DRN-5345308

The complaint

Mr M complains that Specialist Motor Finance Limited (SMFL) was irresponsible in its lending to him. He wants his repayments under his hire purchase agreement and the insurance settlement refunded.

What happened

Mr M took out a hire purchase agreement with SMFL in April 2021 to finance the acquisition of a car. The total amount repayable under the agreement was £11,362.40. Mr M paid a cash deposit of £100 and was then required to make 59 monthly payments of around £188 followed by a final payment of around £198. Mr M said that the agreement was unaffordable, and he was only able to maintain his payments by taking out further debt. He said this resulted in him accumulating a large amount of debt and needing to enter an individual voluntary arrangement.

SMFL explained that it provided finance to people with previous poor financial performance or a limited credit profile. It said that it carried out creditworthiness and affordability checks and that Mr M declared he had a monthly net income of £2,400, was married and a tenant. Its credit check showed he had nine active accounts that were all up to date and six historical defaults. It verified Mr M's income through his payslips and used information from the credit reference agencies and other third-party data to assess his expenses. It said that after deducting Mr M's expenses from his income, along with a £100 buffer, the repayments were affordable. It said Mr M maintained his account well until March 2023 when the account was settled with an insurance claim. Based on this, SMFL didn't accept that the lending was unaffordable for Mr M.

Mr M referred his complaint to this service.

Our investigator accepted that Mr M's defaults were historic but noted that there was still an outstanding balance on these of £4,224 at the time the agreement was provided. While the overall balance had been decreasing, he noted that several of the defaults had increased since the default date which he thought could raise concern. Considering this, and the size and term of the loan, our investigator thought that SMFL should have carried out further checks such as verifying Mr M's living costs, to ensure the lending was affordable.

Our investigator considered what proportionate checks would likely have shown. He found Mr M's net monthly income in the months leading up to the lending was around £3,318. He was paying nominal amounts to debt collection agencies which he thought could suggest Mr M didn't have the money available to repay these. Our investigator calculated Mr M's regular credit commitments, fixed outgoings and normal living costs and found these to be around £3,012 a month. Adding the monthly repayments due under the agreement of around £187 would bring Mr M's total monthly costs to around £3,199. He thought this didn't leave sufficient disposable income to say the lending would be sustainably affordable. Therefore, he upheld this complaint.

SMFL didn't agree with our investigator's view. It said that Mr M's most recent default before the agreement was provided was in June 2019 and his credit report showed no issues since then. It noted that the repayments under its hire purchase agreement were £91 lower than the repayments due under the hire purchase agreement that it thought was settled at that time. It said Mr M was married but there was no indication as to how his costs had been split and that money transfers into the account hadn't been included.

SMFL said that based on the information available its checks were proportionate.

As a resolution wasn't agreed, this complaint was passed to me, an ombudsman, to issue a decision.

My provisional conclusions

I issued a provisional decision on this complaint the details of which are set out below.

Before the agreement was provided, SMFL gathered information about Mr M's employment, income and residential and marital status. It said Mr M declared he was employed with a monthly net income of £2,400, was married and a tenant. The credit search showed that Mr M had nine active accounts which he was maintaining well. Based on his active account balances, he didn't appear to be overindebted.

However, the report also showed he had six defaulted accounts. While these were historic, with the two most recent being recorded in June 2019, the default dates showed that Mr M had experienced an extended period of financial difficulties from 2017 to 2019 and the balances on some of the accounts had increased since the default dates. I also note that Mr M had taken out an unsecured loan in March 2021, just before this agreement was provided. So, while I note the repayments due under the agreement were for around £188 which I don't think raised concerns when compared to his declared income, given Mr M's previous financial issues, the level of his defaulted balances and that he had recently taken out new debt, I think that SMFL was required to get a thorough understanding of Mr M's specific financial circumstances before lending.

In this case, SMFL verified Mr M's income through his payslip which I find reasonable. His repayments to existing credit commitments were recorded on his credit check and I note Mr M's largest outstanding balance was on a hire purchase agreement. SMFL said that this agreement was settled at the time of the new agreement being taken out but having looked at Mr M's credit file, the existing hire purchase wasn't settled until May 2024. Estimates were used for his other costs and in this case, I think that further questions should have been asked to get a clear picture of Mr M's committed expenditure to ensure the lending was affordable.

SMFL wasn't required to request copies of Mr M's bank statements but as I think it was required to get a clear picture of his expenses, I have looked at the information contained in the statements Mr M has provided to understand what further checks would likely have identified. While Mr M's income had been verified, further checks would have shown that additional to his income from the employer he had noted on his application, there were also receipts into the account from other sources. Averaging the income from the sources that appeared in each statement gave a monthly income into the account of around £3,350. Additional to this there were one off payments from individuals but as these weren't consistent, I haven't included these.

Mr M was a tenant and a rental payment of £1,200 is shown in his March statement and £1,249 in his May statement, so I have included an amount of £1,225 for his rental payment. I note SMFL's comment about this potentially being split but as this is the amount being paid from the account, I find it reasonable to include this.

