

## **The complaint**

Mr M complains that Specialist Motor Finance Limited (SMF) were irresponsible in approving a hire purchase agreement for him because it was unaffordable.

When I refer to what Mr M and SMF said or did, it should also be taken to include things said or done on their behalf.

## **What happened**

In March 2022, Mr M entered into a hire purchase agreement with SMF to acquire a A car first registered in March 2019. The total cash price of the car was £9,998. The total amount payable was £15,052.60. There were 59 monthly payments of £250.71 and a final payment of £260.71. The final payment included an Option to Purchase Fee of £10.

In summary, Mr M said SMF should have never approved him for the hire purchase agreement, because it was unaffordable for him due to his bad credit at the time. He said he is struggling to pay for rent, food, and nursery bills each month due to this finance being granted to him. As he was unhappy, he raised a complaint with SMF.

In December 2024, SMF said that Mr M informed them that he was struggling with his finances in May 2023 which, they said, was more than a year into the agreement. But they said this was because Mr M had a recent change in circumstances which increased his household expenses, and he lost the ability to utilise his overtime at work. SMF said that at that time Mr M also told them that he did not rely on the car as he worked from home, so they discussed exit strategies with him. During these discussions, Mr M decided on Voluntary Termination (VT) of his finance agreement. SMF concluded by saying that they appreciate Mr M had a change in circumstances, however, this does not mean their decision to lend was incorrect.

Mr M remained unhappy, so he referred his complaint to Financial Ombudsman Service (Financial Ombudsman).

Our investigator was of the opinion that Mr M's complaint should be upheld. They thought that SMF should end the agreement with nothing further to pay, calculate how much Mr M has paid in total, and deduct £160 per month for fair usage until the VT of the agreement. If Mr M paid more than the fair usage figure, the investigator thought SMF should refund any overpayments, adding 8% simple interest per year from the date of payment to the date of settlement. Plus remove any adverse information recorded on Mr M's credit file. And the investigator said that if there are any arrears after the settlement has been calculated, SMF should arrange an affordable repayment plan and treat Mr M with forbearance and due consideration.

SMF disagreed with the investigator.

So, the complaint has been passed to me to decide.

## **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.

Where evidence is unclear or in dispute, I reach my findings on the balance of probabilities – which is to say, what I consider most likely to have happened based on the evidence available and the surrounding circumstances.

In considering what is fair and reasonable, I need to take into account the relevant rules, guidance, good industry practice, the law and, where appropriate, what would be considered to have been good industry practice at the relevant time. Mr M acquired the car under a hire purchase agreement, which is a regulated consumer credit agreement. Our service can look at these sorts of agreements. SMF is the supplier of the goods under this type of agreement and is responsible for dealing with complaints about their quality.

Amongst other things, I have considered the rules and guidance for lenders set out in the Consumer Credit Sourcebook (CONC) within the Financial Conduct Authority's handbook. When looking at this type of a complaint I need to consider two main questions, in order to decide what is fair and reasonable in the circumstances of the complaint.

The first question is:

### **1. Did SMF complete reasonable and proportionate checks to satisfy themselves that Mr M would be able to repay the borrowing in a sustainable way?**

- a. If reasonable and proportionate checks were completed, did SMF make a fair lending decision, bearing in mind the information gathered and what they knew about Mr M's circumstances?
- b. If reasonable and proportionate checks were not completed, would such checks have shown that Mr M would be able to sustainably repay the borrowing?

The second question is:

### **2. Did SMF act unfairly or unreasonably in some other way?**

And, if I think Mr M has been disadvantaged in any way by SMF's actions, then I will consider what is a fair way to put things right.

Did SMF complete reasonable and proportionate checks to satisfy themselves that Mr M would be able to repay the borrowing in a sustainable way?

SMF were required to carry out reasonable and proportionate checks of Mr M's ability to repay the borrowing in a sustainable way. These, sometimes called 'affordability checks', need to be borrower-focussed (considering Mr M's specific circumstances) and carried out in addition to a creditworthiness assessment, to see if the borrower can afford to repay the borrowing in a sustainable manner. So, SMF needed to consider the impact of any credit payments on Mr M, and not just the likelihood of getting their money back.

