

The complaint

Mr G 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 January 2020 Mr G acquired a vehicle financed by a hire purchase agreement from Specialist Motor Finance. Mr G was required to make 59 monthly repayments of £321.98 followed by a final payment of £331.98. The total amount repayable under the agreement was £19,692.80. Mr G believes Specialist Motor Finance failed to complete adequate affordability checks. Mr G 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, account turnover information and statistical data. It said these searches showed Mr G had five up-to-date active credit accounts and six defaults up to 18 months prior to the application. Its searches also showed two county court judgments (CCJs) registered against Mr G, the most recent being from October 2018.

Our Investigator recommended that the complaint should be upheld. They thought Specialist Motor Finance's checks were proportionate in the circumstances given the amount of data that it had obtained. But our Investigator felt that the decision to agree to lend was unfair as the agreement did not appear to be affordable for Mr G in the circumstances. Our Investigator recommended that Specialist Motor Finance do more to put things right.

Mr G 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 G'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 G before providing it.

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

1. Did Specialist Motor Finance complete reasonable and proportionate checks to satisfy itself that Mr G 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 G 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 G'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 G 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 file check which showed Mr G had five up-to-date active credit accounts and six defaults up to 18 months prior to the application. Its searches also showed two county court judgments (CCJs) registered against Mr G, the most recent being from October 2018. It also used data from credit reference agencies to determine Mr G's income and expenditure. These were calculated as £1,500 and £1,107.42 a month respectively.

Given the size of the lending, the monthly repayments, the length of agreement, and the information in Mr G's credit file, I think that a proportionate amount of checks were completed in order to have enough of an understanding about whether the agreement was affordable for Mr G. But, whilst I'm satisfied Specialist Motor Finance completed proportionate affordability checks, this doesn't automatically mean it made a fair a lending decision.

Did Specialist Motor Finance make a fair lending decision?

Taking the income and expenditure figures into account from Specialist Motor Finance's own searches, it appears to show the agreement wasn't affordable for Mr G. This is because when factoring the proposed agreement into the equation (and removing Specialist Motor's additional £25 buffer) Mr G would only be left with around £70 a month for any unexpected costs. Given that Mr G also had two dependants at the point of sale, I'm satisfied that this wasn't a reasonable buffer that would ensure Mr G would be able to repay the agreement in a sustainable way. It left very little available for unforeseen costs and general upkeep of the vehicle in question.

For this reason, I'm not persuaded that Specialist Motor Finance acted fairly when approving the finance. I'm satisfied that its checks revealed Mr G was unable to sustainably afford the repayments owed under the agreement. So, I'm satisfied that it now needs to put things right.

Did Specialist Motor Finance act unfairly or unreasonably in some other way?

I'm not persuaded from the submissions made to date that Specialist Motor Finance acted unfairly or unreasonably in some other way.

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. The agreement has ended through settlement via a part-exchange, and so Mr G has effectively paid above the original cash price of the vehicle. So, I'm satisfied that any amount in excess of the vehicle price should be refunded.

To settle Mr G's complaint Specialist Motor Finance should do the following:

- Refund any payments made toward the agreement in excess of £9,850 representing the original cash price of the vehicle. It should add 8% simple interest per year* from the date of each overpayment to the date of settlement.
- Remove any adverse information recorded on Mr G's credit file regarding the 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 G 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 G to accept or reject my decision before 9 July 2024.

Paul Clarke
Ombudsman