

The complaint

Mr S complains through a representative that Specialist Motor Finance Limited (“Specialist”) didn’t take reasonable steps to ensure he could afford the repayments towards a hire purchase agreement.

What happened

In May 2019, Specialist provided Mr S with finance for a used car with a price of £19,538. A deposit was paid which was a combination of a cash payment and a part exchange which came to £1,038. Specialist then financed £18,500 and the agreement had interest, fees and charges of £12,429.40. Mr S was due to make 59 monthly repayments of £515.49 followed by a final instalment of £525.49. If Mr S repaid the finance in line with the credit agreement, he would repay a total of £31,977.40. Mr S settled the account in November 2020.

Specialist considered Mr S’s complaint and didn’t uphold it. Specialist concluded adequate checks were conducted which showed the agreement to be affordable. The complaint was then referred to the Financial Ombudsman.

Mr S’s complaint was considered by an investigator, and she upheld the complaint. She said further checks were needed because of the information contained within the credit checks results Specialist received. Had further checks been carried out, Specialist would’ve likely discovered Mr S was gambling and had a number of outstanding payday loans and so the agreement wasn’t affordable for Mr S.

Specialist disagreed with the investigator’s outcome and in summary it said;

- It lends to people with impaired credit.
- There was no justification for Specialist to review Mr S’s bank statements and even if bank statements were considered they showed a sufficient amount of disposable income.
- Mr S’s application was assessed by an underwriter who was satisfied the finance was affordable based on the repayment history of his credit cards and another HP agreement.
- While Mr S had payday loans these were a short-term commitment and so weren’t due to be repaid over the course of the agreement.

These comments didn’t change the investigator’s assessment and so the complaint has been passed to me for a final decision.

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 S's complaint. Having carefully thought about everything I've been provided with; I'm upholding Mr S's complaint. I'd like to explain why in a little more detail.

Specialist needed to make sure that it didn't lend irresponsibly. In practice, what this means is that Specialist needed to carry out proportionate checks to be able to understand whether any lending was sustainable for Mr S 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 S declared he received an income of £4,000 per month. Specialist then utilised a widely used tool within the industry to cross reference Mr S's declared income. The results of that check indicated that the amount Mr S declared was likely to be accurate and so it wasn't unreasonable for Specialist to use this income figure for its affordability assessment.

Looking at the affordability of the finance, it took Mr S's income and from that it deducted a cost-of-living amount of £308 – this is based on statistical data and took account of where Mr S lived and his age. Specialist deducted rent of £399 and then the existing credit commitments which Mr S had and which Specialist was told about from the credit report. This left around £2,407 per month – the finance looked affordable.

I've mentioned the amount of his monthly existing credit commitments, and Specialist knew about these after it carried out a credit search and it's provided a copy of the results that it received from the credit reference agency. I've considered the results to see whether there was anything contained within them to suggest Mr S may have been having any difficulties.

I accept that Specialist says that it lends to people with impaired credit – and while that may be the case that doesn't negate its responsibility under the regulations to have carried out a proportionate check.

Specialist says the results showed there were 12 active accounts of which 9 were up to date, including an active HP agreement, and although it was aware of three defaults these had all occurred more than six months before the finance was agreed and it was also aware of a satisfied CCJ.

Mr S's credit search results demonstrated that he was having difficulties maintaining his existing repayments. He hadn't made a payment towards a mail order account for at least five months – the account was over its credit limit and looking at the repayment history would likely be defaulting soon.

He also had a further two mail order accounts which were over the credit limit and he had missed the April 2019 payments. From this I can see that a month before this finance was granted, Mr S had missed payments on three separate accounts.

There was also the CCJ was only granted a year before and only settled less than a month before the loan was granted. And there had been two defaults recorded on Mr S's credit file between seven and nine months before the loan start date – further indicating difficulties

managing his finances. This coupled with the missed payments on the above accounts show that whatever difficulties Mr S was having had extended over a number of months.

Thinking about the recent adverse credit file data, while I have taken account of the marketplace that Specialist operates in, I can't ignore that the information it received showed that Mr S was having problems maintaining a number of his existing creditors and so it wasn't reasonable for Specialist to lend without carrying out further checks.

Like the investigator, I do think that before the loan was approved, Specialist needed to understand Mr S's actual monthly expenditure given that he was struggling to repay existing creditors with what Specialist believed was a healthy disposable income.

Specialist could've gone about making further enquires a number of ways: it could've asked Mr S what his outgoings were, asked for evidence from Mr S about his bills, or as I've done here used a copy of his bank statements to work out what his living costs likely were.

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

Just thinking about the direct debits in the statements, these were clearly more than Specialist had accounted for in its affordability assessment and just considering the direct debit payments Mr S had, Specialist it may well have thought the finance was affordable. But that wasn't the only factors it needed to think about because there were also payments for things like petrol and other costs that would've needed to have been to Mr S's living costs.

The statements in the months leading up to the finance being approved showed a marked change in Mr S's expenditure. There are payday loans being received, but there was a marked increase in the amount of and frequency of the gambling transactions.

In the month leading up to the finance being approved Mr S spent nearly £2,800 on such transactions against an income of just under £4,000. Mr S was spending the majority of his income on such transactions and so, the loan was neither affordable nor sustainable for him taking account of the existing commitments and living costs he already had as well as his proposed payments to Specialist.

And while there were occasionally winnings, I can't fairly conclude that Specialist finance agreement was only affordable on the basis that Mr S would be successful with this gambling transactions. That just isn't sustainable.

In my view, had Specialist reviewed Mr S's bank statements – which as I've said is one way it could've gone about finding more information about him - then it would've concluded it ought to not have entered into the agreement with him.

Finally, I've also thought about whether Specialist 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 S 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.

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

Putting things right

To settle Mr S's complaint Specialist should do the following:

- refund anything Mr S paid above the amount of finance provided - £18,500;
- it should add 8% simple interest per year* from the date of each overpayment to the date of settlement and
- remove any adverse information recorded on Mr S's credit file regarding the agreement.

*HM Revenue & Customs requires Specialist to take off tax from this interest. Specialist must give Mr S 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 S's complaint.

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 9 January 2025.

Robert Walker
Ombudsman