

## **The complaint**

Mr W complains that Specialist Motor Finance Limited (“SMF”) failed to conduct sufficient checks into his financial position before it entered into a hire purchase agreement with him.

## **What happened**

In August 2019, SMF provided Mr W with a hire purchase agreement for a used car through a credit intermediary. The car had a retail price of £7,995. Mr W paid a £300 deposit, and so £7,695 was financed. The agreement had interest, fees and charges totalling £5,117.80 which led to a total to repay, of £13,172.80. This agreement was to be repaid in 59 monthly repayments of £214.38 with a final payment due of £224.38. The statement of account provided by SMF shows that by August 2024, Mr W owed £25.

SMF considered Mr W’s complaint and didn’t uphold it. SMF concluded the checks it carried out before providing the agreement showed that Mr W would be able to afford his repayments. Unhappy with this response, Mr W referred the complaint to the Financial Ombudsman.

Mr W’s complaint was considered by an investigator, and they upheld it. The investigator said had further checks been made, such as reviewing bank statements, then SMF would’ve been aware that Mr W couldn’t afford the agreement because of his outgoings and living costs.

Mr W agreed with the proposed outcome. Whereas SMF disagreed and provided reasons why. These comments didn’t change the investigator’s assessment and so the complaint was passed to me. I then issued a provisional decision explaining the reasons why I was intending to not uphold Mr W’s complaint.

Both parties were asked for any further submissions to be received by 19 March 2025. SMF didn’t have any further comments about the outcome that I was intending to reach. Mr W gave reasons why he disagreed, and I’ve summarised these below.

- Mr W has said that before he referred the complaint here, he saw other complaints, which appear to be similar to his have been upheld by the Financial Ombudsman.
- SMF ought to have made enquires about how and why Mr W defaulted on accounts four years before. The defaults would’ve impacted his ability to obtain credit at a more affordable rate.
- Mr W says with his existing credit commitments along with the SMF payment represented a significant portion of his salary.
- It wasn’t reasonable for SMF to assume that Mr W was only responsible for 50% of the mortgage costs when he was responsible for all of it.
- It would’ve been reasonable for SMF to have reviewed Mr W’s bank statements given the adverse payment information.

A copy 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 W's complaint. Having carefully thought about everything I've been provided with, I'm intending to not uphold Mr W's complaint. I'd like to explain why in a little more detail.*

*SMF needed to make sure that it didn't lend irresponsibly. In practice, what this means is that SMF needed to carry out proportionate checks to be able to understand whether any lending was sustainable for Mr W 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 Mr W's submissions, he's mentioned mechanical work that needed to be carried out on the car shortly after he received it. I just want to be clear that I am not looking at whether the car was of satisfactory quality. I'm reviewing whether SMF carried out proportionate checks before it lent to Mr W and if didn't carry out proportionate checks, what would further checks have shown it.*

*Mr W declared a monthly income from full time work of £1,766. SMF didn't simply accept what Mr W had told it and it took steps to electronically verify the income Mr W had given using a tool provided by the credit reference agency. SMF was satisfied, having conducted this check, that the income Mr W declared was likely to be accurate.*

*SMF then went about calculating Mr W's outgoings, using statistical data from the Office of National Statistics. It used a cost-of-living payment of £305.25, car insurance at £34, travel of £127, mortgage of £327 – which was 50% of the known mortgage costs. To this is also added a buffer of £25.*

*SMF then took steps to work out his credit commitments and it did this by taking data from the credit search that it conducted. SMF calculated these cost came to around £197.98 per month. After all these deductions from the checked income this left Mr W £749.77 per month to cover the loan payment and any other living costs. So, it does seem, based on the results of its checks that the loan appeared affordable.*

*I just want to point out that SMF is entitled to rely on statistical data – to work out non- discretionary expenditure – because this is laid out with the relevant regulations that SMF needed to adhere too. Unless it knew or ought to have known that his expenditure was higher than shown in the data – or that using the data isn't reflective of Mr W's financial situation.*

*Mr W has provided some testimony that he was responsible for the whole mortgage payment – and not just the 50% that SMF attributed to him. I don't think, superficially, that it was unreasonable, to believe that Mr W's wife may contribute towards this. I accept that may not have actually been the case, but nonetheless, it was still a reasonable assumption to make at the time.*

*However, the crux of the disagreement lays at the credit search results. SMF says as a near to sub-prime lender it is to be expected that there will be some adverse payment information. Whereas the investigator concluded the credit file showed sufficient concern that ought to have led SMF to carry out further checks into Mr W's finances.*

*I've received the credit search results provided by SMF and I don't agree with the investigator that the credit search results ought to have prompted further checks.*

*Firstly, SMF was aware that there had been two defaults recorded on Mr W's credit file in relation to a current account and either a credit or store card. However, the current account default had been settled, and the card balance had been reduced. But the most recent default had been recorded around four years before the finance had been approved. So, I don't think those defaults were an indication that Mr W would likely have had problems repaying this agreement or were a sign that he was currently experiencing financial difficulties.*