There is no set list of checks SMF needed to complete. But the checks should have been proportionate to the circumstances, and what is reasonable and proportionate will vary depending on a number of factors such as, but not limited to the:

- Amount of credit;
- Duration (or likely duration) of the credit;
- Frequency of the repayments;
- Amount of repayments;
- Total amount payable;
- Total charge for credit; and
- Consumer's individual circumstances.

The list above is not exhaustive, and what is considered proportionate may vary as any of the above factors (or others) might influence what a reasonable and proportionate check ought to be.

I have considered that the total amount repayable was £15,052.60. There were 59 monthly payments of £250.71 and a final payment of £260.71. Considering this was a relatively long-term commitment, and a significant size of borrowing, I believe that the assessment of affordability ought to have been relatively thorough.

SMF, in summary, said that, based on Mr M's circumstances, they deduced that he fit their lending criteria as he had a minimum required income of £900 per month. He was over 21 and under 80 years old. At the time of application, he was employed and a UK resident with a valid UK postcode. SMF said that Mr M informed them that he earned £1,800 net a month, he was 31 years of age, single, living with his parents, and employed since November 2013. SMF electronically verified his income and they used information from credit agencies to determine an affordability amount. So they said, they took into account Mr M's net monthly income, his credit commitments, and non-discretionary expenditure (expenses that are needs such as rent, living expenses, groceries, utilities etc.) in order to determine his disposable income and, in addition, included an additional £100 buffer.

SMF explained that they calculated his cost of living to be £289.89, mortgage/rent £300.60, travel £132, car insurance £29 and £433.45 monthly credit commitments based on his credit reference data. So, based on his net monthly income of £1,800 and including the additional buffer of £100 they derived a disposable income of £515. And his agreement repayments were £250.71 per month.

SMF also said they could see that Mr M had seven active credit items, all of which were up to date, six 'good settled credit items', including two hire purchase agreements. There were no defaults and one CCJ from 2018, almost 4 years prior to the credit application.

They said Mr M's pre-contract document(s) confirm a full breakdown of how the total amount payable is made up and that interest and charges have been applied to this borrowing. They said that once Mr M was happy with this information, only then he was presented with the hire purchase agreement, which also clearly detailed the financial particulars. Mr M then signed the agreement, becoming legally bound by its terms.

So, I've considered all of the above, and first I should mention that even though SMF may use the same model for a lot of credit agreement approvals, I'm required to look at each case on its individual merits. Also, that it does not immediately follow that their lending decision was a fair one in each and every case. And while there may be similarities between different cases, all are considered on their own individual facts and merits. Here I make my decision based on what I think is fair and reasonable considering all the circumstances of this particular case.

SMF, in addition to the creditworthiness assessment, and in addition to providing Mr M with the pre-contract document(s) and the hire purchase agreement, needed to see if he could

have afforded to repay the borrowing in a sustainable manner considering his circumstances. I understand that SMF relied on Mr M's acknowledgment of the documents, to ascertain that he understands the monthly payment requirement and other information from those documents. However, SMF are the ones who are required to carry out a reasonable and proportionate checks to determine Mr M's ability to repay the borrowing in a sustainable way. As such, I do not think it is reasonable for them to rely solely on the information given by Mr M and his acknowledgments. And this does not absolve them of their responsibility to carry out appropriate and proportionate checks.

Considering the amount of credit SMF were providing and its monthly payments, and the relatively long-term commitment to repay the credit (60 months), I think it would have been reasonable for them to find out more information at the time of Mr M's application. When coming to this conclusion I have also considered that even though the CCJ on Mr M's credit file was from prior over four years, and that there does not seem to be any missed payments noted, I can see that in the six months prior to the hire purchase agreement being approved, Mr M took out two unsecured loans for a total of around £11,877 (with a total monthly payment of around £414). So, I think this should have started to raise some questions.

Considering that these two unsecured loans were taken about four and five months before he entered into the agreement in question and, in addition, the agreement he was applying for was a relatively long-term commitment, I think SMF ought to have done more to understand Mr M's other commitments and expenditures. They should have taken note of how much he was spending for things such as car insurance, maintenance, road tax, petrol, food and other living essentials. This means they could not have known whether Mr M would be able to sustainably repay a borrowing over a five-year term.

Overall, I do not think SMF carried out reasonable and proportionate checks to satisfy themselves that Mr M would be able to repay the borrowing in a sustainable way.