There were then payments into and out of the account to another individual labelled as 'bills'. The net position of these averaged a payment from Mr M's account of around £185. Additional to these costs, Mr M was paying for utilities, insurances and communications costs and his existing credit commitments (including the existing hire purchase agreement). The total of these averaged around £920. Mr M was then spending around £460 on food and fuel. Taking all of this into account would leave Mr M with around £560 to cover the cost of the agreement (£188) and any other additional living costs or unforeseen expenses. While this doesn't leave a large amount of disposable income, I have included in my assessment Mr M's spending at supermarkets which I would expect to cover his food and certain other essential costs and costs for fuel. Taking this into account, I do not find that I can say that further checks would have shown the agreement to be unaffordable for Mr M. Therefore, I do not uphold this complaint.

Mr M responded to my provisional decision and provided further documents to support his position. He said he had taken out an agreement similar to this one previously and his complaint had been upheld by the business without the need for it to be referred to this service. He said that the provisional decision recorded him as having income of £3,350 but that part of this wasn't for his use as he managed money for a family member and that the payments to and from his account for bills were often the family member's expenses. Given this he said the assessment overstated his available income.

Mr M said that while the assessment suggested he had £560 of disposable income after his essential costs, this didn't reflect the financial pressures he was under. He said that for extended periods the only accessible funds were those paid by the family member and that he was constantly in debt, borrowing from one party to repay another. He said he wasn't in a stable financial position and was delaying payments, living on credit and sacrificing some essential bills to make his debt repayments. Mr M explained that the car was involved in an accident and written off and the insurance payment all went to SMFL leaving him with no compensation and no car.

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.

Our general approach to complaints about unaffordable or irresponsible lending – including the key rules, guidance and good industry practice – is set out on our website.

The rules don't set out any specific checks which must be completed to assess creditworthiness. But while it is down to the firm to decide what specific checks it wishes to carry out, these should be reasonable and proportionate to the type and amount of credit being provided, the length of the term, the frequency and amount of the repayments, and the total cost of the credit. I note SMFL's comment about its position in the lending market and I acknowledge that it lends to customers who may have issues on their credit file. Given this, I think it particularly important that SMFL carries out adequate checks to ensure the customer - who may have experienced previous financial difficulties - is in a stable position to take on new lending.

I would like to thank Mr M for the additional information provided in response to my provisional decision. While I can assure him I have taken all of his comments into consideration, my decision regarding this complaint hasn't changed.

Mr M has said that he had a previous agreement which he complained about, and his complaint was upheld by the business. I can understand why Mr M feels this should support this complaint being upheld. But I would like to explain that we treat each case based on its individual merits and given the information available in this case regarding Mr M's circumstances at the time this agreement was provided I do not find I have enough to say that SMFL should have identified the lending as unaffordable.

While I haven't seen the details of Mr M's other complaint, I note he refers to the agreement subject to that complaint being taken out in November 2019. In this case the agreement was provided in April 2021, by which point his previously recorded defaults were historic (the most recent being recorded in June 2019) and the credit report showed that he was maintaining his active accounts well and he didn't appear to be overindebted. However, while Mr M's credit report suggested he was managing his active commitments, as I set out in my provisional decision, I think given his previous financial issues and the level of defaulted balances, further checks should have been undertaken to understand more about his financial circumstances.

Mr M has explained that he was managing a family member's money through his account. I have considered this but also note that SMFL wasn't required to request copies of Mr M's bank statements before lending. I have used the information contained in these to assess what I think would most likely have been identified had further questions been asked. In this case there were regular payments into the account including payments from an individual. Mr M has included the payments from the individual in the information regarding his family member's transactions, but removing this amount would only reduce the income figure to around £3,290. As I noted in my provisional decision while there were other payments into the account as these weren't regular, I didn't include them in my assessment.

Having considered the information in Mr M's bank statements I think it reasonable that had further checks been undertaken the income above would have been identified along with his expenses for costs such as his rent, utilities, insurances, communications contracts and his existing credit commitments. Taking into consideration these costs and an amount for general living such as food and fuel, didn't raise concerns that the lending would be unaffordable. Therefore, I do not find in this case I can say that SMFL shouldn't have provided the agreement.

I've also considered whether SMFL acted unfairly or unreasonably in some other way given what Mr M has complained about, including whether its relationship with Mr M might have been unfair under Section 140A of the Consumer Credit Act 1974. However, for the reasons I've already given, I don't think SMFL lent irresponsibly to Mr M or otherwise treated him unfairly in relation to this matter. I haven't seen anything to suggest that Section 140A would, given the facts of this complaint, lead to a different outcome here.

I am sorry to hear that Mr M was made redundant and the struggles he is currently facing. I do not underestimate the pressure he is under or the challenges he is facing. But in this case, I do not find that I have the evidence to uphold this complaint.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 24 March 2025.

Jane Archer
Ombudsman