

The complaint

Mrs B complains Specialist Motor Finance Limited (SMFL) irresponsibly entered into a hire purchase agreement because it failed to carry out reasonable and proportionate checks to ensure the agreement was affordable.

What happened

Mrs B entered into the hire purchase agreement on 7 April 2020 in order to acquire a used car. The cash price of the car was £7,499 and Mrs B paid a cash deposit of £750. The total amount payable under the agreement was £11,662.60. Mrs B was to make 59 monthly instalments of £181.71 and a final instalment of £191.71.

Mrs B said she had to borrow from friends and family in order to keep up with the repayments and it has caused her a great deal of stress. Mrs B settled the agreement in November 2023 when she part-exchanged the vehicle.

Mrs B complained to SMFL about irresponsible lending and SMFL responded to the complaint in October 2023. It said it completed appropriate checks and, based on this information, felt the agreement was affordable. Mrs B remained unhappy and asked our service to investigate.

Our Investigator set out their view explaining why they felt the complaint should be upheld. They thought reasonable and proportionate checks hadn't been carried out. They felt such checks were likely to have shown this agreement wasn't affordable. Mrs B accepted the view, but no response was received from SMFL. Therefore, the 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.

We explain how we handle complaints about irresponsible and unaffordable lending on our website. I've used this approach to help me decide Mrs B's complaint. SMFL needed to ensure that it didn't lend irresponsibly as per the rules set out in the Financial Conduct Authority's Consumer Credit Sourcebook (CONC).

In practice, what this means is that SMFL needed to carry out proportionate checks to be able to understand whether any lending was affordable for Mrs B before providing it.

In this case, there are two overarching questions that I need to answer to fairly and reasonably decide Mrs B's complaint. These two questions are:

1. Did SMFL complete reasonable and proportionate checks to satisfy itself that Mrs B would be able to repay the agreement without experiencing significant adverse consequences?

- If so, did it make a fair lending decision?
- If not, would those checks have shown that Mrs B would've been able to do so?

2. Did SMFL act unfairly or unreasonably in some other way?

Did SMFL complete a reasonable and proportionate affordability check?

CONC says 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.

SMFL said when Mrs B applied for the credit she said she earned £1,680 net monthly income and had been employed since June 2010. It also noted she was married and living with parents. SMFL were unable to verify Mrs B's income using credit reference data. So, it obtained payslips which showed her income was £1,482.

SMFL have also provided the credit search it completed. This showed Mrs B had 13 active credit items and 11 of these items were up to date. It also showed three defaults which were all recorded more than one and a half years prior to the application. There were nine good and settled credit items including two previous hire purchase loans for £303 and £263 per month.

Additionally, SMFL said it estimated Mrs B's non-discretionary spend using data from the Office of National Statistics (ONS). It estimated Mrs B's expenditure to be around £272 for housing costs, £127 for travel costs, £43 for car insurance and £269 for cost of living. This was in addition to her existing credit commitments of £416.15. So, including a buffer, it calculated Mrs B's disposable income as £255.04 which it felt showed it was sufficiently affordable for her to make repayments of £181.71 per month.

Having reviewed the information, I don't agree in the circumstances the checks were reasonable and proportionate. Whilst only for small amounts, Mrs B did have two mail order accounts which weren't up to date. This ought to have indicated to SMFL that there might have been something further going on with Mrs B's financial circumstances.

I've also considered the total amount repayable, the size of the monthly repayments, Mrs B's income and her existing credit commitments. Overall, I can see she would be spending a high proportion (around 40%) of her monthly income repaying her credit commitments. I'm also mindful of Mrs B's financial history, although I recognise some time had passed since the defaults. Nevertheless, all of this information when taken together ought to have indicated to SMFL that Mrs B might not be the average customer and so it wasn't reasonable to rely on ONS data. Therefore, SMFL ought to have done more to obtain information about Mrs B's specific expenditure.

Would reasonable and proportionate checks have shown that Mrs B would be able to repay the agreement in a sustainable way?

As I don't think SMFL completed reasonable and proportionate checks, I've gone on to consider what I think such checks were likely to have shown about Mrs B's financial circumstances at the time. To do this, I've reviewed her bank statements from the three-month period leading up to the agreement. I've also obtained a copy of the joint statements for an account Mrs B held with her husband. This was for completeness, and I'd note this doesn't change the outcome.

