mr C's complaint. They said at the point of the application Mr C told them he was employed, earning £2,888 a month. SMF said Mr C's income was verified via a credit reference agency and they used statistical data and his existing credit commitments at the time to estimate the level of Mr C's non-discretionary expenditure. SMF calculated he had a net monthly disposable income of around £890.

SMF also said they completed a full credit search and it showed Mr C had eight active lines of credit, all of which were up to date. And he'd had one default which had occurred more than five years prior to the application and 11 other settled credit items with no concerns.

In summary, SMF said they did adequate checks to assess the affordability of the loan and they were satisfied their decision to lend to Mr C was correct.

Mr C remained unhappy, so he referred his complaint to the Financial Ombudsman Service.

One of our Investigators looked into things and said given the information SMF saw when completing their checks, they should've done more to understand Mr C's financial circumstances before agreeing to lend to him. Our Investigator said had they done, he thought it was more likely than not that SMF would've recognised it wouldn't have been responsible to approve the loan.

SMF didn't respond to our Investigator's opinion, so this complaint has been passed to me to decide.

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.

How we handle complaints about irresponsible and unaffordable lending is explained on our website. It's this approach I've used when deciding Mr C's complaint. SMF needed to ensure that they didn't lend irresponsibly, which in practice means they needed to carry out proportionate checks to be able to understand whether any lending was affordable for him and if it was responsible to provide him finance before agreeing to do so.

The rules that apply to credit agreements taken out at this time are set out in the FCA's consumer credit sourcebook (CONC). Sections 5.2 and 5.3 of CONC are relevant here, as – among other things – they talk about the need for businesses like SMF to complete reasonable, proportionate and borrower-focused creditworthiness assessments before agreeing to lend someone money.

I've considered these rules by asking the following questions:

- Did SMF complete reasonable and proportionate checks to satisfy themselves Mr C would be able to sustainably repay the borrowing without experiencing significant adverse impact on his financial situation?

    - if they did, did SMF make a fair lending decision?

    - if they didn't, would reasonable and proportionate checks have shown that Mr C could sustainably repay the borrowing?

<u>Did SMF complete reasonable and proportionate affordability checks?</u>

What's considered reasonable and proportionate in terms of the checks a business undertakes will vary depending on the details of the borrowing and the consumer's specific circumstances at the time.

Here, the total amount repayable under the agreement was around £8,200, with Mr C committing to make 48 monthly repayments of around £170. This was therefore a relatively significant and lengthy credit commitment for someone to enter into, so my starting point is that I'd expect SMF to have completed a thorough affordability check.

SMF say relevant checks were completed because Mr C's credit report didn't cause them any concerns regarding his financial status. They say whilst he'd defaulted on one account, it was over five years prior and as a specialist lender, it's not unusual for them to see missed payments or defaults on their applicants' credit files.

SMF say they verified Mr C's income via a credit reference agency and they completed their own affordability assessment using a range of data including the verified income, the credit report data they'd gathered, and statistical expenditure data. SMF also say they took into account Mr C's existing debt repayment commitments before deciding the maximum affordable monthly repayment they would allow was £586, much higher than the actual repayment they went on to agree.

SMF haven't provided me the full credit report they relied on, but they have shown me a summary of what they saw. I can see SMF were aware Mr C had two active credit card accounts with limits of £200 and £150, of which combined he'd utilised to within £3 of the limits at the time of the application.

In addition, SMF could see Mr C had missed multiple payments on one of the cards throughout the 12 months prior as well as missing payments towards a communications account. In my opinion this was a sign Mr C might be struggling financially considering he'd failed to meet what would've been very small financial commitments.

SMF could also see Mr C had taken out three unsecured loans within the 12 months prior to the agreement in question, with the outstanding balances at the time totalling around £16,000. One of the accounts indicates Mr C was in an arrangement to pay and while the other two showed no concerns in respect of the repayment history, I think it clearly shows his appetite to borrow had increased significantly within a relatively short period of time – something that should've raised concerns.

