

The complaint

Mr M complains that Specialist Motor Finance Limited (SMFL) was irresponsible in its lending to him. He wants his payments refunded along with interest.

Mr M is represented by a third party but for ease of reference I have referred to Mr M throughout this decision.

What happened

Mr M entered into a hire purchase agreement with SMFL in November 2019 to finance the acquisition of a car. The agreement had a term of 60 months and Mr M was required to make 59 monthly repayments of around £220 followed by a final repayment of around £230. The total amount repayable was £13,266.20. Mr M said that SMFL didn't carry out adequate checks before the lending was provided and had it done so it would have realised that the agreement wasn't affordable.

SMFL issued a final response to Mr M's complaint dated 1 May 2024. It said that it used a risk-based model to assess creditworthiness enabling it to offer products to consumers that might be considered higher risk by mainstream lenders. In Mr M's case, it said he declared he was employed with a monthly net income of £1,750 and that he was married and a tenant. It said a credit check showed he had 13 active accounts of which nine were up to date and that he had no defaults. It calculated the affordability of the agreement based on Mr M's net monthly income, his repayments to other credit commitments based on his credit file and non-discretionary expenditure. It said that based on its calculations the agreement was affordable.

While SMFL didn't consider the lending to be unaffordable, it said that it could have provided more assistance and options when discussing entering into payment arrangements. Because of this it offered Mr M £150 as a gesture of goodwill.

Mr M referred his complaint to this service.

Our investigator thought that SMFL's offer to pay £150 as a gesture of goodwill for the service issues was in line with what we would expect and so she focussed her investigation on the lending decision. She noted the checks undertaken by SMFL and that these showed some adverse information on Mr M's credit file which could have suggested he was struggling financially. Given this she thought that further checks should have been undertaken to understand Mr M's financial position.

Our investigator considered what would have been identified had further checks taken place. She found that Mr M's income averaged around £1,540 a month and he was also receiving payments into his account for rent averaging around £744 a month. His non-discretionary spending was around £1,638 a month. This left him with disposable income of around £646 which was enough to cover the costs of the repayments. However, she noted that his credit search showed Mr M was in arrears on several of his credit commitments and that he was taking out short term loans at the time of his application. She thought this suggested that Mr M was reliant on additional borrowing to meet his existing commitments. She also noted

that Mr M's bank statements showed numerous returned direct debits which further supported the concerns that he was struggling financially. Because of this she didn't think that SMFL had acted fairly by lending to Mr M and she upheld this complaint.

SMFL didn't agree with our investigator's view. It said that its target market is the near-prime segment and so customers can have historic adverse credit or limited credit histories but that it had cut offs to prevent lending to customers with significant current financial difficulties. It said it had sophisticated models to assess applications and these were used in Mr M's case and the payment limit was set based on what was identified as affordable. It said our investigator found Mr M's disposable income to be £646 which was within £32 of its modelled disposable income and that it considered the lending affordable based on this. It noted that Mr M had taken out two small, short-term loans around the time and there were instances of returned direct debits but said this shouldn't prevent the lending. It said the agreement was affordable.

SMFL said it didn't agree with the unaffordable lending outcome but even if this was upheld, it didn't accept the redress recommended was fair. It said that Mr M originally borrowed £7,295 and when considering that Mr M would retain the car and receive a refund under our investigator's redress, this would result in him only paying around £2,613 for the car (which was around £45 a month when spread over 58 months).

My provisional conclusions:

I issued a provisional decision upholding this complaint. While this was the same outcome as our investigator gave, as I took a different approach to the redress I issued a provisional decision to allow the parties the opportunity to provide any final comments.

The details of my provisional decision are set out below.

Before the lending was provided, SMFL gathered information about Mr M's employment and income and his marital and residential status. Mr M declared that he was employed with a net monthly income of £1,750, was married and living in rented accommodation. SMFL validated Mr M's income using a credit reference agency tool and used a combination of credit reference agency information and third-party data sources to assess his credit commitments and estimate his living expenses.

While I accept that SMFL's checks suggested the lending was affordable for Mr M, the credit check showed that Mr M had four loan accounts in arrangements and a mail order account in a debt managed programme. Mr M had two credit card accounts and while his balances were within their limits he was in arrears on one of the accounts. While I understand that SMFL will lend to customers who have experienced previous financial difficulties, given Mr M had current adverse data recorded, I think that further checks were needed to fully understand his financial circumstances and to ensure that he was in a stable enough financial position to take on additional lending.