*I say this in light of the fact that the credit file appeared to show that since those defaults, there had been no further missed payments or other adverse information recorded. Which seems to suggest that a number of years before the agreement was entered into Mr W had financial difficulties to the extent that two accounts defaulted, but more recently he had kept on top of his repayments.*

*There were also CCJs on his credit file – but again the most recent of these was around four years ago – which further supports what I've concluded that a number of years before the agreement started Mr W had some problems maintaining his credit commitments. But there were no recent problems.*

*Secondly, I also disagree with the investigator where they concluded Mr W already had a significant amount of monthly credit commitments compared to his income. He had £950 of credit and or store card debt and he had an existing loan costing him £80 per month. SMF worked out that Mr W's monthly commitments were just under £200 per month, and I think that was a reasonable amount to attribute to Mr W. But I do disagree that either his total debt or monthly payments was a significant portion of his income.*

*I don't think the credit search results would've been of any concern to SMF, and as such I can't see a reason why SMF would've thought that it needed to go further with its checks such as verifying the information that Mr W had provided. Or that it was unreasonable of SMF to have relied on the statistical data that it did use – given I'm not persuaded that the credit file showed such impaired data that it ought to lead to further questioning of Mr W's circumstances.*

*Bank statements may well, if they had been reviewed, showed the agreement not to be affordable to Mr W, but I've not seen enough in the information given and gathered by SMF to make me think that it would've been prompted to have looked at Mr W's finances more closely before it lent.*

*I am therefore, as things stand, going to conclude that SMF conducted proportionate checks before it lent to Mr W and these checks showed that the loan repayments were likely affordable for him.*

### **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.

I've thought about the recent submissions from Mr W as well as what I had available to me while reviewing the complaint. And having thought about everything again, I've still come to the same outcome – that the complaint ought to not be upheld. I've explained why below.

Firstly, and I think Mr W does seem to accept that each case brought to the Financial Ombudsman, has to be looked at on its own individual merits. The fact that what appear to be similar complaints as his which have been upheld for similar reasons doesn't create a precedent that I'm bound to follow. I have to consider the complaint on its own

individual circumstances taking account of the information SMF received and whether, in the circumstances those checks went far enough.

For the reasons I gave in the provisional decision, I still think the checks carried out by SMF were proportionate and went far enough. The results of those checks indicated Mr W would likely to be able to afford his repayments and it is for that reason I do not uphold Mr W's complaint.

The defaults were something that SMF needed to consider as part of its assessment. What the defaults showed was that over four years ago Mr W encountered financial difficulties to the extent that he had problems making payments to other creditors. And he's right to say that the defaults would remain on his credit file for a period of six years and could, especially in the early years of having the defaults, have impacted his ability to obtain credit.

But, when thinking about what SMF did when it approved the finance, I also considered that since the defaults, there hadn't been any other adverse payment information recorded. So, I concluded it was reasonable for SMF to have concluded that whatever difficulties Mr W had experienced four years prior had since passed. The situation would, in my view have been different, if there had been more defaults, more recent defaults or more recent adverse payment information.

Taking account of the results it did receive, I don't think these would've prompted SMF to have dug any deeper into Mr W's credit commitments. This also means, I don't think SMF would've been prompted to have reviewed Mr W's bank statements – given what it knew – it would've been disproportionate for it to do so.

I would add, that in response to the investigator's assessment, SMF did request to see the bank statements that were used as part of their assessment, and I can see the investigator forwarded these to SMF, superficially that seems reasonable given those were used by the investigator to uphold the complaint.

I've thought about what Mr W has said about the portion of his income that would've been needed to make payments not only to SMF but also his existing creditors. There is no hard and fast rule about what is defined as a significant portion – and it maybe that in some situations spending more than 25% would be significant.

But given the checks that SMF carried out, including the credit search and income check I'm satisfied that it was entitled to rely on those results, which showed that recently Mr W had maintained his commitments and he would've likely been able to do so here. Therefore, I still don't think the percentage of income which Mr W needed to pay would've led SMF to carry out further checks.

This also relates to the mortgage – SMF used 50% of the cost that it could see as Mr W's contribution. I don't think was an unreasonable assumption to have made at the point in time when the agreement was granted. However, Mr W says that he was responsible for all of the mortgage costs – and not just 50% of them, but given the checks and the regulations say that SMF is entitled to rely on statistical data, and there wasn't anything else to have prompted further checks, then I don't think it would've likely become aware from the checks it carried out that Mr W was fully responsible for the mortgage.

Mr W said making his repayments as expected wasn't a sign the agreement was affordable. Even though he's told us that struggled to make the payments. But this comment, was what SMF said in response to the view, I didn't make a finding about that, because it's not always clear and obvious that just because a consumer is able to make their repayments as expected it meant the agreement was affordable. In this case, how Mr W repaid the facility

didn't come into my decision making because I was looking at what SMF did and knew at the time the agreement was granted.

I've also considered whether the relationship might have been unfair under s.140A of the Consumer Credit Act 1974. However, for the reasons I've already given, I don't think SMF lent irresponsibly to Mr W 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.

### **My final decision**

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 18 April 2025.

Robert Walker  
**Ombudsman**