DRN-5677023

The complaint

Mr J says Specialist Motor Finance Limited ('SMFL') irresponsibly lent to him. He says that it didn't take reasonable steps to ensure he could afford the repayments towards a hire purchase agreement to purchase a car. He says that it didn't take into consideration his other debts and the other loans he was struggling with.

What happened

This complaint is about a hire purchase agreement that Mr J took out to purchase a car in August 2019. The vehicle had a retail price of £7,194. Mr J paid a £3,000 deposit meaning £4,194 was financed.

This agreement was to be repaid through 35 monthly instalments of £183.83 followed by a final instalment of £193.83. If Mr J made repayments in line with the credit agreement, he would need to repay a total of £9,627.88.

Mr J complained to SMFL saying that he couldn't afford the lending and if SMFL had made better checks it would've seen this and not lent to him.

SMFL considered this complaint, and it didn't uphold it. It thought it'd done adequate checks, which showed that Mr J could afford the lending. Mr J didn't agree with this and brought his complaint to the Financial Ombudsman Service.

Our Investigator upheld Mr J's complaint. He thought the checks that SMFL did showed that Mr J was not likely to have enough left to pay the instalments. He also noted that Mr J was in financial difficulty and if SMFL had looked in more detail at his circumstances it would have still seen that he couldn't afford the lending.

SMFL didn't agree with the Investigator. It said that, after reviewing Mr J's bank statements that, Mr J wasn't struggling financially. This was because it saw Mr J:

- Was able to pay a deposit of £3,000.
- Was significantly in credit in his bank for the most part.
- Was spending significant amounts each month on cryptocurrency trading.
- Was paying for a holiday and for a motorhome.

It thought that the checks that were made were proportionate to the lending decision.

There was some further correspondence, but no new issues were raised. Because SMFL didn't agree, this matter has been passed to me to make 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.

When someone complains about irresponsible and/or unaffordable lending, there are two overarching questions I need to consider when deciding what's fair and reasonable in all of the circumstances of the complaint. These are:

1. Did SMFL complete reasonable and proportionate checks to satisfy itself that Mr J would be able to repay the credit in a sustainable way?

    a. if so, did SMFL make a fair lending decision?
    b. if not, would reasonable and proportionate checks have shown that Mr J could sustainably repay the borrowing?

2. Did SMFL act unfairly or unreasonably in some other way?

And, if I determine that SMFL didn't act fairly and reasonably when considering Mr J's application, I'll also consider what I think is a fair way to put things right.

<u>Did SMFL complete reasonable and proportionate checks to satisfy itself that Mr J would be able to repay the credit in a sustainable way?</u>

There's no set list for what reasonable and proportionate checks are, but I'd expect lenders to consider things such as the amount, duration, and payments of the finance being applied for, as well as the borrowers' personal circumstances at the time of each application.

SMFL have explained that it asked Mr J what his income was, and he said that it was £1,642 a month after tax. It said it verified this using a tool from a credit reference agency.

It also found out that Mr J was 39 years old, he was co-habiting, he was a homeowner and had been employed with the same employer since June 2016.

SMFL also looked at Mr J's credit reference agency data. It says that it found six settled credit accounts, six active credit accounts which were up to date and six accounts which had defaulted. Three of the defaults were historic, but three had been applied within three months of the lending. The value of the defaulted credit was over £4,000 and Mr J was paying just over £60 a month to this. Mr J had also missed a payment to some credit three months prior to the lending and one of his current accounts was overdrawn and not being used.

SMFL then calculated Mr J's expenditure using what it found on his credit file and some statistical estimates of his living expenses. It calculated his cost of living expenditures to be about £310. He had car insurance costs of about £35, travel costs of £125, rent of £435 and his existing credit repayments were just over £500 a month.

Taking all of this from his income, and adding a buffer of £25, would leave him with around £205 a month left over. SMFL thought that this was enough to repay the lending.

