DRN-4913079

Complaint

Mr P complains that Specialist Motor Finance Limited ("SMF") unfairly entered into a hire-purchase agreement with him.

He's said the monthly payments to this agreement were unaffordable bearing in mind his existing debts.

Background

In June 2018, SMF provided Mr P with finance for a used car. The cash price of the vehicle was £12,750.00. Mr P paid a deposit of £1,401.00 and entered into a hire-purchase agreement with SMF to cover the remaining £11,349.00.

The hire-purchase agreement had interest, fees and total charges of £6,022.60 (made up of interest of £6,012.60 and an option to purchase fee of £10) and a term of 60 months. This meant the total amount to be repaid of £17,371.60 (not including Mr P's deposit) was due to be repaid in 59 monthly instalments of £289.36 followed by a final payment of £299.36.

SMF said that the checks completed before the agreement was entered into confirmed that the finance was affordable and so it was reasonable to lend. So it didn't uphold Mr P's complaint. Mr P was dissatisfied at SMF's response and referred his complaint to our service.

Mr P's complaint was then considered by one of our investigators. She thought that SMF ought to have realised that the agreement was unaffordable for Mr P and so it shouldn't have entered into it with him. So she thought that Mr P's complaint should be upheld.

Despite being chased for one, SMF didn't respond to the investigator's assessment. So the complaint was passed to an ombudsman for review as per the next stage of our complaint handling process.

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 Mr P's complaint.

Having carefully considered everything, I've decided to uphold Mr P's complaint. I'll 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 Mr P could make her payments in a sustainable manner before agreeing to lend to him. 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.

I've kept this in mind when determining whether SMF acted fairly and reasonably when deciding to lend to Mr P.

Were the checks that SMF carried out before lending to Mr P reasonable and proportionate?

SMF says Mr P declared that he was employed at the time and that he had a monthly income of around £2,000.00. It says it cross checked Mr P's declaration against information provided by credit reference agencies on the amount of funds going into his main bank account each month.

SMF also says that it carried out credit searches on Mr P which had shown that Mr P had seven existing credit commitments which it considered to be well paid. The information SMF has provided indicates that it was aware Mr P had 42 settled accounts too.

In SMF's view, when reasonable repayments to the amount owing plus estimated amounts for his living expenses were deducted from his monthly income the repayments for this agreement were affordable.

On the other hand, Mr P says his existing commitments meant that these payments were unaffordable and there was no way he was going to be able to maintain them.

I've thought about what Mr P and SMF have said.

The first thing for me to say is that I don't think that the checks SMF carried out did go far enough. I don't think it was reasonable to rely on estimated non-discretionary living costs for Mr P, given the amount being borrowed, the cost of the credit and the term of the agreement.

In these circumstances, I think that SMF needed to do more to find out about Mr P's actual living expenses. As I can't see that SMF did take steps to ascertain Mr P's regular living costs, I find that it didn't complete fair, reasonable and proportionate affordability checks before entering into this hire-purchase agreement with him.

Would reasonable and proportionate checks have indicated to SMF that Mr P was unable to sustainably make the monthly repayments to his hire-purchase agreement?

As proportionate checks weren't carried out before this agreement was entered into, I can't say for sure what they would've shown. So I need to decide whether it is more likely than not that a proportionate check would have told SMF that it was unfair to enter into this agreement with Mr P.

Mr P has provided us with evidence of his financial circumstances at the time he applied for the hire-purchase agreement. Of course, I accept different checks might show different things. And just because something shows up in the information Mr P has provided, it doesn't mean it would've shown up in any checks SMF might've carried out.

But in the absence of anything else from SMF showing what this information would have shown, I think it's perfectly fair and reasonable to place considerable weight on it as an indication of what Mr P's financial circumstances were more likely than not to have been at the time.

To be clear, I've not looked at Mr P's bank statements and the other information he's provided because I think that SMF ought to have obtained this before lending to him. I've consulted this information because it is readily available at this stage and it contains the information I now need to reconstruct the proportionate check SMF should have, but failed to carry out in June 2018.

