

The complaint

Mr T complains through a representative that Specialist Motor Finance Limited (“SMF”) failed to conduct proportionate checks before it advanced finance to Mr T.

What happened

In October 2018, SMF provided Mr T with a hire purchase agreement for a used car which had a retail price of £7,100. Mr T paid a £300 deposit, and so £6,800 was financed. The agreement had interest, fees and charges totalling £5,518.60 with a final purchase fee of £10 to be paid. The total amount to repay under the terms of the agreement was £12,628.60. This agreement was to be repaid in 60 monthly repayments of £205.31. SMF has confirmed the agreement was settled in August 2023.

SMF considered Mr T’s complaint and didn’t uphold it. SMF concluded the checks it carried out before providing the agreement showed that Mr T would be able to afford his repayments. Unhappy with this response, Mr T’s representative referred the complaint to the Financial Ombudsman.

Mr T’s complaint was considered by an investigator and in the latest assessment they upheld the complaint. The investigator said further checks were needed because of the information contained within the credit checks SMF received which included knowing Mr T had entered into a debt management plan in the month before the finance was granted.

Had further checks been made, such as reviewing bank statements, then the investigator said it was likely SMF would’ve been aware that Mr T couldn’t afford the agreement given his outgoings and the payments he was making to payday lenders.

Mr T’s representatives agreed with the proposed outcome. Whereas, SMF disagreed with the investigator’s outcome, saying the payday loans didn’t appear in the credit search results it received and so it wasn’t aware of them. SMF also said the payday loans shouldn’t be considered as these are a short-term commitment and had Mr T been asked about these loans its unlikely, he would’ve said he would carry on using them.

These comments didn’t change the investigator’s assessment and so the complaint has been passed to me to decide.

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.

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 T’s complaint. Having carefully thought about everything I’ve been provided with, I’m upholding Mr T’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 any lending was sustainable for Mr T before providing it.

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.

Mr T declared a monthly income from full time work of £1,860. He also declared he had no dependants and lived at home with parents. SMF took steps to electronically verify the income Mr T had declared using tools provided by the credit reference agency – it was satisfied, having conducted this check, that the income Mr T declared was likely to be accurate.

SMF then went about calculating Mr T's outgoings, it said based on his residential status (living with parents) and the region he lived in, SMF believed his living costs to be £155.66 per month and then £168.75 for rent. Before credit commitments, for the purposes of the affordability assessment, SMF worked out that Mr T's total outgoings were £324.41.

To work out his credit commitments SMF used data taken from the credit search that it conducted and worked out Mr T's existing monthly expenditure was likely to be around £430.75. This gave Mr T total outgoings of £755.16 – which left £1,104.84 per month in disposable income to afford the repayments. So, I can understand, why based on these figures SMF thought the loan was affordable.

However, I don't think it's reasonable to conclude that Mr T's living costs were as low as they calculated, without any further details from Mr T – indeed, it isn't even clear from the information SMF provided how it calculated that his living costs were only £155 per month. But notwithstanding my concerns about the expenditure information used by SMF, I do think, like the investigator that the credit check results it received – ought to have indicated that it needed to do more, before entering into the agreement.

However, the disagreement about this complaint is whether the credit search results ought to have led SMF to carry out further checks. SMF says as a sub-prime lender it is to be expected that there will be some adverse payment information. Whereas the investigator concluded the credit file showed sufficient concern that ought to have led SMF to carry out further checks into Mr T's finances.

I've received the credit search results provided by SMF and I do agree with the investigator that the credit search results ought to have prompted further checks. Firstly, the credit checks show that Mr T was connected to a mortgage account – or at the very least the mortgage account as being recorded on his credit file.

This is a contradiction given as part of his application Mr T said he lived with parents and in SMF's '*Auto Decision*' document the mortgage is listed but has been marked as being "*ignored*" no explanation or further investigation appears to have been undertaken into the reasons why Mr T was connected to a mortgage account or whether he was making any contribution towards repaying the mortgage. Or why a figure was used by SMF for rent but that does equate to 50% of the mortgage payment which the credit file has noted as being £453.

