DRN-4944482

The complaint

Mr T complains that Specialist Motor Finance Limited (SMF) didn't sufficiently check whether he could sustain the repayments when they agreed to lend to him.

What happened

In September 2019 Mr T acquired a car when he entered into a hire purchase agreement with SMF. The cash price of the car was £9,394, a part exchange deposit of £310.68 was made. After interest and charges were applied the total amount to be repaid was £13,167.40 repayable by 48 monthly payments of £267.64. Mr T said he struggled to maintain his repayments and SMF didn't help him when he had to change his job to care for his son.

SMF said as a subprime lender they expected to see applications from consumers with previous credit impairment. They said they verified Mr T's income, checked his credit file for his credit commitments, used statistical data to assess Mr T's expenditure. And allowed a £25 contingency. Based on this information SMF said they agreed to lend to Mr T as they said he'd a disposable income of £522.42 so the lending was affordable for him.

Mr T wasn't happy with SMF's response and referred his complaint to us.

Our investigator said Mr T had shown signs of financial vulnerability shortly before the lending and said SMF should have checked his financial situation further. She said if they had they would have seen that Mr T couldn't sustain the repayments. She said to settle Mr T's complaint SMF should:

- Refund any payments Mr T has made in excess of £9,394, representing the original cash price of the car. Adding 8% simple interest per year* from the date of each overpayment to the date of settlement. And
- Remove any adverse information recorded on Mr T's credit file regarding the agreement.

As SMF haven't accepted or rejected our investigator's outcome Mr T's complaint has been referred to an ombudsman to decide.

A provisional decision was issued in July 2024 that said:

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.

I appreciate my decision will disappoint Mr T but having done so while I'm currently minded to uphold his complaint my reasoning and the way to put things right differs from that of our investigator. I'll explain why.

I've considered the relevant rules, guidance and good industry practice when someone complains about irresponsible and/or unaffordable lending. There are two overarching *questions I need to consider in order to decide what's fair and reasonable in all of the circumstances of the complaint. These are:*

1. Did SMF complete reasonable and proportionate checks to satisfy themselves that Mr T would be able to repay the credit in a sustainable way?

a. if so, did SMF make a fair lending decision?

b. if not, would reasonable and proportionate checks have shown that Mr T could sustainably repay the borrowing?

2. Did SMF act unfairly or unreasonably in some other way?

The Consumer Credit Conduct of Business sourcebook (CONC) requires SMF to carry out a reasonable assessment of whether Mr T could afford to repay the loan in a sustainable manner. This is sometimes referred to as an "affordability assessment" or "affordability check".

While I accept SMF as a subprime lender would expect to see previous credit difficulties when they assessed the affordability of the lending for Mr T. The affordability checks still need to be "borrower-focused", meaning SMF need to think about whether repaying the loan sustainably would cause difficulties or adverse consequences for Mr T. Basically, it's not enough for SMF to only think about the likelihood of Mr T being able to pay them back they must also consider the impact of repayment on Mr T himself.

There's no set list for what reasonable and proportionate checks are. But I'd expect lenders to consider the specific circumstances of the loan application. What constitutes a proportionate affordability check will generally depend on several factors such as the specific circumstances of the borrower, their financial history, current situation and whether there are any indications of vulnerability or financial difficulty.

SMF said they assessed Mr T's application using a combination of data sourced from Credit Reference Agencies (CRA),Office of National Statistics,(ONS) and industry publications to determine an affordability amount. They said they took into account his net monthly income which he declared to be £1,397.27, his credit commitments and non-discretionary expenditure such as rent, living expenses, groceries and utilities. And they'd included an additional amount of £25, which they said left Mr T with a disposable income of £522.42.

SMF said Mr T's credit check showed he'd seven active credit items that were all being well managed. He'd four defaults, one of which was around four months prior to their credit search. And six settled credit items. I've considered the checks SMF did.

CONC 5.2A.16(3) says:

"For the purpose of considering the customer's income under CONC 5.2A.15R, it is not generally sufficient to rely solely on a statement of current income made by the customer without independent evidence (for example, in the form of information supplied by a credit reference agency or documentation of a third party supplied by the third party or by the customer)."

SMF has shown they verified Mr T's income through a CRA.

CONC 5.2A.17(2) says:

The firm must take reasonable steps to determine the amount, or make a reasonable *estimate, of the customer's current non-discretionary expenditure. And SMF has done this with the use of ONS statistical data which CONC 5.2A.19 allows them to do.*

But as outlined above consideration should be given to other factors such as whether there are indications of vulnerability or financial difficulty. I can see from the information SMF saw it showed that Mr T had within four months of the lending had a default registered on his credit file. And while SMF said they expect to see credit impairment and have shown they factored in the repayment of any defaulted balances in their assessment. I can't see that they considered this to be a sign that Mr T was experiencing financial difficulty and the impact that further indebtedness would have on him. So, I think SMF should have checked Mr T's financial situation further.

