

Complaint

Miss T complains that Specialist Motor Finance Limited (“SMF”) unfairly entered into a hire-purchase agreement with her. She’s said the monthly payments to the agreement were unaffordable and so she shouldn’t have been accepted for it.

Background

In May 2017, SMF provided Miss T with finance for a used car. The cash price of the vehicle was £9,994.00. Miss T didn’t pay a deposit and entered into a 61-month personal contract purchase hire-purchase agreement with SMF for the entire amount.

The loan had interest, fees and total charges of £6,915.20 (made up of interest of £6,470.20, an arrangement fee of £250, a credit facility fee of £185 and finally an option fee of £10, which needed to be paid if Miss T exercised her option to purchase the vehicle) at the end of the term. So the total amount to be repaid of £16,859.20 was due to be repaid 1 monthly instalment of £250, followed by 59 monthly instalments of £273.57 followed by an optional final repayment of £468.57.

Miss T’s complaint was considered by one of our investigators. She eventually reached the conclusion that proportionate checks would have shown SMF that it shouldn’t have entered into this agreement with Miss T. So she recommended that Miss T’s complaint should be upheld.

SMF disagreed with our investigator and the complaint was passed to an ombudsman for a final decision.

My provisional decision of 10 March 2025

I issued a provisional decision – on 10 March 2025 - setting out why I was my intention not to uphold Miss T’s complaint.

In summary, while I was satisfied that the checks SMF carried out before agreeing to lend to Miss T weren’t proportionate, I didn’t think that it carrying out such checks would have made a difference to its to lend decision in this instance. This was because I was satisfied that the information provided indicated that proportionate checks would more likely than not have shown Miss T was in a position to make the monthly payments due on this agreement.

SMF’s response to my provisional decision

SMF didn’t respond to my provisional decision or provide anything further for me to consider.

Miss T’s response to my provisional decision

Miss T responded to confirm that she disagreed with my provisional decision. In summary she:

- pointed out that there were typographical errors in the provisional decision.

- noted that I had agreed that SMF hadn't carried out proportionate checks.
- said that I hadn't taken into consideration the failure to carry out proportionate checks or the reasons why the investigator felt that the complaint should be upheld in her assessment.

Although I've summarised the points that Miss T has made, I wish to confirm that I've considered everything she has said and provided during the course of her complaint.

My findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Before I go any further, I wish to address the fact that my provisional decision contained typographical errors. Miss T is not only correct in pointing these errors out she is also entitled (as is SMF for that matter) to expect that a decision wouldn't contain such errors. So I'd like to personally apologise for the typographical errors that were contained in the provisional decision.

I now turn to my final thoughts on Miss T's 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 Miss T's complaint.

Having carefully thought about everything I've been provided with, including the responses to my provisional decision, I'm still not intending to uphold Miss T's complaint. I'd like to explain why in a little more detail.

Our typical approach to complaints about unaffordable and irresponsible lending

Bearing in mind Miss T's response to my provisional decision, I think that it would be helpful for me to set out that we consider what a firm did to check whether loan payments were affordable (asking it to evidence what it did) and determine whether this was enough for the lender to have made a reasonable decision on whether to lend.

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.

That said, I think that it is important for me to explain that our website does not provide a set list of mandated checks that a lender is expected to carry out on every occasion – indeed the regulator's rules and guidance did not and still do not mandate a list of checks to be used. It simply sets out the types of things that a lender could do.

It is for a lender to decide which checks it wishes to carry out, although we can form a view on whether we think what was done was proportionate to the extent it allowed the lender to reasonably understand whether the borrower could make their payments.

Furthermore, if we don't think that the lender did enough to establish whether the repayments to an agreement was affordable, this doesn't on its own mean that a complaint

should be upheld. We would usually only go on to uphold a complaint in circumstances where we were able to recreate what reasonable and proportionate checks are likely to have shown – typically using information from the consumer – and this clearly shows that the repayments in question were unaffordable.

The checks that SMF carried out prior to lending to Miss T – were they reasonable and proportionate?

SMF has said that it has little information left from the time it agreed to provide Miss T with her agreement. On the other hand, Miss T has said that she was asked to provide copies of payslips. I also understand that SMF's usual process would have seen it carry out credit checks on Miss T. Therefore, I think that SMF is likely to have been aware that Miss T had previously defaulted on credit and that she would have had some other adverse payment information recorded against her too.

In my view, the presence of defaulted accounts on any credit search coupled with the amount advanced means that SMF ought to have had a reasonable appreciation of Miss T's actual living costs, before deeming that she would be able to make her repayments. I've not seen anything to indicate that SMF did have this information.

Furthermore, while I accept that SMF operating in the market that it did may have led it to conclude that this information wasn't necessary to understand whether it was prepared to accept the credit risk of lending to Miss T, I do think that obtaining this information was important to determining Miss T's ability to afford the monthly payments. Given SMF didn't obtain this information, I don't think that the checks it carried out before lending to Miss T were proportionate.

