

The complaint

Mr B complains that Specialist Motor Finance Limited (Specialist Motor Finance) irresponsibly granted him a hire purchase agreement that he couldn't afford to repay.

What happened

In March 2023 Mr B acquired a vehicle financed by a hire purchase agreement from Specialist Motor Finance. Mr B was required to make 59 monthly repayments of £556.06 followed by a final payment of £566.06. The total amount repayable under the agreement was £33,373.60. Mr B believes Specialist Motor Finance failed to complete adequate affordability checks. Mr B says that if it had it would've been clear the agreement wasn't affordable at the time.

Specialist Motor Finance disagreed. It said it carried out an adequate assessment following its own lending criteria which included a review of his credit file and statistical data to estimate monthly expenditure. It said these searches showed Mr B had seven up-to-date active credit accounts, no defaults and one settled credit item.

Our Investigator recommended that the complaint should be upheld. They thought Specialist Motor Finance's checks weren't proportionate in the circumstances given the amount of lending and the length of the agreement for Mr B's circumstances. Our Investigator felt that had proportionate checks been completed it would've been clear that the decision to lend was unfair as the agreement did not appear to be affordable for Mr B's circumstances. Our Investigator recommended that Specialist Motor Finance do more to put things right.

Mr B agreed. However, Specialist Motor Finance did not confirm acceptance or rejection by the deadline and so the case was passed for an Ombudsman to issue a final decision on the matter.

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.

Where evidence is incomplete, inconsistent, or contradictory, I reach my decision on the balance of probabilities – in other words, what I consider most likely to have happened in light of the available evidence and wider circumstances.

We explain how we handle complaints about irresponsible and unaffordable lending on our website. I've used this approach to help me decide Mr B's complaint. Specialist Motor Finance needed to ensure that it didn't lend irresponsibly as per the rules set out in the FCA's Consumer Credit Sourcebook (CONC). In practice, what this means is that Specialist Motor Finance needed to carry out proportionate checks to be able to understand whether any lending was affordable for Mr B before providing it.

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

1. Did Specialist Motor Finance complete reasonable and proportionate checks to satisfy itself that Mr B would be able to repay his loan without experiencing significant adverse consequences?
 - If so, did it make a fair lending decision?
 - If not, would those checks have shown that Mr B would've been able to do so?
2. Did Specialist Motor Finance act unfairly or unreasonably in some other way?

Did Specialist Motor Finance complete a reasonable and proportionate affordability check?

Specialist Motor Finance was required to ensure it carried out adequate checks on Mr B's ability to sustainably afford the agreement. These checks had to be borrower-focussed and proportionate (see CONC 5.2A). What is considered proportionate will vary depending on the circumstances, such as (but not limited to): the total amount repayable, the size of the monthly repayments, the term of the agreement (CONC 5.2A.20 R), and the consumer's specific circumstances.

So, I'd expect Specialist Motor Finance to require more assurance the greater the potential risk to Mr B of not being able to repay the credit in a sustainable way. It is from this standpoint and criteria that I've approached my decision.

Specialist Motor Finance completed a credit check which showed Mr B had seven up-to-date active credit accounts prior to the application. It also used data from credit reference agencies and statistical sources to determine Mr B's income and expenditure. These were recorded as £2,369 and £1,356.56 a month respectively.

Given the size of the lending, the monthly repayments, the length of agreement, and the information in Mr B's credit file, I don't think a proportionate amount of checks were completed to have enough of an understanding about whether the agreement was affordable for Mr B. I say this in part because the income Specialist Motor Finance was able to verify differed by around £800 to what was disclosed by Mr B. And because the monthly amount the agreement required was a substantial amount of his verified income to maintain for a term of 60 months.

I want to be clear that I've considered Specialist Motor Finance's position about the type of checks that it did complete. And I understand that it felt none of the searches it completed demonstrated any risk of financial stress. However, considering the circumstances already mentioned I'm not satisfied that these checks adequately gathered a proportionate amount of information. Specialist Motor Finance was lending Mr B a significant amount of money which required payments over five years. Its checks failed to answer how much Mr B actually had left to spend from his income after existing commitments, and there remained discrepancies over Mr B's declared income.