This doesn't automatically mean SMF shouldn't have lent to Mr T as I need to consider whether these checks would have shown that the repayments were unaffordable for him – or in other words that he lost out because of SMF's failure to complete proportionate checks. I can't be sure exactly what SMF would have found out if they'd asked or what Mr T would have told them about his financial situation. In the absence of anything else, I think it would be reasonable to place significant weight on the information set out in Mr T's bank statements.

Mr T has provided bank statements for June, July and August 2019, the three months prior to the lending. His income across the three months averaged to around £1,402, slightly more than SMF used in their assessment. I can also see that Mr T received a benefit of £327.60, as this would be payable every four weeks, I'd consider this to be an additional income of around £355 a calendar month. This would mean Mr T's average income would be around £1,757.

SMF assessed Mr T's outgoings as being cost of living £321.69, rent £296.22, travel £127.00, car insurance £30.00 and £74.94 his monthly credit commitments using CRA data. From Mr T's bank statements, I can see his monthly rent was around £760. Mr T was married with dependent children and his average food costs were around £707, car insurance £35, mobile phone £33, media £12 and petrol costs £95. He'd credit commitments of around £75 and transactions with the reference "car" in June 2019 - £110, July 2019 - £100 and August 2019 – £150 so I've averaged this to around £120 a month. This meant Mr T's non-discretionary spending was around £1,762. Which would indicate the lending wasn't affordable.

But CONC says that a lender must consider the customer's ability to make repayments under the agreement which can include CONC 5.2A.12 (2) (b):

"income from savings or assets jointly held by the customer with another person, income received by the customer jointly with another person or income received by another person in so far as it is reasonable to expect such income to be available to the customer to make repayments under the agreement"

The bank statements provided by Mr T are for a joint account with his partner. And I can see that there were regular payments into the account, from his partner from another account. In June 2019 – around £835, July 2019 – around £657 and in August 2019 – around £700. There were also transfers to his partner, June 2019 – around £213 and August 2019 around £259. So overall there was further income available to Mr T towards his household bills of around £574 a month which I think our investigator should have taken into account. So, Mr T would have had an income of £1,757 and £574, this would have left Mr T after factoring in the new lending of around £265, a disposable income of around £316 for discretionary and unexpected spending which I'd consider sufficient to sustain his repayments under the *agreement.*

So, I don't agree that the lending was unaffordable for Mr T. And I haven't seen any evidence to show that SMF acted irresponsibly in agreeing to lend to Mr T. As I think the lending was affordable for Mr T at inception I won't be asking SMF to refund any monies Mr T has paid in excess of the cash price.

But part of Mr T's complaint was that SMF didn't help him when he was struggling to make his repayment. CONC 7.3 says:

When dealing with customers in default or in arrears difficulties a firm should pay due regard to its obligations under Principle 6 (Customers' interests) to treat its customers fairly.

So I've looked carefully at the notes of contact.

SMF said Mr T had maintained his repayments up to February 2020 when he asked for his payment date to be changed. And he'd fallen behind in his repayment in September and December 2020 when there'd been unexpected costs. I've considered SMF's records and can see that Mr T struggled to make his monthly repayment several times over the period of the agreement. While I can see there were occasions when Mr T was late in making his repayment, I can also see the payment was usually made by his partner making a card payment later the same month. And he settled the agreement in October 2023.

Mr T in his complaint has said that he'd asked for his payment date to be changed from the end of the month to the 11th of each month, which I can see is the date the card payment was usually taken. I understand that on Mr T's request he was advised he needed to pay an additional month for the change to be effective, but he wasn't able to do this.

CONC provides examples of how a lender can help a consumer who is in arrears. I think it would have been reasonable for SMF to arrange for Mr T's payment date to be changed, for example they could have deferred (CONC 7.3.5(2)) one payment to allow for the payment date to be changed to the 11th of each month so that Mr T could make his repayments on time, which SMF's records show he would have been able to do, without making the terms of the repayment unreasonably long. And by not changing Mr T's payment date he's incurred late payment fees and has suffered distress and inconvenience from SMF chasing him by email and telephone for his monthly payment.

Responses to my provisional decision

I haven't been asked to consider any further representations by either party.

I've considered whether SMF acted unfairly or unreasonably in some other way given what Mr T has complained about, including whether their relationship with him might have been viewed as unfair by a court under s.140A Consumer Credit Act 1974. But because I'm partially upholding Mr T's complaint already for the reasons I've explained I don't think I need to make a finding on this. I believe the redress I've suggested results in fair compensation for Mr T 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.

My final decision

I partially uphold this complaint. And ask Specialist Motor Finance Limited to:

- Refund Mr T any late payment fees that they have charged to him after he requested his payment date to be changed. Adding 8% simple interest per year* from the date

of each payment to the date of settlement.
- Pay Mr T £150 for the distress and inconvenience caused.
- Remove any late payment information recorded on Mr T’s credit file under this agreement.

*HM Revenue & Customs requires Specialist Motor Finance Limited to take off tax from this interest. They must give Mr T a certificate showing how much tax they’ve taken off if he asks for one.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr T to accept or reject my decision before 30 August 2024.

Anne Scarr
Ombudsman