

## **The complaint**

Mr T complains through a representative that Specialist Motor Finance Limited “Specialist” gave him car finance that wasn’t affordable for him.

## **What happened**

In August 2018, Specialist provided Mr T with a hire purchase (HP) agreement through an intermediary for a used car with a price of £4,825. No deposit was paid so the full vehicle price was financed. The total charge for credit was £3,924 and if Mr T repaid the agreement in line with the terms and conditions, he would’ve repaid a total of £8,749. Mr T was due to make 59 monthly repayments of £145.65 followed by a final instalment of £155.65. Specialist says the agreement was settled in September 2023.

Specialist considered Mr T’s complaint and didn’t uphold it and the complaint was then referred to the Financial Ombudsman.

Mr T’s complaint was considered by an investigator, and they upheld the complaint. The investigator concluded 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 T was already struggling to meet his existing credit commitments so couldn’t afford any further credit.

Specialist didn’t agree and it gave it’s reasons why. As no agreement was reached the complaint was passed to me to decide. I then issued my provisional decision explaining the reasons why I was intending to uphold Mr T’s complaint.

Both parties were asked for any further submissions. Specialist responded and in summary said.

- It has asked to view the transactions made to another account – and which haven’t yet been provided. It says these were significant amounts – and even taking account of the transfers in – he was moving over £1,000 per month to the other account.
- Specialist provided comments about the use of the hire purchase agreement and how it goes about calculating whether a consumer is likely to be able to afford the payments.
- Mr T’s income was checked as part of the application as well additional checks – which showed the accounts he had opened with the last year had been well maintained. With monthly repayments of around 10% of his income.
- There should be a deduction for keeping Mr T mobile through the course of the agreement which was repaid without any obvious difficulties.
- Specialist considered how Mr T had managed a previous hire purchase agreement – where there were no missed payments. It would’ve been expected that this agreement was repaid before entering the one with Specialist – as this is how the marketplace works.
- Although Mr T had payday loans, he would’ve only needed to have made payments for a short period of time and so it shouldn’t be considered that he would have to make these over the lifetime of the agreement.

- Mr T made all his repayments showing the agreement was affordable.
- The redress proposed would mean that Mr T would've paid zero interest and retained control of a vehicle that has a value.
- The redress disproportionately rewards Mr T while penalising Specialist.
- Removing any adverse would be against its contract with the credit reference agencies to provide an accurate reflection of how the account was repaid.

Following this response, I went back to Specialist to clarify what statements had been provided and which accounts the statements covered. Specialist responded, and in addition to what it commented on above it said.

- No consideration has been taken to what would've happened to Mr T had Specialist not been approved for the finance.
- Mr T had an existing HP agreement costing £108 – which he hadn't missed a payment towards and so the new agreement wasn't significantly adding to his monthly repayments.
- There were other non-discretionary expenditures in the bank statements – that if they hadn't have been made Mr T would've been able to afford the finance.
- The bank statements show that Mr T's income was in line with his declaration and the results of Specialist income check.
- Had Specialist questioned Mr T about his use of payday loans it's unlikely Mr T would've declared he'd carry on using them.
- The bank statements don't show any affordability concerns.
- There was no reason for Specialist to have carried out further checks.

An extract of the provisional findings follows this in smaller font and forms part of this final decision.

### **What I said in my provisional decision:**

*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 T's complaint. Having carefully thought about everything I've been provided with; I'm intending to uphold Mr T'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 T 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.*

*As part of his application, Mr T declared he worked full time earning £2,100 net per month. Specialist utilised a widely used tool within the lending industry to cross reference Mr T's declared income. Specialist says the results of that check indicated that the amount Mr T declared was likely to be accurate and so it wasn't unreasonable for Specialist to use this*

income figure for its affordability assessment.