As a starting point I don't agree with this. The hire purchase repayment was about £184, and this would leave Mr J with too little. Even after considering the buffer amount of £25, this still only left him with less than £50 each month for any significant unforeseen expenditures. I think this is far too low considering the 36 month term of the agreement, and means that any further expenses he had would need to be funded by further borrowing which may not be sustainable.

Added to this when the new repayment was considered, Mr J would be paying just under £700 a month to creditors which is a very high amount of his declared and verified income. And, as I've said above, Mr J has some significant recent problems repaying the credit he already had.

Taking all this into account, I think the size of the repayments were too high and meant that Mr J was paying too much, and so SMFL shouldn't have approved the lending.

Our Investigator, and SMFL, have considered the further information that Mr J has provided including his bank statements. I don't think this information and considerations are entirely relevant as SMFL didn't need to consider Mr J's circumstances further for it to be clear it shouldn't have lent. The information it had was enough for this to be the case.

That said, I will comment on some of the information that has been provided as I think it also shows that Mr J couldn't afford the lending.

Mr J has confirmed that his share of the household bills was just over £1000 a month. His other expenditures looked to be, on average, about £850 a month. Even though Mr J's income looks to be slightly higher than SMFL recorded, at between £1,800 to £1,900, the information from his bank statements also shows that he couldn't, on the face of it, afford this lending.

The crux of SMFL's further issues is that it says Mr J was spending amounts on things such as house renovations and cryptocurrency trading. And I can see that large sums were deposited into his account to facilitate these. Mr J has said that these sums came from a relative of his partner, and a friend, and would need to be repaid in the future. And I can see that Mr J did start to repay these.

It's not entirely clear what SMFL is trying to say here, but it seems to be that as Mr J was able to spend money on these things, including having the money for the finance deposit, then he must have been able to afford to do so. I don't think this is a reasonable assumption and seems to wholly ignore the business responsibilities about determining if credit is sustainably repayable. Mr J was spending more than his income, and it seems to be due to extensive borrowing from friends and family: that doesn't mean he was financially secure. And it isn't a reasonable basis to lend further money.

So, I think it's fair to say that the information SMFL had showed that it shouldn't have lent to Mr J, and any further consideration of his circumstances would have also shown this. I don't think SMFL should have lent to Mr J.

<u>Did SMFL act unfairly or unreasonably in some other way?</u>

Mr J had repayment problems relatively soon after he started the finance in April 2020. He informed SMFL that he had cash flow problems and he was then made redundant. I understand he changed his employer, and he started paying weekly to the finance in November 2020.

There is limited information here about how the finance was reconstructed and the contact between Mr J and SMFL about this. But SMFL does seem to have tried to help Mr J when he couldn't repay the finance and I don't think additional compensation for the customer service received is warranted. I've noted that Mr J hasn't disagreed with our Investigators similar conclusions to this, so I won't comment further about it.

Finally, I've thought about whether considering this complaint more broadly as being about an unfair relationship under Section 140A of the Consumer Credit Act 1974 would lead to a different outcome. But even if it could (and should) reasonably be interpreted in that way I'm satisfied this wouldn't affect the outcome in this particular case.

Putting things right

Where a business has made an error, our service would usually aim to put the consumer back in the position they would've been in had the error not occurred. However, in cases where a business has lent irresponsibly this isn't entirely possible, as the lending provided can't be undone.

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 J should therefore only have to pay the original cash price of the car, being £7,194. Anything Mr J has paid more than that amount should be refunded as an overpayment.

To settle Mr J's complaint SMF should do the following:

- Refund any payments Mr J has made in excess of £7,194.
- 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 J's credit file regarding the agreement.

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

My final decision

For the reasons I've explained, I uphold Mr J's complaint.

Specialist Motor Finance Limited should put things right by doing what I've said above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 18 September 2025.

Andy Burlinson
Ombudsman