#### Would reasonable and proportionate checks have shown that Mr M could sustainably repay the borrowing?

I think it would have been reasonable for SMF to find out more information about Mr M's financial circumstances at the time. I cannot be certain what evidence, information, or questions SMF would have asked and reviewed. However, I have been provided with a copy of Mr M's bank statements from the time of borrowing, and I have reviewed these along with what Mr M's credit file from that time shows, to get an understanding of what his financial commitments were likely to be. In absence of anything else, I think the information available from the bank statements were a reasonable indicator of the type of evidence or information SMF would have likely found out about Mr M's expenditure, had they completed reasonable and proportionate checks at the time of borrowing.

The bank statements show that Mr M had regular monthly income of around £1,892. From these, I can also see that after his regular expenses, plus the car finance payments on the hire purchase agreement in question, this would only leave Mr M with less than around a £100 a month to spend on other expenses. And this does not even include the other credit that was available to Mr M at the time – such as a current account overdraft. I can also see that in December 2021 and January 2022, Mr M was having to use his short-term borrowing to cover his normal living costs. And yes, Mr M did have a savings account with a positive balance, but I do not think it would be reasonable to say that Mr M would be able to sustainably afford the repayments towards the agreement from his savings, as I would not consider these as a form of regular income. Also, I know that SMF questioned some of the large payments that Mr M was making to another individual, but I understand these were for his bills and I have not seen enough evidence to say that this, most likely, was not the case.

So, taking all of the points made by SMF and all the circumstances of Mr M's finances at the time, I do not think he would be left with enough money to cover his car insurance, tax, maintenance, and fuel. And no money would be left to spend on other essential day to day expenses like food, clothing and shelter.

Taking everything into consideration, had SMF done more to establish Mr M's financial circumstances by carrying out reasonable and proportionate checks, I do not think they would have lent to him. From the above it is clear that SMF hire purchase agreement was not affordable, and Mr M could not repay this borrowing sustainably without relying on borrowing, savings, or on family for help.

#### Did SMF act unfairly or unreasonably in some other way?

I have not seen anything to make me think SMF acted unfairly or unreasonably in some other way. As part of this, I also considered whether the relationship might have been unfair under s.140A of the Consumer Credit Act 1974 but I'm satisfied the redress I'm directing in this decision results in fair compensation for Mr M 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**

I do not think that Mr M should have been given this credit agreement, so I think the position needs to change to one where the agreement would have been never entered into in the first place. So, I think the credit agreement should be ended with nothing further to pay.

However, Mr M did have use of the car, so I think it is fair he pays for that use. But I'm not persuaded those monthly repayments from the credit agreement of approximately £250 a month, are a fair reflection of what fair usage would be. I say this because a proportion of that repayment went towards repaying interest. Having said that, there is not an exact formula for how to calculate what a fair monthly repayment might be. So, in deciding what is fair and reasonable I've taken into account the amount of interest charged on the agreement, Mr M's overall usage of the car, and what his likely costs to stay mobile would have been if he had not entered into this agreement. Considering all of this, I think it is fair that Mr M should pay £160 for each month he had use of the car until the VT of the agreement.

As such, SMF should calculate how much Mr M has paid in total and deduct £160 per month for fair usage up until the agreement was voluntary terminated. If Mr M paid more than the fair usage figure, they should refund any overpayments. And if there are any arrears after the settlement has been calculated, SMF should arrange an affordable repayment plan and treat Mr M with forbearance and due consideration.

In addition, considering that I do not think that Mr M should have been given this credit agreement, I think that it would not be fair or accurate to record any adverse information on his credit file.

#### **My final decision**

For the reasons mentioned above, I uphold this complaint and direct Specialist Motor Finance Limited to:

1. End the finance agreement with nothing further to pay;
2. Calculate how much Mr M has paid in total and deduct £160 per month for fair usage until the agreement was voluntary terminated. If Mr M paid more than the fair usage figure, they should refund any overpayments;

3. Add 8% simple interest per year to point two above, from the date of payment to the date of settlement.
4. Remove any adverse information recorded on Mr M's credit file in relation to this credit agreement.

If Specialist Motor Finance Limited considers tax should be deducted from the interest element of my award, they should provide Mr M with a certificate showing how much they have taken off so he can reclaim that amount, if he is eligible to do so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 7 July 2025.

Mike Kozbial  
**Ombudsman**