DRN-5483576

Complaint

Mr R complains that Specialist Motor Finance Limited ("SMF") unfairly entered into a hire-purchase agreement with him. He's said suitable affordability checks weren't carried out prior to the application and he was lent to despite suffering from a poor credit history and a gambling addiction.

Background

In January 2020, SMF provided Mr R with finance for a used car. The cash price of the vehicle was £18,553.98. Mr R paid a deposit of £3,553.98 and borrowed the remaining £15,000.00 he required to complete his purchase by entering into a hire-purchase agreement with SMF.

The agreement had interest, fees and total charges of £11,350.00 (made up of interest of £11,340.00 and an option to purchase fee of £10). The balance to be repaid of £26,350.00 was due to be repaid by 59 monthly instalments of £439.00 followed by a final monthly instalment of £449.00.

Mr R complained that the agreement was unaffordable and so should never have been provided to him. SMF didn't uphold the complaint. It said that its checks confirmed that the finance was affordable and so it was reasonable to lend.

The complaint was subsequently considered by one of our investigators. She didn't think that SMF had done anything wrong or treated Mr R unfairly. So she didn't recommend that Mr R's complaint should be upheld.

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

My findings

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 R's complaint.

Having carefully thought about everything I've been provided with, I'm not upholding Mr R'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 R 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.

SMF says it agreed to this application after Mr R provided details of his monthly income which it says cross checked against information it received from credit reference agencies on the amount of funds his main account received each month. It says it also carried out credit searches on Mr R which did show defaulted accounts and a county court judgement recorded against him. These adverse credit items had been settled.

However, it considered these to be historic and the credit search also showed four active credit accounts which it considered to have been well maintained. In its view, when reasonable repayments to the amount owing plus a reasonable amount for Mr R's living expenses based on statistical data, were deducted from his monthly income the monthly payments were affordable.

On the other hand, Mr R says his existing commitments meant that these payments were unaffordable and there was no way he was going to be able to maintain them.

I've thought about what Mr R and SMF have said.

The first thing for me to say is that, unlike our investigator, I don't think it was reasonable for SMF to have relied on statistical data for Mr R's living costs. While SMF may have considered them to be historic, which I don't necessarily agree with, Mr R's previous difficulties with credit did not suggest that he fell within the profile of the average borrower. So I'm not persuaded that it was reasonable for SMF to rely on statistical data in determining Mr R's living costs and I think that its failure to find out about Mr R's actual living costs means that its checks weren't proportionate.

As SMF didn't carry out proportionate checks, I've gone on to decide what I think SMF is more likely than not to have seen had it obtained further information from Mr R. Bearing in mind, the length of time of the agreement and the amount of the monthly payment, I would have expected SMF to have had a reasonable understanding about Mr R's regular living expenses as well as his income and existing credit commitments.

I wish to be clear in saying that I'm not going to use the information Mr R has provided to carry out a forensic analysis of whether the repayments to his agreement were affordable. I say this particularly as Mr R's most recent submissions are being made in support of a claim for compensation and I need to keep in mind that any explanations he would have provided at the time are more likely to have been with a view to persuading SMF to lend, rather than highlighting any unaffordability.

Equally, what SMF needed to do was supplement the information it had on Mr M's credit commitments, with some further information on his actual living costs rather than rely on estimates or statistical data. Having considered the information Mr R has provided, this appears to show that when his committed regular living expenses and existing credit commitments were deducted from his declared monthly income, which was cross checked by SMF, he did have the funds, at the time at least, to sustainably make the repayments due under this agreement.

I accept that Mr R's actual circumstances at the time were worse than what the information about his committed living costs and existing commitments to credit shows. For example, I know Mr R has said that he was not employed in full time employment and employed through his limited company with lower earnings. However, Mr R declared that he received £3,300.00 a month.

As previously explained, SMF obtained information on the amount of funds Mr R's main bank account each month to check the plausibility of Mr R's declaration. These checks suggested that the amount of funds going into Mr R's account each month meant suggested that his declaration of income was plausible.

To be clear this was simply a check on whether Mr R's account did receive credits commensurate with his declaration. There was no check on the source of Mr R's credits. Given this was a check against Mr R's declaration and this indicated it was plausible, I don't think that SMF was required to go into checking the source of Mr R's credits. Particularly as Mr R was also paying a cash deposit equating to more than a month of the salary he declared. I'm satisfied that this combined with SMF's cross checking meant that it was entitled to rely on Mr R's declaration of income.

I note that Mr R has also referred to his gambling. And having looked at the copies of the bank statements Mr R has provided us with now, I can see significant gambling. It's possible – but by no means certain – that SMF might have decided against lending to Mr R had it seen this. However, given the circumstances here, what I need to think about here is what were Mr R's actual committed living costs and what were his existing regular credit commitments? – given this was a first agreement and Mr R was being provided with a car, which he would not be able to gamble, rather than cash.

Bearing in mind checking bank statements wasn't the only way for SMF to have found out more about this – it could have obtained copies of bills or other evidence of payment etc – I don't think that proportionate checks would have extended into obtaining the bank statements which Mr R has now provided us with.

In my view, proportionate checks certainly wouldn't have gone into the level of granularity whereby SMF ought reasonably to have picked up on Mr R's gambling. I also think that it is unlikely – and certainly less likely than not – that Mr R made any attempt to disclose his gambling at the time, or that SMF knew or ought to have known about this.

In reaching my conclusions, I've also considered whether the lending relationship between SMF and Mr R might have been unfair to Mr R under section 140A of the Consumer Credit Act 1974 ("CCA").

However, for the reasons I've explained, I don't think SMF irresponsibly lent to Mr R or otherwise treated him 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.

Overall and having carefully considered everything, given what I think further enquiries into Mr R's living expenses are likely to have shown SMF, while I don't think that SMF's checks before entering into this hire purchase agreement with Mr R did go far enough, I'm satisfied that carrying out reasonable and proportionate checks won't have stopped SMF from providing these funds, or entering into this agreement. So I'm not upholding this complaint.

I appreciate that this will be disappointing for Mr R. But I hope he'll understand the reasons for my decision and at least consider that his concerns have been listened to.

My final decision

My final decision is that I'm not upholding Mr R's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 8 September 2025.

Jeshen Narayanan
Ombudsman