

## **The complaint**

Ms C says Specialist Motor Finance Limited, ('SMF'), irresponsibly lent to her.

She says that it didn't take reasonable steps to ensure she could afford the repayments towards a hire purchase agreement for a car. She does not believe the agreement should ever have existed as better checks would have resulted in her application being declined.

Ms C's complaint has been brought by a representative and I've referred to Ms C and the representatives' comments as being from Ms C for ease of reading.

## **What happened**

This complaint is about a hire purchase agreement that Ms C took out to purchase a car on 21 December 2017. The vehicle had a retail price of £9,500 and the full amount was financed. This agreement was to be repaid through 48 monthly instalments. There were 47 monthly repayments of £301.46 and then a final instalment of £311.46. If Ms C made repayments in line with the credit agreement, she would need to repay a total of £14,480.08. Ms C has repaid the agreement and has retained the car.

Ms C complained to SMF saying that it had not performed adequate checks. And if it had made better checks it would have seen that she was unable to afford the repayments and not lent to her.

SMF considered this complaint, and it didn't uphold it. It said it'd carried out adequate checks, which showed Ms C could afford the lending. It did think that it could have provided more assistance to Ms C when she entered an arrangement to pay in 2021, due to some financial difficulties she was having. It offered £500 compensation for this.

Ms C didn't agree with this and brought her complaint to the Financial Ombudsman Service.

Our Investigator considered the time limits to bring and complaint considering when the complaint was made in relation to the start of the credit and whether the relationship was unfair under section 140A, 140B and 140C of the Consumer Credit Act ('CCA'). And why she thought these factors led to the Financial Ombudsman Service being able to consider the complaint, despite it possibly being made later than six years of the time the credit agreement was started.

Our Investigator went on to uphold Ms C's complaint. She thought the finance shouldn't have been approved as SMF's checks showed the finance was not affordable.

SMF didn't agree with the Investigator. It said that:

- It did make proportionate checks before lending, these included verifying Ms C's income using credit reference agency data and making detailed enquiries into her expenditure in a telephone call.
- These showed that Ms C could afford the finance.

- It acknowledged that Ms C wouldn't have a lot of spare income after the finance repayments. But it was reasonable to assume her partner would also be responsible for any unforeseen expenditures, so this wasn't material.

Because SMF didn't agree, this matter has been passed to me to make 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.

When someone complains about irresponsible and/or unaffordable lending, there are two overarching questions I need to consider when deciding 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 itself that Ms C 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 Ms C could sustainably repay the borrowing?
2. Did SMF act unfairly or unreasonably in some other way?

And, if I determine that SMF didn't act fairly and reasonably when considering Ms C's application, I'll also consider what I think is a fair way to put things right.

#### *The financial Ombudsman Services jurisdiction to consider this complaint*

Before I consider whether the car finance was lent irresponsibly I'll note that our Investigator talked about whether the complaint was in jurisdiction and the potential unfair relationship between Ms C and SMF. I have also considered this.

The rules that govern our service are set out in the Handbook of the Financial Conduct Authority, specifically the Dispute Resolution section (DISP). DISP 2.8.2R(2) sets out the time limits in which we have to work. The parts of the rule relevant to this case are:

*“The Ombudsman cannot consider a complaint if the complainant refers it to the Financial Ombudsman Service: [...] (2) more than: (a) six years after the event complained of; or [...]*

According to the agreement the credit was started on 21 December 2017 and Ms C's complaint was made on 18 December 2023 and sent by email to SMF on this day. So, the complaint was made within six years of the time of sale. As the complaint was brought within six years of the time of the event complained, I therefore don't think it is outside of the Financial Ombudsman Service's jurisdiction in respect of the time taken to complain. Because of this I don't need to consider this issue, or the related unfair relationship issue, any further. And I've noted our Investigator did consider this was likely to be the case.

Did SMF complete reasonable and proportionate checks to satisfy itself that Ms C would be able to repay the credit in a sustainable way?