When reviewing the statements, I note Mrs B managed bills and living costs with others in the household. This meant sometimes she made payments towards living costs, such as food, and other times she transferred money for these costs to be paid by someone else. I've asked her for testimony to understand some of the incoming and outgoing payments. I note she contributed money to a joint account she had with her husband. However, she also transferred money from the joint account to support with her own living costs.

I want to assure both parties I've carefully weighed up all the evidence I have to decide, on balance, what I think reasonable and proportionate checks were most likely to have shown at the time of the lending.

The statements show Mrs B received an average income of £1,163.93. The reason it was lower than what was verified from Mrs B's payslips was because repayments for a loan were taken before it was paid to Mrs B. It seems this loan did appear on the credit search carried out by SMFL, so I'm satisfied this doesn't make a difference to the overall outcome. Nevertheless, I think it's likely this would have come to light had further checks regarding Mrs B's expenditure been carried out. For clarity, I've taken the lower income figure, but I haven't added the loan repayments into the expenditure calculations because that would lead to the loan being accounted for twice.

From the statements, I can see Mrs B made payments towards pet insurance, food and phone bills. I've also considered incoming and outgoing payments from other members of Mrs B's household as I'm satisfied these represented contributions towards the household costs. I've reviewed the credit commitments (excluding the loan repayments already accounted for). Having done so, Mrs B's total expenditure seemed to have been around £925. I appreciate this is slightly lower to what was set out by our Investigator, but I'm satisfied it doesn't change the outcome here.

Considering her average income of around £1,164, Mrs B would be left with around £57 once the repayment of £181.71 had been made. I'm not satisfied this was sufficient disposable income to show Mrs B would be able to sustainably make the repayments. At this point, I'd also note Mrs B was in arrears and she would still need to make the payments to bring this up to date.

Therefore, I'm satisfied had SMFL carried out reasonable and proportionate checks it's likely they would have shown this agreement wasn't sustainable for Mrs B. This is because her expenditure at the time seems to show it's likely she wouldn't be left with sufficient disposable income to afford the agreement. So, I don't think the lending should have been approved. I'll come back to how SMFL should put things right below.

Did SMFL act unfairly or unreasonably in some other way?

I've also considered whether SMFL acted unfairly or unreasonably in any other way, including whether the relationship might have been unfair under s.140A of the Consumer Credit Act 1974. I'm satisfied the redress I have directed below results in fair compensation for Mrs B in the circumstances of her complaint. Based on what I've seen, I'm satisfied no additional award would be appropriate in this case.

Putting things right

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. Taking into account all the circumstances, I felt the complaint should be put right in a different way to that set out by our Investigator. I explained this to the parties and gave them the opportunity to comment. Mrs B

accepted what had been set out and no response on this point was received from SMFL (although it did request a copy of the bank statements).

The agreement has now ended and Mrs B part-exchanged the vehicle for £4,000. I'd note £3,748 of this went towards settling the finance agreement. And £252 went towards the cash price of the new vehicle Mrs B was acquiring.

As the agreement has ended, Mrs B should only be charged the original cash price of the car which was £7,499. As explained, Mrs B has already benefitted from £252 of the value of the vehicle when she part-exchanged, therefore she should be refunded anything paid towards the agreement with SMFL in excess of the cash price (£7,499) less £252. This is because I can't direct redress which puts Mrs B in a better position than she otherwise would have been.

SMFL should also include the deposit Mrs B paid in its calculations. It should also include payments made by the third party to settle the agreement. This is because the payments were paid towards the agreement on Mrs B's behalf following part-exchange of the vehicle.

Therefore, to put things right Specialist Motor Finance Limited should:

- Refund (less £252) any payments made towards the agreement in excess of £7,499, 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 on Mrs B's credit file regarding the agreement.

* If SMFL considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mrs B how much it's taken off. It should also give Mrs B a tax deduction certificate if she asks, so she can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

I'm upholding this complaint and Specialist Motor Finance Limited should put things right in the way outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 28 August 2024.

Laura Dean
Ombudsman