

Complaint

Miss I 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 January 2020, SMF provided Miss I with finance for a used car. The cash price of the vehicle was £11,680.00. Miss I didn't pay a deposit and entered into a 60-month hire-purchase agreement with SMF for the entire amount of the purchase.

The amount borrowed was £11,680.00, the loan had interest, fees and total charges of £7,204.80 (made up of interest of £7,194.80 and an option to purchase fee of £10) and the total amount to be repaid of £18,884.80 was due to be repaid in 59 monthly instalments of £314.58 followed by a final payment of £324.58.

Miss I's complaint was considered by one of our investigators. She thought that SMF had ought to have realised that it shouldn't have lent to Miss I. So she thought that the complaint should be upheld.

SMF accepted that it shouldn't have lent to Miss I. However, it didn't agree with the way that the investigator suggested that it should put things right for Miss I. As its alternative was not accepted it asked for an ombudsman to consider the case.

So 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, including how we typically direct respondent firms to put things right, on our website. And I've used this approach to help me decide Miss I's complaint.

The first thing for me to say that SMF has already agreed that it shouldn't have provided entered into this hire purchase agreement with Miss I. As this is the case, I don't need to consider whether SMF acted fairly and reasonably in deciding to lend to Miss I. I simply need to determine whether what SMF has offered to do to put things right for Miss I is fair and reasonable in all the circumstances of her complaint.

Having carefully considered everything, I think that SMF needs to do more to put things right for Miss I. I'll explain why I think this is the case in a bit more detail.

What we would normally expect a firm to do where it agrees it lent irresponsibly

I think that it might help for me to start by explaining that where a business accepts (or we decide) it did something wrong, as a general starting point we'd look to the business putting the consumer, as close as practically possible, to the position they would be in if that wrong hadn't taken place.

In an ideal world, this would mean us expecting a business to put a consumer in the position they'd now be in if what has been complained about hadn't happened. However, in cases concerning irresponsible lending that's simply not possible as the funds that shouldn't have been advanced were lent. As the lent funds will have been used and spent it's effectively too late to wind things back.

In these circumstances, we have to look at some other way of asking a business to put things right in a fair and reasonable manner and bearing in mind what is practically possible. Where a business entered into an agreement that would have resulted in unaffordable payments for a borrower, we'd typically expect it to put the consumer in the position they'd be in now if they hadn't paid any interest and charges on that credit.

This would see the customer repay the funds that they borrowed and had the use of, but we'd normally expect the lender to refund (or remove) any interest and charges that were added. And if those interest and charges were paid also add 8% simple interest per year.

This usually balances the fact that lender shouldn't have lent to the consumer against them having benefitted from the decision – in terms of having funds they wouldn't have had and having spent funds which, in many cases, they may well have known they were unlikely to be able to repay.

That said, we do look at each case individually and on its own particular merits. While we do have a general approach to how we might tell a lender to put things right where it provided a finance that it shouldn't have (such as Miss I's hire purchase agreement here), we can and will sometimes tell it to do something different.

So I could agree that SMF should do something different if a strong reason to depart from our general approach exists and it would be fair and reasonable to do something else in the circumstances of that individual case.

SMF's alternative proposal

In this case, SMF argues that it would be fair and reasonable to do something different here. It has proposed to work out what Miss I would have paid if she had been provided with an agreement that had more affordable payments over the same term. And it wants to refund Miss I the difference between the amount that Miss I did pay and what she would have paid if Miss I had the lower payments it has calculated.

It says that this is a fairer solution as Miss I's position actually improved in the period that she had the agreement.

I've carefully thought about what SMF has said.

Why I don't agree with SMF's alternative offer

In the first instance, SMF has accepted that its checks in this instance were not proportionate. And it is seeking to calculate a more affordable monthly payment from this, what it accepts is, flawed information. So, in my view, all SMF has potentially sought to do here is place

Miss I in the position she would be if she had a less unaffordable agreement, rather than an affordable one.

I say this because while I accept that SMF's calculations have resulted in a lower monthly payment, given the lack of depth in the checks carried out, for example a reliance on statistical data in circumstances where Miss I's credit history showed she fell outside the profile of the average borrower, there's insufficient evidence to demonstrate that proportionate checks would show this new monthly payment was affordable.

Secondly, SMF has said that it carried out a further income and expenditure with Miss I, in November 2022, and this showed Miss I's financial position had improved in the duration she had the finance. So there no evidence of Miss I having to borrow further to make her repayments. However, it's unclear how in depth the checks that SMF carried out in November 2022 were.

I say this because Miss I's credit file show that another County Court Judgment was taken out against her in September 2022. And I can also that Miss I did take out other credit in between the period between the period she was provided with this hire purchase loan in January 2020 and the further income and expenditure assessment taking place in November 2022. Indeed, I can see that Miss I also went on to have a number of accounts enter into default after this too.

So I'm not persuaded by the argument that Miss I's financial position did improve after she entered into this agreement. And it follows that I'm not persuaded by SMF's argument that I should depart from our typical approach to redress because of this.

Overall and having considered everything (including the points SMF has made), I've not been persuaded that the facts and circumstances of this case require me to depart from our typical approach to putting things right in irresponsible cases, in order for me to reach a fair and reasonable outcome.

In reaching my conclusions, I've also considered whether the lending relationship between SMF and Miss I might have been unfair to Miss I under s140A of the Consumer Credit Act 1974.

However, I'm satisfied that what I direct SMF to do below results in fair compensation for Miss I given the overall circumstances of her complaint. I'm also satisfied that, based on what I've seen, no additional award is appropriate in this case. So SMF needs to put things right in line with our typical approach (which I've described earlier on) and in the way that I direct it to do so below.

Fair compensation – what SMF needs to do to put things right for Miss I

Miss I's statement of account shows that she has already paid more than the cash price of the car. As this is the case, I'm satisfied that SMF should put things right for Miss I by:

- transferring ownership of the car to her;
- refunding any and all interest, fees and charges she paid on this agreement;
- adding interest at 8% per year simple on any refunded payments from the date they were made by Miss I to the date of settlement†

- removing any adverse information recorded on Miss I's credit file as a result of this agreement.

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

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss I to accept or reject my decision before 25 November 2024.

Jeshen Narayanan
Ombudsman