DRN-5212428

The complaint

Mr M complains about credit granted to him by Specialist Motor Finance Limited (SMF).

What happened

SMF agreed credit for Mr M in August 2022 to finance a car. The cash price of the car was £11,390 and Mr M borrowed this in full. The balance payable under the agreement came to £20,647 including interest and fees. This was to be repaid in 59 monthly instalments of £343.95 with a final instalment of £353.95. The credit was granted under a hire purchase agreement. This meant SMF remained the owner of the car until the credit was repaid.

I understand that Mr M met his payments on time, at least until May 2024,when he complained to SMF that the agreement was unaffordable for him from the beginning, and that it had been irresponsible to enter into it. Mr M said that he was struggling to manage his finances at the time and SMF would have seen this and declined his application, had it carried out sufficient affordability checks beforehand.

SMF didn't uphold Mr M's complaint. It said that it carried out adequate checks to assess the affordability of the credit and that the information it reviewed showed that the credit was affordable for Mr M at the agreement's inception.

Mr M wasn't happy with this response and referred his complaint to us. Our investigator looked into things and found that SMF carried out reasonable and proportionate checks before entering into the agreement with Mr M, and there wasn't anything in the information it gathered to suggest the lending would be unaffordable or unfair. Our investigator also found that further checks would likely have shown the credit to have been affordable for Mr M, and didn't recommend that his complaint be upheld.

Mr M didn't agree with this recommendation. He asked for the complaint to come to an ombudsman to decide and it's been passed to me.

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.

The Financial Conduct Authority was the regulator when SMF lent to Mr M. Its rules and guidance said that before agreeing credit for him, it needed to check that he could afford to meet his repayments out of his usual income, without having to borrow further, while meeting his existing commitments and without experiencing financial difficulty or other adverse consequences. The assessment needed to be proportionate to the nature of the credit (the type of credit, amount or term, for example) and to Mr M's particular circumstances, and SMF needed to bear in mind that some decisions might require a more rigorous assessment. Ultimately, SMF needed to treat Mr M fairly and take full account of his interests when making its lending decision.

With this in mind, my main considerations are did SMF complete reasonable and proportionate checks when assessing Mr M's application to satisfy itself that he would be able to make his repayments without experiencing adverse consequences? If not, what would reasonable and proportionate checks have shown? Would this information have led to the credit being declined? Ultimately, did SMF make a fair lending decision? Did it treat Mr M unfairly in any other way, including whether the relationship might have been unfair under s.140A of the Consumer Credit Act 1974?

SMF provided the information it relied on in its affordability assessment which included its expenditure estimates and information from Mr M's application and credit file. Mr M provided bank statements for his current account for the months of May to June 2022, letters from his bank, and a scanned copy of his credit file dated September 2024.

Mr M gave his monthly income as £2,045 to SMF and said he was in full time employment. SMF used data from the Office of National Statistics to estimate Mr M's monthly expenses as £1,046 (including a buffer). It said it was prepared to lend to Mr M up to a maximum monthly repayment of £511 and his loan repayments ended up at £343.95, well within his estimated disposable income.

The information SMF relied on from Mr M's credit file showed that he held two current accounts and three revolving credit accounts with combined credit limits of £1,300 and balances of £453. There were default markers on two accounts with balances of less than £1,000, the latest of which was reported more than three years prior to the agreement. I don't think there was anything in this information which would have raised concerns for SMF that Mr M was having current difficulty with his finances or that he would likely have problems meeting his repayments.

That said, SMF should have considered whether it had gathered sufficient information to make a reasonable assessment bearing in mind factors such as the type and amount of the credit, the duration of the agreement, the repayments and total amount payable, for example. Mr M was borrowing a considerable amount relative to what he'd said about his salary, and would need to meet the repayments for five years, with significant adverse consequences if he couldn't do so, such as losing access to a car while still having to meet repayments. So, in this case, I think it would have been reasonable and proportionate of SMF to have verified the figures it relied on for Mr M's income and his non-discretionary expenditure before entering into this agreement.

SMF said it checked Mr M's income using a credit reference agency report that reviews current account turnover, and it was satisfied that the figure he gave wasn't overstated. Mr M's bank statements show that his monthly income was around £2,000 in the months before inception, so I think any further verification would have reassured SMF that the figure it relied on was reflective of his circumstances. I've also concluded from the bank statements that, while Mr M's regular non-discretionary expenses came to more than the estimated figure SMF relied on, it's more likely than not that he would have been able to meet these expenses and repay his existing debt while meeting the repayments for the agreement.

Mr M said that he had many returned direct debits around this time and incurred unarranged overdraft fees. These are shown on the bank statements but as Mr M frequently transferred money out of his account prior to having payments returned and incurring fees, I can't say that these charges alone are evidence of financial difficulty at that time. As mentioned, the credit file information SMF provided didn't show any missing or late payment markers on Mr M's active accounts. And, while I've relied on Mr M's bank statements to come to a view about what a proportionate check on his finances might have revealed, this isn't necessarily the information SMF would have reviewed and the regulations aren't prescriptive about this.

Altogether, I've concluded that SMF would have continued with its offer of credit, even if it had taken further steps to verify Mr M's income and expenditure.

Mr M told us that he was made bankrupt in 2019 for the second time and discharged in January 2020. He said this was due to having county court judgements totalling over £10,000. Mr M also said that he had numerous defaults and years of continued missed payments prior to entering into bankruptcy.

The judgements don't appear on the copy of the credit file Mr M provided, though his bankruptcy does. I don't know if SMF saw any of this information - the credit file information SMF provided to us didn't show a bankruptcy or court judgements. However, even if SMF had been aware of this information, I don't think this means it would have declined to lend to Mr M. The bankruptcy had been discharged two and a half years before the agreement began and, as mentioned, the latest default marker was over three years old. SMF told Mr M in its final response letter that it lent to people with fewer lending options available to them, even where they'd previously struggled with their finances.

I understand that Mr M asked SMF for a settlement figure in April 2023 and also asked about termination of the agreement. Mr M says he can't trade in his car for a cheaper one because the value of the car is lower than the amount he needs to repay. He said that SMF was irresponsible to provide him with a high interest loan for a car that was going to be in negative equity almost immediately. Mr M also told us that the debt is causing him stress and had impacted adversely on his mental health and wellbeing.

I am sorry to hear that things have been difficult for Mr M, and also that I can't provide the resolution he's hoping for. As I've explained above, while I've found that SMF should have carried out more rigorous checks before lending to him, I've concluded that such checks wouldn't have shown the credit to be unaffordable for him and so wouldn't have led to a decline. I haven't found that SMF was irresponsible to have entered into the agreement as it did, or that it treated Mr M unfairly in doing so, and I haven't seen anything to suggest that Section 140A would, given the facts of this complaint, lead to a different outcome here. It follows that I am not upholding Mr M's complaint.

I would remind SMF of its obligations to treat Mr M with forbearance and due consideration if he is struggling with his repayments, which may mean agreeing an affordable repayment plan with him.

My final decision

For the reasons I've explained above I am not upholding Mr M's complaint about Specialist Motor Finance Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 12 February 2025.

Michelle Boundy
Ombudsman