As SMF say, some level of missed payments to credit commitments would not necessarily be a reason for them to decline an application, but it should have been a reason for them to take steps to understand Mr C's financial circumstances in more detail.

I'm satisfied what I've set out above, should've prompted them to have done more. And therefore, I don't think proportionate checks were carried out.

<u>If SMF had carried out proportionate checks, what would they have found?</u>

The fact that SMF didn't carry out proportionate checks doesn't automatically mean they shouldn't have lent to Mr C. I need to consider whether these checks would've shown the lending was unaffordable for him or irresponsible for SMF to approve.

Proportionate checks would have involved SMF finding more out about Mr C's income and expenditure to determine whether he'd be able to make the repayments in a sustainable way.

I've looked at the bank statements for the current account into which Mr C received his income, covering the three months prior to the agreement being taken out. In the absence of any other information, I think they provide bank statements provide a good indication of his overall financial circumstances at the time.

I'm not saying SMF businesses need to obtain bank statements specifically when completing affordability checks, but I think in Mr C's case it would have been difficult to gain an understanding of his expenditure without doing so. So I'm inclined to say that SMF would have needed to look at his bank statements to proportionately understand his ability to sustainably repay the agreement.

The bank statements issued for May through to July 2018 show that Mr C had payments returned unpaid a total of seven times over that period all towards essential commitments such as rent, council tax, communications accounts, and utility companies.

It was also clear that Mr C was reliant on short-term payday borrowing which didn't appear as credit commitments on the report provided by SMF. In the three-month period he took out seven new agreements, borrowing a total of £1,760.

So, I think while on the face of it, it may have appeared to SMF the agreement was affordable, I think it was clear looking deeper into his financial situation he was struggling and having to borrow in order to meet his commitments, and at times still failing to do this.

In addition, had SMF completed proportionate checks, I think it's more likely than not they would've seen the high level of gambling transactions on Mr C's account, and they would've determined it was irresponsible to lend to him.

In the three months prior to the agreement being taken out, Mr C conducted 160 separate gambling transactions, totalling around £7,800 which accounted for approximately 90% of his verified monthly income. I think it's also significant the volume of transactions increased from month to month.

I'm aware over the same period Mr C received around £3,800 back from the same companies he gambled with, but even factoring in these credits his net spending still accounted for approximately 46% of his verified monthly income. And in any case any winnings Mr C might have received weren't guaranteed and I'm satisfied the sheer level of transactions conducted in a short period of time ought to have given SMF cause for concern that approving the lending for Mr C wasn't responsible, nor would it be sustainably affordable for him to repay over the full term.

In summary, SMF needed to ensure Mr C could afford to sustainably repay the borrowing without causing him financial difficulty and that their decision to lend to him was responsible.

I don't think SMF completed proportionate checks prior to lending to Mr C, and I think had they done, what they'd have found out would've led them to decide Mr C wasn't in a position to sustainably repay this agreement, nor was it responsible to grant him the lending.

I don't think SMF made a fair lending decision by approving the agreement they did.

Putting things right

As I don't think SMF should've lent to Mr C, I don't think it's fair for them to be able to apply any interest or charges under the agreement. So, Mr C should only have to pay the original cash price of the vehicle, that being £5,770.

My final decision

For the reasons I've given above, my final decision is that this complaint should be upheld.

Specialist Motor Finance Limited should:

- Refund anything Mr C has paid in excess of the cash price of £5,770, adding 8% simple interest* per year from the date of the overpayment to the date of settlement.

- Remove any adverse information recorded to Mr C's credit file in relation to this agreement.

*If Specialist Motor Finance Limited consider that they're required by HM Revenue & Customs to take off income tax from any interest due to Mr C, they should tell him how much they've taken off.

They should also give Mr C a certificate showing this if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 23 April 2024.

Sean Pyke-Milne
Ombudsman