

The complaint

Mr G is complaining that Specialist Motor Finance Limited (SMF) shouldn't have lent to him – he says they were irresponsible in doing so. Mr G is represented in his complaint, but for ease I've written as if we've dealt directly with him throughout.

What happened

In March 2018, Mr G took out a hire purchase agreement with SMF to finance the purchase of a vehicle. He paid no deposit and borrowed £7,740 – the cash price of the car. The agreement required Mr G to make 57 monthly repayments of £255.61, and a final instalment of £265.61. His payments were a little sporadic, with some rejected direct debits, and extended periods of him paying weekly instead of monthly, but he didn't run into significant arrears and settled the agreement in February 2023.

In February 2024, Mr G complained to SMF, saying he thought SMF had failed to conduct appropriate checks before lending to him and the lending was unaffordable.

Mr G didn't receive a response from SMF so brought his complaint to our service. When he did so, SMF said they'd never received a complaint from Mr G and asked for more details from us. But when we sent them details, they didn't respond to Mr G's complaint or provide us with any information.

Our investigator therefore considered Mr G's complaint without any information from SMF, as allowed by the rules that govern our service. Our investigator said she couldn't see that SMF had carried out reasonable and proportionate checks before lending to Mr G. But she thought if they had carried out proportionate checks, SMF would have been able to conclude the lending was affordable for Mr G and make a fair decision to lend to him.

SMF didn't reply to our investigator's view, but Mr G did. He wasn't happy. He said he missed a lot of bills over the course of the agreement and had to take out other debts in order to pay for the car. He told us he'd defaulted on two credit cards prior to taking out this agreement, and he was regularly incurring bank charges for rejected direct debits. Mr G said he was moving money out of his main account to save it for food so that it wouldn't be taken for direct debits and then would transfer it back in to buy food for himself and his children. He asked for an ombudsman to look into his complaint – and it was passed to me.

I reviewed the complaint and reached a different outcome to our investigator – I thought the complaint should be upheld. So I issued a provisional decision on 10 April 2024. In that, I said:

“The Financial Conduct Authority (FCA) sets out in a part of its handbook known as CONC what lenders must do when deciding whether or not to lend to a consumer. In summary, a firm must consider a customer's ability to make repayments under the agreement without having to borrow further to meet repayments or default on other obligations, and without the repayments having a significant adverse impact on the customer's financial situation.”

Did SMF carry out proportionate checks?

SMF haven't told us anything about the checks they carried out or provided any evidence. So, I can't say SMF carried out proportionate checks before lending to Mr G.

If SMF had done proportionate checks, what would they have found?

Proportionate checks would have involved SMF finding out about Mr G's financial circumstances to determine whether he'd be able to make repayments in a sustainable way. Given that the agreement required Mr G to make payments of over £250 per month each month for almost five years, I'd have expected these checks to be thorough, taking into account his credit history and his income and non-discretionary expenditure.

Unfortunately, due to the time that's passed, we don't have much evidence of Mr G's credit history at the time of the agreement. He's told us he'd defaulted on two credit cards, but I don't have any evidence of this. What I can see from his bank statements is that he was in his overdraft almost constantly, with some of this being unplanned usage. I'd have expected this to have been visible to SMF if they'd carried out a credit check, and to have raised some concerns about affordability.

I wouldn't necessarily have expected SMF to have reviewed Mr G's bank statements – but I do think they'd have needed to verify Mr G's income and get some understanding of his expenditure. The best way for me to do this now is to look at his bank statements. I've reviewed the statements for his current account for the three months preceding the lending decision.

Mr G's income in December 2017 was around £2,200. But this was considerably higher than in January 2018 and February 2018 when it was around £1,500. I looked at March 2018 as well to get a better idea of what Mr G's sustainable monthly income was and I'm satisfied that SMF wouldn't have been able to fairly assess Mr G's net monthly income as any more than £1,600.

Turning to Mr G's expenditure, I can see his rent was £600 per month, and he spent around £250 per month on bills including energy, communications and TV. Mr G was paying an average of £20 per month to creditors and £25 per month to his bank for account fees and overdraft charges. He was also spending £55 per month on car insurance and road tax, and around £400 per month on food and fuel. There was no indication that anyone else was contributing to these expenses. Taking all this together, it looks like Mr G's non-discretionary spending amounted to around £1,350 per month.

Deducting this figure from Mr G's income suggests he had net disposable income of no more than £250 per month before entering into this agreement – meaning that the £255 payments required under this agreement wouldn't be affordable for him. This is supported by the fact that Mr G's statements show he had very little discretionary spending, was almost always in his overdraft, and was being sent money by family members.

In her view, our investigator noted that Mr G made a lot of transfers into this bank account from other accounts in his name which we don't have statements for. Whilst that is true, he also made a lot of transfers out to other accounts in his name and the net of all the transfers across the three months was minimal. So, I don't think it's likely he had any other sources of income and I don't consider the transfers in and out of this bank account to be significant to the outcome of the complaint.

In summary, I can't see that SMF carried out proportionate checks before lending to Mr G. And I'm inclined to say that if they had, they would have found he didn't have enough disposable income to be able to sustainably afford the repayments required under this agreement.”

Mr G accepted my provisional decision and SMF didn't respond.

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 neither party provided any additional comments or evidence, my findings are unchanged from those set out in my provisional decision.

Putting things right

As I don't think SMF should have approved the loan, it's not fair for them to charge any interest or other charges under the agreement. But Mr G has had the full benefit of use of the car so it's fair he pays the cash price of it.

In addition, SMF should remove any adverse information recorded on Mr G's credit file regarding the agreement because it wouldn't have been recorded on his credit file if SMF hadn't lent to him.

My final decision

As I've explained, I'm upholding Mr G's complaint. Specialist Motor Finance Limited need to do the following to settle the matter:

- refund all the payments Mr G has made in excess of £7,740, adding 8% simple interest per year from the date of each overpayment to the date of settlement; and
- remove any adverse information recorded on Mr G's credit file regarding the agreement.

If SMF consider tax should be deducted from the interest element of my award they should provide Mr G a certificate showing how much they've taken off so that Mr G can reclaim that amount, assuming he is eligible to do so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 26 May 2025.

Clare King
Ombudsman