But once again, even though I have my concerns around this, the other credit file data showed that Mr T was already likely experiencing financial difficulties and while not enough to automatically decline the request for funds, was in my mind sufficient to have prompted SMF to carry out further checks to ensure that the agreement was affordable to Mr T.

In August 2018 he had settled a mail order account that has been noted as being as part of a "*debt managed program*". Indicating Mr T had significant problems repaying this debt.

In addition, two of the open accounts (a credit / store card and a loan) were also subject to some sort of "*arrangement*". An over the last year, the credit / store card account had spent 6 months in arrears – at various levels. And the loan account had already needed an arrangement despite having only been open 5 months. So, while I do accept that SMF operates in a marketplace where they expect their customers to have some impaired credit. In this case, I don't think Mr T's ought to have been ignored considering he is showing signs of having difficulties repaying more than one of his accounts – and one account had been only open a matter of months.

Like the investigator, I do think that before the loan was approved, SMF needed to conduct further checks into Mr T's financial situation. It could've gone about doing this a number of ways, it could've asked for bank statements or any other documentation SMF felt was needed to satisfy itself that Mr T wasn't currently experiencing financial difficulties and to ensure the agreement was affordable.

I accept that had SMF conducted proportionate checks it may not have seen all the information that I have seen. But, in the absence of SMF conducting a proportionate check I do think it's entirely fair and reasonable to consider the bank statement that I now have access to.

Firstly, it does look like Mr T's income fluctuated through the period of time that I've been able to review, and at times was significantly less than what SMF used for its affordability check, but whether I used the income figure used by SMF or an average off what I've seen doesn't make a difference to the outcome that I've reached for the reasons I've set out below.

In the months before the loan was approved, Mr T was regularly taking out and repaying payday loans to the extent that almost all of his income was being used to repay such loans. However, in the two months before the loan was approved, Mr T does seem to have curbed his use of such loans. But Mr T was regularly using a high-cost revolving credit facility and in the month before the loan he had taken drawdowns of around £600 – which of course would need to be repaid.

On top of this I can see regular payments to an individual – each month, direct debits and standing orders as well as travel costs. Looking at the statement in the month before the loan was approved, these living costs total nearly £1,000 and of course there would be other costs that are visible in the statements that haven't been accounted for such as food. So, to me, it seems that Mr T's living costs and payments to service the high-cost credit facility came to over £1,500 per month.

Given I've not included costs for food – which are visible, as well the costs that Mr T would have once the car was purchased such as insurance and taking account of his loan payment, I think had SMF taken a closer look at Mr T's finances, which it what it needed to do in order to have carried out a proportionate check, it would've likely discovered this and decided that Mr T couldn't repay the loan in a sustainable manner when thinking about his use of the high cost flexible credit facility as well as his other living costs.

Finally, I've also thought about whether SMF acted unfairly or unreasonably in any other way and I've considered whether the relationship might have been unfair under s.140A of the Consumer Credit Act 1974. However, I'm satisfied the redress I have set out below results in fair compensation for Mr T in the circumstances of the complaint. I'm satisfied, based on what I've seen, that no additional award would be appropriate in this case.

I've set out below what SMF needs to do in order to put things right.

Putting things right

To settle Mr T's complaint SMF should do the following:

- Refund any payments Mr T has made in excess of £6,800 representing the amount it lent. It should then add 8% simple interest per year* from the date of each overpayment to the date of settlement.
- Remove any adverse information recorded on Mr T's credit file regarding the agreement.

*HM Revenue & Customs requires SMF to take off tax from this interest. SMF must give Mr T a certificate showing how much tax it's taken off if he asks for one.

My final decision

For the reasons I've outlined above, I am upholding Mr T's complaint.

Specialist Motor Finance Limited should put things right for Mr T as directed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 4 October 2024.

Robert Walker
Ombudsman