What I still need to consider even though I agree that SMF failed to carry out reasonable and proportionate checks and why

As I've explained above, SMF failing to carry out reasonable and proportionate checks isn't on its own enough for me to uphold a complaint. This is because it's only fair and reasonable for me to uphold a complaint in circumstances where proportionate checks will have shown a lender that the payments were unaffordable.

So it isn't sufficient for me to uphold a complaint simply because more should have been done. I have to be satisfied that doing more would have resulted in the lender taking a different course of action – in this case, declining Miss T's application for finance. As this is the case, I have gone on to decide what I think SMF is more likely than not to have seen had it obtained the information I think that it needed to obtain from Miss T in order for its checks to have been proportionate.

Given the circumstances here, I would have expected SMF to have had a reasonable understanding about Miss T's regular living expenses as well as her income and existing credit commitments (which it already had). SMF could have if it wanted to have asked for bank statements, or it could have instead asked for copies of bills etc to build this picture of Miss T's living expenses. However the important thing here is that it somehow needed to get an idea of what Miss T's actual living expenses were before it decided to lend to her.

Why I don't think that SMF finding out more about Miss T would have led it to conclude that the monthly payments on the agreement were unaffordable for her

I've already explained why I think that the key thing that SMF needed to find out was what Miss T's living expenses were and whether they were significantly different to what it likely concluded about them based on statistical data. Having carefully, considered everything, I'm

not persuaded that Miss T's living expenses were significantly more than the average. This is particularly as Miss T declared that she was single with no dependents at the time of this application.

Secondly, as I explained in my provisional decision, the investigator included payments for short-term loans in her assessment of what Miss T's ongoing commitments would be for the period that she have to maintain the payments to this SMF agreement for. However, payday type lending has a short repayment term – typically a couple of months at the longest.

I also think that it is unreasonable to expect SMF to assume that Miss T would continue taking out payday type lending for the duration of this agreement and it is unlikely that Miss T would have said that she planned to continue doing so. So I don't think that it is reasonable to include Miss T's payday type lending as an ongoing commitment that Miss T had to make for the entire 60 months of this agreement.

I accept that Miss T's actual circumstances at the time she entered into this agreement were significantly worse than what finding out more than about her committed living expenses is more likely than not to have shown. For example, I can see that there are significant amounts of payments going out of Miss T's account which I would not categorise as essential expenditure. I suspect that these transactions are indicative of an issue that was likely to affect her ability to sustainably make her repayments.

I accept that it is possible – but by no means certain – that if SMF had seen what Miss T has provided now, it may have made a different decision on whether to lend. However, SMF wasn't aware of the extent and nature of Miss T's additional spending, or the effect that this could have on her ability to repay. Equally, I also need to keep in mind that this was a first agreement and Miss T was being provided with a car rather than cash.

Given the circumstances here as well as what I think that SMF needed to find out, I don't think that reasonable and proportionate checks would have extended into obtaining bank statements from Miss T – especially as, as I've explained earlier, bank statements weren't the only way that SMF could find out about Miss T's living expenses in the first place.

I also have to consider Miss T's submissions in the context that they are now being made in support of a claim for compensation. Whereas at the time of sale, at least, Miss T clearly wanted the car she had chosen and it's fair to say that any explanations she would have provided would have been with a view to persuading SMF to lend rather than highlighting the agreement was unaffordable.

Therefore, I think that it is unlikely – and certainly less likely than not – that Miss T would have disclosed her additional spending at the time, or more importantly that SMF would have been in a position to know about this had it carried out proportionate checks.

So having carefully considered everything, I'm satisfied that the available information makes it appear, at least, as though proportionate checks would have shown that Miss T could make the monthly payments to this agreement in a sustainable manner. And in my view, it is unlikely – and less likely than not – that SMF would have declined to lend if it had found out the further information that I think it needed to here.

Overall and having carefully considered everything, while I remain satisfied that SMF's checks before entering into this hire-purchase agreement with Miss T did go far enough, I'm not persuaded that reasonable and proportionate checks would have prevented SMF from providing these funds, or entering into this agreement with her.

In reaching my conclusions, I've also considered whether the lending relationship between SMF and Miss T might have been unfair to Miss T under section 140A of the Consumer Credit Act 1974 ("CCA").

However, for the reasons I've explained above, I don't think that SMF irresponsibly lent to Miss T or otherwise treated her unfairly in relation to this matter. And I haven't seen anything to suggest that section 140A CCA or anything else would, given the facts of this complaint, lead to a different outcome here.

So overall and having carefully considered everything, I'm not upholding this complaint. I appreciate that this will be very disappointing for Miss T – particularly as she feels strongly about this matter and it's clear that she feels that SMF not carrying out sufficient checks resulted in it acting unfairly. But I hope she'll understand why SMF's failure to carry out sufficient checks isn't on its own enough and that she'll at least feel her concerns have been listened to.

My final decision

For the reasons I've explained above and in my provisional decision of 10 March 2025, I'm not upholding Miss T's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss T to accept or reject my decision before 28 April 2025.

Jeshen Narayanan
Ombudsman