I have looked through Mr M's bank statements and while I accept that these would support the agreement being technically affordable, they also showed several returned direct debits for essential bills. This further supported the issue identified in the credit file that Mr M was experiencing issues managing his money at the time of his application. Mr M's bank statements also show that Mr M was making use of short-term loans and combining this with the information about him struggling to meet his bill payments could further suggest that he was borrowing to pay his existing commitments. Taking all of this into account, I find that the information identified through SMFL's checks raised concerns that Mr M was struggling financially and not in a stable financial position at the time of his application. This conclusion

would have been further supported had further checks taken place to fully understand Mr M's financial situation. Therefore, I am upholding this complaint.

Our investigator set out in her view how this complaint should be settled and SMFL disagreed with this. I have considered the circumstances of this complaint in order to decide what a fair resolution should be. Mr M was near the end of his agreement when the view was issued and, based on the information available to this service, he had already paid above the cash price of the car. Since the view was issued, Mr M has confirmed that he no longer has the car. He said he hasn't had the car since November 2024 which is when the agreement was due to end. Based on this it appears that Mr M had the benefit of the car for the full term of the agreement.

Based on the above, rather than calculating a fair usage amount, I think a fair resolution is for Mr M to only be liable for the cash price of the car. He should therefore be refunded any payments he has made above this amount along with interest.

I've also considered whether SMFL acted unfairly or unreasonably in some other way given what Mr M has complained about, including whether its relationship with Mr M might have been viewed as unfair by a court under Section 140A of the Consumer Credit Act 1974. However, I'm satisfied the redress I have directed below 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.

SMFL didn't agree with my provisional decision. It noted that the redress would result in Mr M paying zero interest and receiving an additional refund as well as retaining the car. It noted the value of the car and said that Mr M would have benefited from the car with an equivalent monthly usage fee of around £45. It said this resulted in a windfall for Mr M and didn't reflect a fair cost for him being kept mobile.

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.

SMFL didn't uphold Mr Ms' complaint about irresponsible lending but did accept that it could have provided him with better service. It offered to pay him £150 because of this. I find this a fair resolution to that part of Mr M's complaint and so in this decision I have focused on the outstanding issue about whether the lending should have been provided.

Our general approach to complaints about unaffordable or irresponsible lending – including the key rules, guidance and good industry practice – is set out on our website.

The rules don't set out any specific checks which must be completed to assess creditworthiness. But while it is down to the firm to decide what specific checks it wishes to carry out, these should be reasonable and proportionate to the type and amount of credit being provided, the length of the term, the frequency and amount of the repayments, and the total cost of the credit.

For the reasons I set out in my provisional decision, I think that further checks were needed before Mr M was provided with the credit to fully understand his financial circumstances and to ensure that he was in a stable enough financial position to take on additional lending. And, as I have explained, I find that had further checks taken place, these would have raised concerns that Mr M was struggling financially and not in a stable financial position at the time of his application. Because of this I am upholding this complaint.

I set out my proposed redress in my provisional decision and SMFL didn't agree this resulted in a fair outcome. I have considered the comments it has made but my conclusions haven't changed. As I have explained I do not think that SMFL acted fairly in this case by providing the finance to Mr M, therefore it shouldn't be able to benefit from any interest or charges arising from the agreement. It is fair that Mr M pays for the cost of the car, but he shouldn't be required to pay any more than that. I appreciate what has been said about the overall cost to Mr M but the redress I have set out reflects that Mr M should only be required to pay for the cost of the car and any overpayments need to be refunded. As he hasn't had the benefit of the money used for any overpayments, interest is added to these.

So, while I understand the points SMFL has made, these do not change my conclusions to this complaint.

Putting things right

I don't think SMFL ought to have approved the lending, I don't think it's fair for it to be able to charge any interest or charges under the agreement. Mr M should therefore only have to pay the original cash price of the car, being £7,295. Anything Mr M has paid in excess of that amount should be refunded as an overpayment.

To settle Mr M's complaint SMFL should do the following (additional to the offer to pay £150 for the service issues Mr M experienced):

- Refund any payments Mr M has made in excess of £7,295, representing the original cash price of the car. It should add 8% simple interest per year* from the date of each overpayment to the date of settlement.
- Remove any adverse information recorded on Mr M's credit file regarding the agreement.

*HM Revenue & Customs requires SMFL to take off tax from this interest. SMFL must give Mr M a certificate showing how much tax it's taken off if he asks for one.

My final decision

My final decision is that I uphold this complaint. Specialist Motor Finance Limited should take the actions set out above in resolution of this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 29 April 2025.

Jane Archer
Ombudsman