

The complaint

Mr G complains through a representative that Specialist Motor Finance Limited (“SMF”) failed to conduct sufficient checks into his financial position before it lent to him.

What happened

In September 2019, SMF provided Mr G with a hire purchase agreement for a used car through a credit intermediary. The car had a retail price of £7,1995 and no deposit was paid so the full amount was financed. The agreement had interest, fees and charges totalling £5,842.60 – so Mr G had a total to repay of £13,051.60. This agreement was to be repaid in 59 monthly repayments of £217.36 with a final payment due of £227.36. The statement of account provided by SMF shows the finance was repaid in October 2024.

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

Mr G’s complaint was considered by an investigator, and in their latest assessment they upheld the complaint. The investigator said further checks were needed because of the impaired credit file data SMF received. This ought to have led to further checks which would’ve shown SMF that Mr G couldn’t afford the agreement given his credit commitments and his gambling.

SMF disagreed with the investigator’s and so the complaint was passed to me. I then issued my provisional decision explaining the reasons why I was intending to not uphold Mr G’s complaint.

Any further responses or submissions needed to have been received by 27 March 2025. We didn’t hear from SMF – beyond an acknowledgement. Mr G’s representative responded and although disappointed by the outcome didn’t have any further or new submissions for me to consider.

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 G’s complaint. Having carefully thought about everything I’ve been provided with; I’m intending to not uphold Mr G’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 G 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.

Mr G declared a monthly income of £2,189. However, SMF didn't simply accept what Mr G had told it and it took steps to electronically verify his income using a tool provided by a credit reference agency. Having carried out this check, SMF could see the income Mr G declared was likely to be accurate. It therefore wasn't unreasonable for SMF to have used this income figure for its affordability check. SMF then went about calculating Mr G's outgoings using statistical data from the Office of National Statistics. It used a cost-of-living payment of £285.90, car insurance at £38, travel of £127, rent of £232.97 To this it 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 – having done so SMF calculated his existing commitments were around £345.70 per month.

After all these deductions from the checked income this left Mr G £1,043 per month to cover the loan payment and any other living costs not accounted for. So, it does seem, based on the results of its checks that the loan appeared affordable.

The main disagreement lays with the credit search results. SMF says that as a near to sub- prime lender it is to be expected that there will be some adverse payment information contained with a credit report. Whereas the investigator concluded the credit file showed sufficient concern that ought to have led SMF to carry out further checks into Mr G's finances.

I've received the credit search results and I do think that there was some information that suggest Mr G may have been having some difficulties which ought to have led to further checks being made. But, for reasons I'll go onto to explain, I don't think those further checks would've likely led SMF to have concluded the agreement was unaffordable. I've summarised the credit checks below.

- *Mr G had nine active accounts, including loans, credit / store card, current accounts and utilities and all bar one of these accounts had been repaid without difficulty.*
- *A loan that Mr G had taken in 2018 was, according to the credit search results, subject to a debt management plan – and had been for some time.*
- *More than a year before the agreement was entered into Mr G had defaulted on an account but he had been able to settle the defaulted balance.*
- *Two accounts that had been settled earlier on in 2019 had also been part of the same debt management plan.*

But I can also see the HP agreement that Mr G had settled in April 2019, and so I do understand why SMF may have thought it needed not to anymore because Mr G appeared to have settled it without any problems.

However, I also can't ignore that Mr G had defaulted on an account and had been for at least three accounts part of a debt management plan – indicating that he had problems managing his finances. Saying all of this, I do think SMF's checks needed to go further.

Although, it had an accurate idea of Mr G's income and what his credit commitments were, it didn't, as far as I can see, have an accurate idea of what Mr G's actual likely non- discretionary living costs were. I appreciate that SMF used statistical data – and there are circumstances where that is applicable but given the impaired credit history I don't think it was appropriate to use the data here. I've therefore concluded, like the investigator that the checks needed to go further before approving the finance. In those circumstances it just wasn't fair, or reasonable, to have relied on statistical data to determine what his likely living costs were.

SMF's checks could've gone further simply by asking Mr G what his actual living costs were rather than solely relying on statistical data either by asking for evidence from Mr G about his bills, obtaining other documentation or as I've done, it could've asked for copy bank statements.

But to be clear, I've only used the bank statements to get an idea of what Mr G's regular living costs are likely to have been at the time. I've not done this because I think SMF ought to have requested this information as part of underwriting this loan. After all, SMF already had a reasonable idea about Mr G's existing credit commitments and his income.

I accept that had SMF conducted proportionate checks it may not have seen all the information that I have seen. But, in the absence of SMF conducting a proportionate check I do think it's fair and reasonable to consider statements that I now have access to.

This does mean, that while the investigator could see that Mr G was gambling, I don't think SMF would've likely discovered that by carrying out a proportionate check – after all it didn't have to obtain bank statements to find out about Mr G's living costs.

I've also noted what the investigator said about the new mobile phone contract and the guarantor loan – but as a credit search had already been carried out there wasn't a need for SMF to have double checked or to have verified the results.

The bank statements, in this case, have solely been used to view what other costs Mr G had such as rent, utilities and any other regular monthly commitments that he had. As I've said, I'm not using the statements to check Mr G's income or have expected SMF to have conducted a full financial review into Mr G's financial position.

I can see from the two sets of statements that Mr G had a number of regular payments each month – such as rent of £550, tv licence and other direct debit payments such as for TV subscription services. These costs come to around £1,100 per month.

I can see from Mr G's bank statement Mr G's credit commitments to loans and credit cards would've been greater than SMF was aware of. But as it was entitled to rely on the results of the credit checks, then it was entitled to believe his commitments were no greater than £345 per month.

Adding together the cost of the loan, the existing credit commitments as well as what SMF would've likely discovered by carrying out a proportionate check into Mr G's circumstances. It would've seen the loan was affordable and sustainable for him and so I've not upheld the complaint.

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.

As there were no new submissions, I see no reason to depart from the findings I made in the provisional decision and which have been set out above. I still think SMF needed to do more before granting Mr G the finance. But even if SMF had carried out more detailed expenditure checks it still would've thought the loan was affordable for Mr G.

Finally, 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 G 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 do not uphold Mr G's complaint.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 25 April 2025.

Robert Walker
Ombudsman