

## **The complaint**

Mr A complains that Specialist Motor Finance Limited (SMFL) irresponsibly entered into a hire purchase agreement with him. He says SMFL failed to take reasonable steps to ensure his ability to make repayments under the agreement sustainably.

Mr A has been represented by a third party. But for clarity, I've only referred to Mr A throughout this decision.

## **What happened**

In April 2019 SMFL provided Mr A with finance to purchase a used car. The car cost £8,995 and Mr A entered into a hire purchase agreement to finance the full amount. After interest and charges the total amount due was £14,287.60, repayable in 47 monthly instalments of £297.45 followed by one repayment of £307.45. Mr A settled the agreement in full in April 2023.

In November 2023 Mr A complained to SMFL saying that they didn't undertake appropriate affordability checks. He said SMFL were irresponsible to enter into a finance agreement with him. SMFL didn't agree with Mr A's complaint. In their view they carried out reasonable checks which showed that the payments for this agreement were affordable for Mr A, and they lent on this basis.

Mr A remained dissatisfied with SMFL's response and referred the complaint to our service, where it was considered by one of our investigators. She didn't think SMFL's checks had been proportionate, and in her view proportionate checks would have shown that the agreement wasn't affordable for Mr A. For this reason, she thought the complaint should be upheld. Mr A agreed with our investigator's view. SMFL didn't respond, and so the complaint has come 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.

The Financial Conduct Authority (FCA) sets out in a part of its handbook known as CONC what lenders must do when deciding whether to lend to a consumer. In summary, 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. What's proportionate depends on the specific circumstances of each application. We'd expect lenders to think about the nature of the credit (the amount repayable and the term, for example) and about the applicant's individual circumstances. I'd expect a lender to find out more about a prospective borrower's ability to repay if for example, a borrower's income was low, the amount lent was high, or the borrower's credit file reveals an impaired credit history.

*Were SMFL's checks proportionate?*

SMFL said Mr A told them he was co-habiting and living in rented accommodation at the time of his finance application. He said he'd been with his employer for around two years, earning approximately £1,350 per month. SMFL used data from one of the credit reference agencies (CRA) as well as current account turnover analysis to check Mr A's income hadn't been overstated. I'm satisfied SMFL did enough to verify Mr A's income.

SMFL used statistical data to calculate Mr A's likely outgoings. CONC allows lenders to use statistical data in this way unless they have reason to believe it would be inappropriate to do so. Here, I think Mr A's credit history ought to have led SMFL to think Mr A might have been struggling financially.

Mr A had two unsatisfied defaults, with SMFL saying the most recent was in September 2014. I can see that on the check they completed a defaulted utility account showed a settlement date of September 2014 and a default balance of £2,165. Mr A also supplied a copy of his credit report, which shows the utility account in question. However, the recorded default date is July 2018. I can't be certain why the data reported to SMFL is different to that showing on Mr A's report. I don't think it was unreasonable for SMFL to conclude the default was historic. But I think the remaining information SMFL gathered during their check ought to have been enough to prompt further checks.

I say this because SMFL's check also showed that Mr A held a credit card with a limit of £500, which he'd exceeded. Mr A was in an arrangement to pay with the credit card lender and had missed two payments in the three months leading up to his application. SMFL's check further showed Mr A was in another arrangement with a utility provider and had missed a payment to a communications provider in the month before his application. I think this ought to have led SMFL to conclude Mr A was likely struggling financially. The proposed agreement would see Mr A making payments of almost £300 per month from his salary of £1,350 over four years. In those circumstances I think it would have been proportionate for SMFL to do more to understand Mr A's expenditure rather than relying on estimates.

In summary, I'm satisfied SMFL didn't carry out reasonable and proportionate affordability checks before lending.

*If SMFL had carried out proportionate checks, what would they have shown?*

A proportionate check would have involved finding out more about Mr A's committed expenditure. There are different ways a lender can go about checking a prospective borrower's committed expenditure. I can't be sure what SMFL would have done had they decided to conduct further checks, or what Mr A would have told them. In the absence of anything else, I've placed significant weight on the information contained in Mr A's bank statements for the three months leading up to his application as an indication of what would most likely have been disclosed.

Mr A submitted two sets of statements, one for his own account and one for an account he held jointly with another person. Mr A's income was paid into his sole account, and I can see it averages out to around £1,370 per month – so broadly in line with what SMFL were able to verify. In terms of committed expenditure, I can see a regular monthly payment of £530 which appears to be rent and £88 to an energy supplier. Mr A also made frequent transfers to the joint account across the three months leading up to his application. He only received one payment (of £10) back into his account. Overall, I'm satisfied that Mr A was solely responsible for covering rent and the energy bill at an overall cost of £612.

Adding the cost of the agreement to that would see Mr A spending around £909 of his verified income of £1,350, leaving him with £441 to cover his credit commitments including the outstanding default balances, the cost of owning a car and to contribute to other committed and essential household expenditure, which was paid from the joint account. So, a high-level view of Mr A's statements suggests the agreement wasn't affordable.

Furthermore, if SMFL had sought to understand or verify Mr A's committed expenditure I think it's likely they would have realised that Mr A was making frequent use of high-cost credit. In the three months leading up to his application, he took out nine payday loans, totalling around £2,235. I think this would have made it clear to SMFL that Mr A was reliant on credit to maintain his commitments. The proposed agreement would have significantly increased Mr A's indebtedness and put further strain on his finances to such an extent that providing him with additional lending was irresponsible.

For the reasons set out above, I don't think that SMFL acted fairly by providing the finance.

*Did SMFL act unfairly in any other way?*

I've also considered whether SMFL acted unfairly or unreasonably in some other way given what Mr A has complained about, including whether their relationship with Mr A might have been unfair under s.140A Consumer Credit Act 1974.

However, I'm satisfied the redress I have directed below results in fair compensation for Mr A in the circumstances of his complaint. I'm satisfied, based on what I've seen, that 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 them to be able to charge any interest or charges under the agreement.

Mr A has already paid more than the cash value of the vehicle to SMFL, having settled the agreement in full in April 2023. So, SMFL must do the following to settle Mr A's complaint:

- Calculate how much has been paid in total under the agreement.
- Deduct the cash price of the vehicle (being £8,995) from the total paid.
- Pay Mr A the difference, adding 8% simple interest per year\* from the date of each overpayment to the date of settlement.
- Remove any adverse information recorded on Mr A's credit file regarding the agreement.

\*HM Revenue & Customs requires SMFL to take off tax from this interest. SMFL must give Mr A a certificate showing how much tax they've taken off if Mr A asks for one.

### **My final decision**

For the reasons I've explained, I'm upholding this complaint. Specialist Motor Finance Limited need to settle the complaint as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 20 August 2024.

Anja Gill  
**Ombudsman**