

## **The complaint**

Miss C complains that Specialist Motor Finance Limited (“SMF”) failed to conduct sufficient affordability checks. Had it done so it would’ve seen she was in a debt management plan (DMP) and she couldn’t afford the agreement.

## **What happened**

In April 2019, SMF provided Miss C with a hire purchase agreement for a used car through a credit intermediary. The car had a retail price of £18,000 and no deposit was paid so the full amount was financed. The agreement had interest, fees and charges totalling £11,098 – so a total to repay of £29,098. This agreement was to be repaid in 59 monthly repayments of £484.80 followed by a final payment of £494.80. As of April 2024, an outstanding balance remained due.

SMF considered Miss C’s complaint and didn’t uphold it. SMF concluded the checks it carried out before providing the agreement showed Miss C would be able to afford her repayments. Unhappy with this response, Miss C referred the complaint to the Financial Ombudsman.

Miss C’s complaint was considered by an investigator, who didn’t uphold the complaint. The investigator said further checks were needed given the credit check results received by SMF which showed recent impaired credit history. However, had further checks been carried out SMF would’ve still lent to Miss C.

Miss C didn’t agree and instead asked for a final decision and so the complaint has been passed to me.

## **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.

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 C’s complaint. Having carefully thought about everything I’ve been provided with; I’m not upholding Miss C’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 Miss C 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.

Miss C declared a monthly income from full time work of £2,092. However, SMF didn't simply accept what Miss C had told it. It firstly requested and received two copy payslips – for February and March 2019 – the payslips confirmed an income of £2,073. Secondly, SMF took steps to electronically verify her income using a tool provided by a credit reference agency. Having carried out this check, SMF decreased Miss C's monthly income and so for the affordability assessment it used a final figure of £1,966. Given, what Miss C had declared to SMF, and the results of its checks, it's fair to say SMF had accurate information about Miss C's income.

SMF then went about calculating Miss C's outgoings using statistical data from the Office of National Statistics – taking account of her residential status (living with parents) and the region she lived in. It used a cost-of-living payment of £167.95 and housing costs of £470.25.

SMF then took steps to work out her credit commitments and it did this by taking data from the credit search that it conducted – having done so SMF calculated her existing commitments were around £624 per month.

After all these deductions from the checked income this left Miss C £703 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.

I'd add that SMF is potentially entitled to rely on statistical data – to work out non-discretionary expenditure – because this is laid out with the relevant regulations that SMF needed to adhere to. However, there are circumstances where it may not be appropriate for it to have relied upon it. So, for example, unless it knew or ought to have reasonably known that his expenditure was higher than shown in the data. The circumstances of this complaint have led me to conclude it wasn't reasonable for SMF to have relied on statistical data and I've explained why below.

As I've said above, SMF carried out a credit search and it has provided a summary of the results that it received. The results do suggest Miss C may have been having some difficulties which ought to have led to further checks being made.

Miss C had 13 active accounts, including loans, credit / store card and current accounts. There was one default recorded, but this had occurred more than three years ago, so I don't think the default would've, on its own led SMF to be concerned. I would add that based on the information given to SMF the amount it calculated Miss C was repaying each month to her creditors seems about right.

However, I also can't ignore that some of Miss C's active accounts were in arrears at the time – indicating perhaps that she was struggling to pay them. Indeed, the information provided by SMF does seem to suggest that it was aware that a number of her accounts were subject to a debt repayment plan.

I've thought about what SMF says about it being a subprime lender. But I can't ignore that it had information that showed it Miss C had been having difficulties making her existing credit repayments to the extent that she needed additional help and support. And it accepted this information without making any further checks.

Although, SMF had an accurate idea of Miss C's income and what her credit commitments were, it didn't, as far as I can see, have an accurate idea of what Miss C'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. SMF's checks could've gone further simply by asking Miss C about her other non-discretionary living costs were rather than solely relying on statistical data either by asking for evidence from Miss C about any bills she had, 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 Miss C'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 Miss C's existing credit commitments and her 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.

I'd also add that just because I've determined further checks were needed, that doesn't on its own mean it was wrong of SMF to have granted the loan. After all, if upon further investigation the loan appeared affordable it wouldn't have been unreasonable to have granted it.

The bank statements, in this case, have solely been used to view what other costs Miss C had such as housing costs and any other regular monthly commitments that she had. As I've said, I'm not using the statements to have conducted a full financial review into Miss C's financial position.

Firstly, I would add that while SMF worked out Miss F's income to be just over £1,900 per month (as a result of its checks) this is less than what was shown in her bank statements as Miss C already received additional benefits – so her actual income was over £2,300 per month. So even if there were any concerns about the income, then SMF would've seen that she had around £400 per month more coming in than it calculated.

Any review of Miss C's bank statements or any other documentation would've shown that what Miss C declared about her living costs were broadly accurate. There aren't any obvious payments to utilities or council tax suggesting she did live at home with parent(s).

Miss also had what appear to be payments towards an existing hire purchase agreement, a TV subscription service, mobile phone and internet. There were payments for car tax and insurance as well as petrol. There is also the payments towards her debt management plan. But even taking these into account, the loan would've appeared affordable for her.

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 Miss C's circumstances. It would've seen the loan was affordable and sustainable for her and so I've not upheld the complaint.

I've thought about what has happened with the way the account has been managed, and it does seem at times that Miss C has contacted SMF to let them know about changes in her circumstances – this started from February 2021. In March 2023, SMF agreed a repayment

plan after it was told Miss C had been off work sick – I think that was a fair and reasonable response to the information it was provided with.

The agreement may well have now been repaid, but if it hasn't and Miss C is having difficulties managing her payments, then she may wish to reach out to SMF to see what additional help and support it can offer. And I would remind SMF that it is required to treat Miss C fairly and with forbearance – if necessary.

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 Miss C or otherwise treated her 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.

### **My final decision**

For the reasons I've outlined above, I am not upholding Miss C's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss C to accept or reject my decision before 6 June 2025.

Robert Walker  
**Ombudsman**