DRN-4700015

The complaint

Ms G complains that Specialist Motor Finance Limited ('SMF'), irresponsibly granted her a hire purchase agreement she couldn't afford to repay.

What happened

In June 2019, Ms G acquired a used car financed by a hire purchase agreement from SMF. Ms G was required to make 59 monthly repayments of £289.84 with a final payment due of £299.84. The total repayable under the agreement was £17,400.40.

Ms G got into difficulty with meeting the monthly agreement in 2020 but was able to agree having her payments partly deferred or deferred in full for several months that year.

Ms G voluntarily ended the agreement in May 2023.

Ms G says that SMF didn't complete adequate affordability checks. She says if it had, it would have seen the agreement wasn't affordable. She was already in debt and did not have enough disposable income to meet the monthly repayments.

SMF didn't agree. It said that it carried out a thorough assessment which included relying on what Ms G said in her application and carrying out credit checks.

Our investigator recommended the complaint be upheld. He thought SMF ought to have realised that it was likely to have been irresponsible to lend to Ms G.

As SMF doesn't agree, 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.

SMF 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.

Before granting the credit, I've seen that SMF found out about Ms G's income and occupation. Her net monthly income looks to have averaged out at around £3,100 per month in the months leading up to the agreement. At the time Ms G was a tenant and having to find monthly rent of £1,300 per month.

SMF relied on statistical date to help it establish if the finance repayments were likely to be affordable, using factors such as her location and likely monthly outgoings. Based on that, it thought that Ms G would be left with enough disposable income each month to meet the repayments. The regulator has said firms can estimate expenditure unless it knows or there are indicators to suggest an estimate is unlikely to be accurate. But in this case the credit check SMF also completed showed a recent default plus a history with at least two other defaults. I note that the most recent default had been registered in May 2019. So there was a risk that Ms G could be struggling financially at that time. And a credit check alone wouldn't give a full picture of what Ms G's regular living expenses were. Also, it wouldn't necessarily have picked up on short term borrowing she was taking out, some of which was being used to fund a high level of online gambling. She was also making repayments on an outstanding high cost loan of around £350 per month.

In those circumstances I think it would have been reasonable and proportionate for SMF to have taken steps to better understand Ms G's specific financial circumstances, rather than relying on an estimate. This is particularly relevant taking into account the overall size of the borrowing, the monthly repayments and the term of the agreement. So I don't think it did enough in its enquiries to ensure the agreement was both affordable for Ms G and that it was acting responsibly in lending to her. Without knowing more about Ms G's regular committed expenditure and financial situation, I don't think SMF would have gained a good enough understanding as to whether Ms G would be able to sustainably repay the agreement. It therefore didn't complete proportionate checks

I can't be sure exactly what SMF would have found out at the time had it carried out better and more proportionate checks. But if it had asked, in the absence of anything else, I think it would be reasonable to place significant weight on the information contained in Miss G's bank statements. Ms G had several bank accounts at the time and handled her finances in such a way that she was frequently making transfers back and forth between them. However, from what I've seen Ms G has been able to provide enough for us to gain a broad understanding of her financial situation at the time.

From the bank statements and details provided by Ms G that I've seen, I agree that Ms G was spending heavily on online gambling in the months leading up to the lending – spending around £9,000 between March and May 2019. This has complicated the position given that to facilitate her gambling spend Ms G was often transferring funds between her main account and other accounts she held, as well as making use of high-cost short term loans. I've seen the points SMF has raised, having reviewed the bank statements. Ms G's use of several accounts and making transfers bank and forth between them, has made it harder to gain an exact picture of her financial situation at the time. There are often arguments to be made about whether certain expenditure is necessary and whether it could have been avoided in order to prioritise meeting the repayments required under the agreement. Ms G has responded as far as she is able to the points that have been raised and these have been considered in some detail by our investigator.

From my review of the file, what I don't consider to be in dispute is that Ms G had incurred a credit default just a month before she took the agreement, that she was making use of short term high cost borrowing shortly before entering into the agreement and was using her income – as well as some borrowing – to fund a high level of online gambling. In the months leading up to the agreement, the gambling was at a level which was roughly equivalent to her monthly income. She was at the same time making monthly repayments towards a historically defaulted account which had to be backed up by a guarantor.

I think all this demonstrates that Ms G was juggling her finances in the run up to the agreement in trying to accommodate a very concerning level of online gambling. That means she wasn't in a position to sustainably afford the repayments on her new agreement for the full term without a significant risk that she would be left with little, if any, disposable income each month unless she resorted to further borrowing. I am therefore satisfied that SMF didn't act fairly by approving the finance.

Putting things right – what Specialist Motor Finance Limited needs to do

As I don't think SMF ought to have approved the lending, it should therefore refund all the payments Ms G has made, including any deposit. However, based on the information we have, Ms G did have use of the car for around 47 months before she returned it – during which time she largely met her monthly repayments, although it was necessary to make deferral changes to the payment schedule to accommodate difficulties she started experiencing in 2020. But I'm not persuaded that monthly repayments of over £299 a month are a reasonable reflection of what fair usage would be. This is because a proportion of those repayments went towards repaying interest.

There isn't an exact formula for working out what a fair usage should be. In deciding what's fair and reasonable I've thought about the amount of interest charged on the agreement, Ms G's likely overall usage of her car and what her costs to stay mobile would likely have been if she didn't have the car. In doing so, I agree a fair amount Ms G should pay is £148 for each month she had had use of the car. This means SMF can only ask her to repay a total of £6,956. Anything Ms G has paid in excess of this amount should be treated as an overpayment.

To settle Ms G's complaint SMF should do the following:

- End the agreement with nothing further to pay.

- Refund all the payments Ms G has made, less £6,956 for fair usage.

  - If Ms G has paid more than the fair usage figure, SMF should refund any overpayments, adding 8% simple interest per year* from the date of each overpayment to the date of settlement. Or;

  - If Ms G has paid less than the fair usage figure, SMF should arrange an affordable and sustainable repayment plan for the outstanding balance.

- Once SMF has received the fair usage amount, it should remove any adverse information recorded on Ms G's credit file regarding the agreement.

*HM Revenue & Customs requires SMF to take off tax from this interest. SMF must give Ms G a certificate showing how much tax it's taken off if Ms G 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 Ms G to accept or reject my decision before 10 May 2024.
Michael Goldberg
Ombudsman