I think it would have been proportionate for Specialist Motor Finance to have enquired about Mr B's specific expenditure – including costs such as food, petrol, utilities and housing. Without knowing what his regular committed expenditure was Specialist Motor Finance wouldn't have got a reasonable understanding of whether the agreement was affordable for his specific circumstances. I think it also would've been proportionate for Specialist Motor Finance to query with Mr B why there was such a discrepancy between his declared income and the income it was able to verify, as this may be an indicator of financial stress.

I'm satisfied Specialist Motor Finance didn't complete proportionate affordability checks, but this doesn't automatically mean it failed to make a fair a lending decision.

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

I can't say exactly what further questions or evidence Specialist Motor Finance would have asked for had it sought to adequately verify Mr B's committed expenditure. So, in the absence of anything else, I've reviewed copies of Mr B's bank statements in the three months leading up to the application as well as the existing credit file information that was available at the time.

I want to be clear that I'm not suggesting Specialist Motor Finance were required to check his bank statements specifically, but I'm satisfied that these give me a good indication of what information it would have likely found out about his financial circumstances had it completed reasonable and proportionate affordability checks. I've also relied on Mr B's provided payslips to help clarify the discrepancy around his monthly income.

These statements reveal that Mr B's monthly income received into his account averaged at around £1,160 per month (his payslips show deductions for commitments were also being taken directly from his salary). His average monthly expenditure was around £1,300. This includes credit commitments, rent, utilities, household expenses, food and petrol. It meant on average Mr B wasn't left with disposable income even before factoring in the agreement's £556.06 a month. Even if I remove Mr B's lowest income month from the calculations it would still leave Mr B's average income as £1350 - not enough to maintain the finance agreement payments along with his other commitments.

Given these circumstances, proportionate checks would have shown the agreement wasn't affordable or sustainable for the five years Mr B was expected to maintain payments. His income and expenditure showed that he was already struggling financially and did not have sufficient disposable income to maintain the finance agreement long term. I think this demonstrates that he'd likely be unable to sustain the agreement without incurring financial difficulties, and I don't think Specialist Motor Finance ought to have approved the lending on that basis.

Putting things right

As I don't think Specialist Motor Finance 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. But Mr B has had use of the vehicle for over a year, and it's my understanding that he is still in possession of the vehicle. I think it's fair that Mr B pays for that use, but I don't think that the monthly repayments under the agreement are a fair reflection of what fair usage for the vehicle should be. This is because a large proportion of the repayments went towards repaying interest.

There isn't an exact formula for working out what fair usage ought to be. However, in deciding what's fair and reasonable, I've thought about the amount of interest charged on the agreement, the likely use Mr B had of the vehicle and the costs he would likely have incurred to stay mobile if he'd never entered into this agreement. In doing so, I think a fair amount Mr B should pay is £320 for each month he's had use of the vehicle.

To put things right Specialist Motor Finance should:

- End the agreement and collect the vehicle with nothing further to pay.
- Refund all the monthly payments Mr B made, less £320 per month he had use of the vehicle.
- If Mr B has paid more than the fair usage figure, Specialist Motor Finance should refund any overpayments, adding 8% simple interest per year* from the date of each

overpayment to the date of settlement. Or:

- If Mr B has paid less than the fair usage figure, Specialist Motor Finance should arrange an affordable and sustainable repayment plan for the outstanding balance.
- Once Specialist Motor Finance has received the fair usage amount, it should remove any adverse information recorded on Mr B's credit file regarding this agreement.

*HM Revenue and Customs requires Specialist Motor Finance to deduct tax from the interest payment referred to above. Specialist Motor Finance must give Mr B a certificate showing how much tax it's deducted if he asks for one.

My final decision

My decision is that 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 Mr B to accept or reject my decision before 9 July 2024.

Paul Clarke
Ombudsman