DRN-5528809

The complaint

Mr G, who is represented by a third party, complains that Specialist Motor Finance Limited ('SMFL') irresponsibly granted him a hire purchase agreement he couldn't afford to repay.

What happened

In March 2018, Mr G acquired a used car financed by a hire purchase agreement from SMFL. The cash price of the car was £5,495. Mr G was required to make 59 monthly repayments of £147.94 followed by a final instalment of £157.94. The total repayable under the agreement was £8,886.40.

The agreement was settled in April 2020.

Mr G says that SMFL didn't complete adequate affordability checks. He says if it had, it would have seen the agreement wasn't affordable. SMFL didn't agree. It said that it carried out a thorough assessment which included asking Mr G about his income, carrying out a credit check and establishing what his typical spending was likely to be using an external database.

Our investigator recommended the complaint be upheld. She thought SMFL ought to have realised the agreement wasn't affordable to Mr G.

SMFL disagrees, saying that its checks were enough to demonstrate that it was likely Mr G had enough disposable income to be able to afford to repay the agreement.

The complaint has therefore been passed to me for a final decision.

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 unaffordable and irresponsible lending on our website. And I've used this approach to help me decide Mr G's complaint.

SMFL carried out a credit check to establish what credit commitments Mr G already had. SMFL often lends to customers who might have fewer lending options available to them and who might be regarded by other lenders as a higher lending risk. It says it therefore uses its checks with such issues in mind. That said, SMFL still needed to carry out checks that went far enough to establish that the borrowing was likely to be affordable as well as being something that could be repaid sustainably. This was after all a five-year agreement that represented a significant financial commitment for Mr G.

SMFL says it verified Mr G's income by viewing one of his payslips. It also looked into his credit history and saw that Mr G had taken out credit elsewhere, including a mortgage. He had some settled credit accounts, including a hire purchase agreement that had ended around four years earlier. He also had four accounts where he'd defaulted on payments, the most recent one being from April 2017 - less than a year earlier.

SMFL has explained that it verified Mr G's income by using an external data source to assess whether the new credit was likely to be affordable. The figures it used allowed £83.50 for existing credit payments, £384 for mortgage payments and £309 for household costs and other committed spending. I can understand that this would have provided a measure of reassurance to SMFL. But given the defaults and that fact that Mr G would need to maintain payments under the agreement for five years, for the checks to be proportionate I think it was necessary for SMFL to have gained a more thorough understanding of Mr G's overall financial circumstances before lending.

I have also seen that SMFL calculated Mr G's expenditure using statistical data so as to give typical spending figures based on his age and where he lived. The regulator allows firms like SMFL to use such data unless something shows or suggests that the estimated figures might be inaccurate. I think there was enough to show here that Mr G had been struggling with his day-to-day spending finances relatively recently and that there was a risk of his financial position deteriorating. So again, I think it would have been reasonable and proportionate for SMFL to have taken steps to better understand Mr G's specific financial circumstances, rather than relying on an estimate.

It follows that I think it would have been proportionate for SMFL to carry out further verification as to Mr G's financial situation, looking at his income and regular expenditure. That doesn't necessarily mean that SMFL had to ask Mr G to provide them with bank statements, but in the absence of anything else I think it reasonable to place significant weight on the bank statements Mr G sent our investigator – and which have been passed to SMFL. I've focused in particular on the statements covering the three months leading up to the agreement as I think these provide a fair indication of what would most likely have been disclosed to SMFL at the time.

The statements show that Mr G was only just able to meet his daily financial commitments out of his income. Mr G was receiving an average net monthly employment income of around £1,600 in those three months. Like our investigator, I've noted his regular committed spending on household costs, including his mortgage - which was £480 and less than SMFL had allowed for. I've also noted evidence that Mr G was continuing to pay back the defaulted sums – although one of these had already been cleared. He was also paying for high-cost short term loans. All of this looked to be costing him around £1,400 each month. So that would leave him with only £200 from which he'd need to pay for the repayments due under the new agreement. He was therefore likely to be left with only around £50 each month as disposable income. Had SMFL carried out better checks, I think it would have seen this too.

SMFL has suggested that Mr G may have been splitting household costs with his wife. I'm not sure that's correct in reality, given that over the three-month period Mr G had transferred to her an average of £420 each month. This doesn't support SMFL's suggestion that they were both contributing towards household costs. On the contrary, it looks more likely to be part of Mr G's regular monthly outgoings towards supporting regular household spending. So it's something that SMFL would have seen for itself had it carried out better checks at the time.

All of this means that it's difficult not to draw the conclusion that there was a real risk of Mr G's financial circumstances deteriorating. He didn't seem to be in a good enough position financially to be able to afford the repayments towards the new agreement without a likelihood that he'd be getting into further financial difficulty. Had SMFL completed proportionate checks, I think it's likely it would have discovered this too. It therefore didn't act fairly by approving the finance.

I've also seen that Mr G had difficulties with meeting his repayments on two occasions in 2019 due to changes in his personal circumstances. After he got in touch with SMFL, he was offered a payment deferral in the first instance and a payment arrangement for the second one. I don't think SMFL treated Mr G unfairly or failed to offer suitable forbearance when these issues happened.

I've also considered whether the relationship between Mr G and SMFL might have been unfair under S.140A of the Consumer Credit Act 1974. However, I'm satisfied the redress I have directed below to be carried out for Mr G results in fair compensation for him 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 – what SMFL need to do

As 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 G should therefore only have to pay the original cash price of the car, being £5,495. Anything Mr G has paid in excess of that amount should be refunded as an overpayment.

To settle Mr G's complaint SMFL should therefore do the following:

- Refund any payments Mr G has made in excess of £5,495, 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 G's credit file regarding the agreement.

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

My final decision

I uphold this complaint and direct Specialist Motor Finance Limited to put things right in the manner set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 12 June 2025.
Michael Goldberg
Ombudsman