Specialist then took Mr T's income and from that it deducted a cost-of-living amount of £608 – this is based on statistical data and took account of where Mr T lived and his age. Specialist made a further deduction for rent of £402 and then a further £599 to take account of his existing credit commitments – using data from the credit search results. This left around £493 per month to afford the payments so 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 T may have been having any difficulties.

The information shows that Mr T had 16 active accounts which were up to date. But it was aware of missed payments on two credit card accounts around six months before the finance was granted – but these accounts were quickly brought up to date. Mr T must have had some recent difficulties because a current account had defaulted and then was partly settled in January 2018. And given the credit search ought at the very least to have given Specialist cause for concern.

The credit file data also showed, Mr T had opened 5 loan accounts since January 2018, and the longest term was 7 months. Although the credit file didn't show this, I think it would've been fair to conclude that these loans were likely to be payday or instalment loans. And the number of likely active payday / instalment loans ought to have prompted further checks into Mr T's living costs because it was perhaps a sign that Mr T was having problems managing his finances.

Taking account of the recent adverse credit file data, I don't think it was fair or right for Specialist to have relied on statistical data for Mr T's living costs. I do think that before the loan was approved, Specialist needed to understand Mr T's actual monthly expenditure. Specialist could've gone about checking his living costs a number of ways: it could've asked Mr T what his outgoings were, asked for evidence from Mr T 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.

The bank statements showed that Mr T had a number of outstanding payday loans – and indeed he had recently taken a new one at the end of July 2018 that hadn't yet filtered through to the credit search results. There also appears to be a further instalment loan provider that hadn't been picked up by the credit search results that was costing him an additional £172 per month.

There are also a regular direct debit payments being missed – it seems that in July 2018 the same payment for a TV subscription service is returned unpaid on two occasions and in June 2018 Mr T has difficulties repaying one of his payday loans. Of course, it's worth pointing out here that CONC 1.3 sets out that non-payment of existing creditors could be a sign of financial difficulties.

A review of Mr T's banks statements to look at his living costs would've likely shown Specialist that he was already having difficulties managing his existing creditors to the extent that in the three months before the loan was granted he had at least six returned, unpaid direct debits. In addition, Mr T had a number of active payday loan accounts – at least four by the time the loan was granted. So, to me, it seems likely Mr T had a need for payday loans in order to supplement his income.

In my view, had Specialist reviewed Mr T'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, as it was not likely to be sustainably afford for him. I am therefore intending to uphold the complaint.*

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

### **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.

Mr T hasn't provided any new submissions and I've thought about the response provided by Specialist. Having done so, I'm still upholding the complaint, and I've explained why its comments haven't persuaded me to change my mind below.

I also want to reassure both Specialist and Mr T that where I haven't commented on a specific issue which has been raised following the provisional decision it's not because I've failed to take it on board and think about it. The reason I will not have commented on the issue is because I'm satisfied that I don't need to do so in order reach what I consider to be a fair and reasonable outcome – given what I said in the provisional decision. For the sake of completeness, I would add that our complaint handling rules, which I'm required to follow, permit me to adopt such an approach.

Firstly, I agree with Specialist that it did check Mr T's income as part of the application – but the complaint didn't turn on whether the income was checked (or not). But for completeness, I was and still am satisfied that Specialist were entitled to rely on the income declaration by Mr T as well as its check into his income. And even if I were to accept that the income check wasn't sufficient – to be clear I don't think this – then a review of the bank statements would've shown the income amount was broadly accurate. So, I say no more about Mr T's income.

While I don't necessarily think it's unreasonable for Specialist to have considered how Mr T repaid a previous agreement – it is still nonetheless required to carry out proportionate checks into any prospective applicant – in line with the requirements within the regulations. Neither do I really need to comment on the ending of the other purchase agreement – for the same reasons. The complaint didn't uphold on this basis. I also want to be clear that I didn't include the repayments to the agreement which ended because Mr T wouldn't have that commitment moving forward.

