

Complaint

Miss S complains that Specialist Motor Finance Limited (“SMF”) unfairly entered into a hire-purchase agreement with her. She’s said the monthly payments to the agreement were unaffordable and so she shouldn’t have been accepted for it.

Background

In March 2021, SMF provided Miss S with finance for a used car. The cash price of the vehicle was £16,750.00. Miss S paid a deposit of £3,750.00 and entered into a 60-month hire-purchase agreement with SMF for the remaining £13,000.00 needed to complete the purchase.

The loan had interest, fees and total charges of £9,834.00 (made up of interest of £9,824.00 and an option fee of £10, which needed to be paid if Miss S exercised her option to purchase the vehicle) at the end of the term. So the total amount to be repaid of £22,824.00 (not including Miss S’ deposit) was due to be repaid 59 monthly instalments of £380.40 followed by a final monthly instalment of £390.40.

Miss S’ complaint was considered by one of our investigators. He didn’t think that SMF had done anything wrong or treated Miss S unfairly. So he didn’t recommend that Miss S’ complaint should be upheld.

Miss S disagreed with our investigator and the complaint was passed to an ombudsman for a final decision.

My findings

I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint.

We’ve explained how we handle complaints about irresponsible and unaffordable lending on our website. And I’ve used this approach to help me decide Miss S’ complaint.

Having carefully thought about everything I’ve been provided with, I’m not upholding Miss S’ complaint. I’d like to explain why in a little more detail.

SMF needed to make sure that it didn’t lend irresponsibly. In practice, what this means is that SMF needed to carry out proportionate checks to be able to understand whether Miss S could make her payments in a sustainable manner before agreeing to lend to her. And if the checks SMF carried out weren’t sufficient, I then need to consider what reasonable and proportionate checks are likely to have shown.

Our website sets out what we typically think about when deciding whether a lender’s checks were proportionate. Generally, we think it’s reasonable for a lender’s checks to be less thorough – in terms of how much information it gathers and what it does to verify that information – in the early stages of a lending relationship.

But we might think it needed to do more if, for example, a borrower's income was low, the amount lent was high, or the information the lender had – such as a significantly impaired credit history – suggested the lender needed to know more about a prospective borrower's ability to repay.

SMF says it agreed to this application after it completed an income and expenditure assessment on Miss S. During this assessment, Miss S provided details of her income and employment details. SMF verified Miss S' income with copies of payslips. It says it also carried out credit searches on Miss S which showed that she did have active commitments, which it says were being well maintained. However, I think that it would also have been aware that Miss S had previously defaulted on credit and that she would have had some other adverse payment information too.

As I understand it, SMF argues that when the amount Miss S already owed plus a reasonable amount for Miss S' living expenses were deducted from her monthly income the monthly payments were still affordable. On the other hand, Miss S says that these payments were unaffordable.

I've thought about what Miss S and SMF have said.

The first thing for me to say is that, unlike our investigator, I don't think that the checks SMF carried out did go far enough. In my view, the presence of defaulted accounts on the credit search coupled with the amount advanced means that SMF ought to have taken further steps to get an appreciation of Miss S' actual living costs, rather than relying on estimates of this. SMF did not do this, so I don't think that its checks before lending to Miss S were sufficient.

As I don't think that SMF carried out sufficient checks, I have gone on to decide what I think SMF is more likely than not to have seen had it obtained further information from Miss S. Given the circumstances here, I would have expected SMF to have had a reasonable understanding about Miss S' regular living expenses as well as her income and existing credit commitments (which it already had).

I've considered the information Miss S has provided on her circumstances at the time. But I don't think that SMF attempting to find out further information about Miss S' living costs would have made a difference here. I say this because I've not seen anything that shows me that when Miss S' committed regular living expenses, other non-discretionary expenditure and her existing credit commitments were deducted from what she received each month, she did not have the funds to make the payments to this agreement.

I say this in the knowledge that Miss S' actual circumstances at the time were worse than what the information about her living costs shows. I know that Miss S has had some discussion with the investigator over her actual expenditure and the fact that she was gambling significant sums of money. And it's possible – but by no means certain – that if SMF had seen what I have now seen, it may have made a different decision on whether to lend.

However, SMF wasn't aware of this gambling. And the truth is, given the circumstances here as well as what I think that SMF needed to find out, I don't think that reasonable and proportionate checks would have extended into obtaining bank statements for multiple accounts – especially as bank statements weren't the only way that SMF could find out about Miss S' living expenses in the first place. I also say this while particularly mindful that Miss S' deposit of £3,750.00 – some ten months' worth of monthly payments – in itself will have provided persuasive evidence of an ability to make payments.

So having carefully considered everything, I'm satisfied that the available information makes it appear, at least, as though proportionate checks would have shown that Miss S could make the monthly payments to this agreement in a sustainable manner. And in my view, it is unlikely – and less likely than not – that SMF would have declined to lend if it had found out the further information that I think it needed to here.

Overall and having carefully considered everything, while I don't think that SMF's checks before entering into this hire-purchase agreement with Miss S did go far enough, I've not been persuaded that reasonable and proportionate checks would have prevented SMF from providing these funds, or entering into this agreement with her.

In reaching this conclusion I've also considered whether the lending relationship between SMF and Miss S might have been unfair to Miss S under section 140A of the Consumer Credit Act 1974 ("CCA").

However, for the reasons I've explained, I don't think SMF irresponsibly lent to Miss S or otherwise treated her unfairly in relation to this matter. And I haven't seen anything to suggest that section 140A CCA or anything else would, given the facts of this complaint, lead to a different outcome here. So I'm not upholding this complaint.

I appreciate that this will be very disappointing for Miss S. But I hope she'll understand the reasons for my decision and that she'll at least feel her concerns have been listened to.

My final decision

My final decision is that I'm not upholding Miss S' complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 27 September 2024.

Jeshen Narayanan
Ombudsman