There's no set list for what reasonable and proportionate checks are, but I'd expect lenders to consider things such as the amount, duration, and payments of the finance being applied for, as well as the borrowers' personal circumstances at the time of each application.

SMF have explained that it asked Ms C what her income was, and she said that it was around £1,000 a month after tax. SMF checked this using some information from a credit reference agency ('CRA'). There isn't any evidence to show that this income amount was incorrect.

It also checked Ms C's credit file and saw that she had eight active credit accounts which were all up to date.

The CRA information also showed that Ms C had some defaults over three years in the past, but there was nothing more recent than this. So, I don't think there is anything on this report that shows me SMF should've declined her application, or that it should've been unduly concerned about her current financial position.

SMF went on to consider Ms C's expenditure. It did this in a phone call with her and it said that it found out that their household expenditure was £1,649.30 and she was responsible for 34% of this. Which was £560.76. It also determined that her existing credit expenditure was £134.94. From this, SMF calculated that Ms C had a disposable monthly income of £304.98.

The finance repayments were just over £301 a month so I think it's clear that Ms C would have very little, if any, spare income. I agree with our Investigator that this likely makes the finance repayments unaffordable.

SMF says that it's reasonable to assume that her partner, who it said paid most of the bills, would be able to pay, or contribute to, any further expenses that may be incurred.

But I don't think the lending was approved on this basis. There isn't anything to say this was looked at when the credit was arranged. The lending was in Ms C's name only and was approved on her circumstances alone. It needed to be affordable for her, and I don't think that it was. And her partners circumstances were accounted for but on the basis they paid a proportion of the bills.

And even if it was approved on this basis then this would put Ms C in the situation where she would be reliant on another person for any unforeseen expenditures over the four year period of the finance. I don't think this is reasonable as it couldn't be guaranteed.

Added to this, SMF has said that it would only normally lend 25% of a person's income. And that it didn't adhere to its own lending criteria here. It has acknowledged that it should only have lent up to maximum of £250 a month in this case. Which further supports my decision that this lending was irresponsible.

I think these factors make it unlikely that Ms C would be able to sustainably repay the new finance. And that SMF should have realised this, given the information it had and not lent to her. And I think this was borne out when Ms C became unable to reliably pay the finance in 2021.

#### Did SMF act unfairly or unreasonably in some other way?

SMF has said that it could have better managed how it contacted and handled Ms C's difficulties in 2021. SMF has already made an offer to pay £500 to settle this aspect of Ms C's complaint and I think this offer is fair in all the circumstances. I have included it in the compensation below.

Finally, I've thought about whether considering this complaint more broadly as being about an unfair relationship under Section 140A of the Consumer Credit Act 1974 would lead to a different outcome. But even if it could (and should) reasonably be interpreted in that way I'm satisfied this wouldn't affect the outcome in this case.

### **Putting things right**

Ms C made use of the credit facility SMF provided, and she purchased a car with this. So, it's fair that she pays the car price. However, as SMF shouldn't have approved her finance application. So, I don't think it's fair that she should pay any interest and charges. So, SMF should refund these, with interest.

SMF should:

- Refund anything Ms C paid above the cash price of the car of £9,500.
- Apply 8% simple yearly interest on the refund, calculated from the date Ms C made the overpayments to the date of the refund<sup>†</sup>.
- Remove all adverse entries relating to this agreement from Ms C's credit file.
- Pay Ms C £500 due to how it handled her financial difficulties in 2021. If SMF has already paid this it does not need to pay it again.

<sup>†</sup>If SMF thinks that HM Revenue & Customs requires it to take off tax from this interest. SMF must give Ms C a certificate showing how much tax it's taken off if she asks for one.

### **My final decision**

For the reasons I've explained, I uphold Ms C's complaint.

Specialist Motor Finance Limited should put things right by doing what I've said above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms C to accept or reject my decision before 5 June 2025.

Andy Burlinson  
**Ombudsman**