Mr P's bank statements show that he was employed. But Mr P was also borrowing regularly from a number of different lenders and this may well have skewed the income cross-checking that SMF did. SMF may say that it couldn't have known about this and that it was entitled to rely on its checks.

However, SMF was aware that Mr P had a disproportionately high number of settled accounts. So it ought to have known that there was a possibility that Mr P was in regular receipt of borrowed funds and that Mr P was likely to be receiving more than just his income into his account.

It is also clear that Mr P was struggling to manage his existing commitments. I can see that Mr P was borrowing from a number of payday as well as other high-cost type lenders and that he was struggling to juggle his commitments. I also think that proportionate checks would have shown SMF that Mr P was likely to make his payments to this agreement using borrowed funds, which meant he was unlikely to be able to repay without borrowing further or suffering significant adverse consequences.

SMF may question why Mr P sought to the purchase the vehicle he did given what the information he's provided showed. I'm not wholly unsympathetic to any argument that SMF may make in relation to the wisdom of Mr P's actions. Nonetheless the key thing here is that the regulations in place required SMF to take reasonable steps to ascertain Mr P's ability to make his monthly payments.

And I'm satisfied that if SMF had found out more about Mr P, which it needed to do in order to have carried out reasonable and proportionate checks, it would have seen that he was struggling to manage his existing commitments and why this was the case. I'm satisfied that Mr P simply wasn't in a position to make the monthly payments to this agreement, let alone other reasonable associated running costs for the vehicle such as petrol, tax and insurance.

So having carefully considered everything, I'm satisfied that reasonable and proportionate checks would have alerted SMF to the fact that Mr P wasn't in a position to sustainably make the payments to this agreement. It therefore follows that SMF shouldn't have lent to him and that it ought to put things right.

Fair compensation – what SMF needs to do to put things right for Mr P

I've carefully thought about what amounts to fair compensation in this case. In broad terms, where I find that a business has done something wrong, I'd normally expect that business – in so far as is reasonably practicable – to put the consumer in the position they *would be in now* if that wrong hadn't taken place.

In essence, in this case, this would mean SMF putting Mr P in the position he'd now be in if the agreement hadn't been entered into in the first place. But when it comes to complaints about irresponsible lending this isn't straightforward. Mr P did enter into the agreement and *was,* at least, given the car in question. He also had use of the vehicle for some time.

So, in these circumstances, I can't undo what's already been done. And it's simply not possible to put Mr P back in the position he would be in if he hadn't been sold the car in the first place.

As this is the case, I have to think about some other way of putting things right in a fair and reasonable way bearing in mind all the circumstances of the case. Our website sets out the main things we consider when looking at putting things right in cases where we conclude that a lender did something wrong in irresponsible/unaffordable lending complaints.

We typically say the borrower should repay the amount lent and the lender refunds any interest, fees and charges the borrower paid. This is because the borrower will have had the benefit of the credit they were provided with and it's usually the extra paid over and above this – any interest fees and charges – that will have caused the consumer to lose out.

In this case, this would limit Mr P to paying back the £11,349.00 he was originally lent by SMF. This won't always be an appropriate direction as in some instances the vehicle purchased will already have been surrendered by the customer. However, in this case, I understand that Mr P settled the agreement with SMF and that ownership of the vehicle has been transferred to him.

So in this case, Mr P repaying only the capital lent, keeping the car and being refunded the interest, fees and charges he paid is a viable option. I see no reason to depart from our typical approach and I'm therefore satisfied that represents a fair and reasonable solution I this instance.

As this is the case, I'm satisfied that SMF should put things right for Mr P by:

- refunding any and all interest, fees and charges he paid on this agreement;
- adding interest at 8% per year simple on any refunded payments from the date they were made by Mr P to the date of settlement†
- removing any adverse information recorded on Mr P's credit file as a result of this agreement.

† HM Revenue & Customs requires SMF to take off tax from this interest. SMF must give Mr P a certificate showing how much tax it has taken off if he asks for one.

My final decision

For the reasons given above, I'm upholding Mr P's complaint. Specialist Motor Finance Limited should put things right for Mr P in the way I've directed it to do so above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr P to accept or reject my decision before 19 August 2024.

Jeshen Narayanan
Ombudsman