For the reasons I gave in my provisional decision – and which haven't changed I don't think the checks went far enough.

Specialist has said that it didn't just carry out the checks I detailed in the provisional decision, but the application was also manually assessed. But there is no mention of this in the final response letter, or cover letter to our service. And the system notes provided suggest the application was reviewed. But this indicates that only a closer look was paid to Mr T's credit search results and his income was confirmed. But it doesn't look like there was any further review into Mr T's living costs – which is what I think really needed to have happened.

And while, I do have to consider what Mr T may have done had the agreement not be granted I also have to consider the obligations Specialist had to conduct proportionate affordability checks.

I also don't think its right to say – that just because Mr T needed a vehicle that it was correct to grant it for him. After all – following that logic through to its fullest conclusion then it's in

effect saying that should a consumer request finance for a car – it should be granted because it will keep them mobile – regardless as to whether the agreement was actually affordable for them – or not.

I've also considered what Specialist has said about the review of the bank statements, but for the reasons I outlined in the provisional decision as well as the investigators findings. I'm, persuaded that had it reviewed his statements it would've concluded the agreement was unlikely to be afford for Mr T.

Specialist ought to have reasonable been on notice that Mr T was using payday loans. And while I accept that these were likely to be paid over a shorter period then the finance approved – the fact Mr T had the number outstanding loans meant paying this agreement – and the credit search results indicated he'd been a regular user of such loans for a number of months. There was no indication, and Specialist couldn't be sure, that Mr T would stop using them.

In addition, I think it also would've likely discovered Mr T was already having problems managing his existing commitments – given the number of returned direct debits – which again ought to have alerted Specialist to the fact that Mr T wasn't in a position to take on any further credit – when he couldn't pay his existing ones.

Although, I've set out below what Specialist needed to do in order to put things right for Mr T. I have thought about what Specialist says about Mr T being kept mobile – but he's ultimately, repaid the loan agreement and so the financial loss to Mr T was the interest, fees and charges that were levied. In effect, Specialist has received the money for the value of the car – there is no short fall.

There are some situations where a fair usage fee maybe levied – for example where a complaint maybe upheld during the course of the agreement and where the outstanding balance still remains. Or in a situation where at the uphold point, a consumer hasn't paid the lender a sufficient amount to cover the purchase price of the car.

In those situations, it is entirely fair and appropriate for a lender to take possession of the car and take account of fair usage, after all a lender's ability to sell the car (and the value it may receive) would've been impacted by the consumer's use of the vehicle. However, in this case, as the agreement has been repaid, I don't think a fair usage deduction should be made – after all I'm not recommending the car be returned to Specialist.

And while I'm not asking Specialist to remove the loan from the credit file, I do think, given the credit ought to not have been provided that any adverse credit file information should be removed from his file. Indeed, this is a common recommendation made by the Financial Ombudsman Service where its decided credit was provided – when it ought not to have been.

Having thought about what Specialist has said in response to the provisional decision, I'm not persuaded to either change the outcome or the redress that it ought to pay.

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 T 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.

## **Putting things right**

In the circumstances of this complaint, Mr T has already repaid the value of the vehicle plus an amount of interest, fees and charges. There is no balance left to pay and I am not directing Mr T to return the car. In those circumstances, I don't think a fair usage fee is fair or applicable. Instead, I think that Specialist should refund any interest, fees or charges that Mr T paid above the asking price of the vehicle and that is what I've set out below.

To settle Mr T's complaint Specialist should do the following:

- refund anything Mr T paid above the amount of finance provided - £4,825;
- 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 T's credit file regarding the agreement.

\*HM Revenue & Customs requires Specialist to take off tax from this interest. Specialist must give Mr T a certificate showing how much tax it's taken off if he asks for one.

## **My final decision**

For the reasons I've explained above and in the provisional decision, I'm upholding Mr T's complaint.

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 6 June 2025.

Robert Walker  
**Ombudsman**