DRN-5711965

The complaint

Mr L complains that Specialist Motor Finance Limited (SMFL) acted irresponsibly by failing to complete sufficient affordability checks before agreeing to lend to him.

What happened

In February 2024, Mr L acquired a used car financed through a Hire Purchase Agreement (HPA) with SMFL. The cash price of the car was £18,990. Mr L paid a deposit of £3,771 with the balance of £15,219 provided as credit through the agreement.

The agreement required Mr L to make 59 monthly repayments of £466.74, followed by a final repayment of £476.74. Mr L fell into arrears making his repayments soon after entering the HPA, leading to SMFL recovering the car from him and selling it to reduce his debt.

In January 2025 Mr L complained to SMFL that they failed to complete sufficient checks to assess his affordability prior to him entering into the agreement. He said had they done, they shouldn't have given him the loan and by doing so it had caused him to experience financial hardship.

SMFL didn't think they'd done anything wrong so didn't uphold Mr L's complaint, saying they'd completed adequate checks to assess his affordability prior to lending to him and that the information they'd reviewed showed them the loan was affordable for him at the time of inception.

Mr L remained unhappy, so he asked the Financial Ombudsman Service to look into his complaint.

One of our Investigator's looked into things. He said based on the checks SMFL did complete and what they saw as a result of those checks, he didn't think they'd completed proportionate checks to determine Mr L's affordability.

In order to assist him, our Investigator asked Mr L for some information regarding his income and expenditure at the time. While Mr L was able to provide some information including bank account statements for one account, he was unable to provide copies of statements for other bank accounts he also held at the time.

Based on the information available to him, our Investigator said he thought had SMFL completed proportionate checks, they'd have likely seen the agreement appeared affordable for Mr L and as such, he didn't think they did anything wrong by agreeing to lend to him.

Mr L didn't agree with our Investigator's opinion saying his disposable income was less than the amount stated and had SMFL done the right checks, they would have seen the finance repayments were unaffordable. Mr L also said he had defaults and County Court Judgements (CCJ's) on his credit file at the time, and he was in a lot of debt, more reasons why if SMFL had properly checked, they shouldn't have lent to him. Mr L also let our Investigator know he would use the proceeds he made from vehicle sales towards bills, and he split those bills equally with his partner.

Our Investigator explained the information available to him didn't show any of Mr L's committed expenditure in two of the three months prior to the lending. But based on what our Investigator, he said it appeared Mr L had enough left each month for the repayments to be affordable. Our Investigator asked Mr L to provide a breakdown of his expenditure and evidence such as bank statements for his other accounts to show what and for how much his committed expenditures were.

Mr L sent our Investigator a copy of his credit file as well as some screenshots detailing his gambling activity from around the time. He said funds from his gambling, along with the profit from the buying and selling of vehicles shouldn't be taken into account as income. But Mr L didn't provide any further statements or information about his expenditure, so our Investigators opinion remained unchanged.

Because no agreement could be reached, this complaint has been passed to me to decide.

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.

Having done so, and I acknowledge it will come as a disappointment to Mr L, I'm not upholding his complaint for broadly the same reasons as our Investigator. I'll explain why.

How we handle complaints about irresponsible and unaffordable lending is explained on our website. It's this approach I've used when deciding Mr L's complaint. SMFL needed to ensure they didn't lend irresponsibly which in practice, means they needed to carry out proportionate checks to be able to understand whether any lending was affordable and sustainable for him before agreeing to provide the finance.

The rules that apply to credit agreements are set out in the FCA's consumer credit sourcebook (CONC). Section 5.2A of CONC is relevant here, as – among other things – it talks about the need for businesses like SMFL to complete reasonable and proportionate creditworthiness assessments before agreeing to lend someone money.

I've considered these rules by asking the following questions:

1) Did SMFL complete reasonable and proportionate checks to satisfy themselves Mr L would be able to meet the repayments of the borrowing without experiencing significant adverse consequences?

- If they did, was their decision to lend to Mr L fair?

- If they didn't, would reasonable and proportionate checks have shown that Mr L could sustainably repay the borrowing?

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

<u>Did SMFL complete reasonable and proportionate affordability checks?</u>

What's considered reasonable and proportionate in terms of the checks a business undertakes will vary dependant on the details of the borrowing and the consumer's specific circumstances at the time.

Here, the total amount repayable under the agreement was around £31,785.40, with Mr L committing to make 60 monthly repayments of around £470. This was, therefore, a relatively lengthy credit commitment for someone to enter into repaying not an insignificant amount back each month, so my starting point is that I'd expect to see SMFL to have completed a thorough affordability check.

SMFL said they completed a credit file check from which they understood Mr L's existing financial circumstances. Aside from two historic defaults, one of which had been satisfied, they saw overall he was managing his finances well with 11 of his 12 active credit account showing up to date, and the remaining one once marginally in arrears and for just one month.

I understand Mr L has said he was subject to defaults and CCJ's at the time of taking out the HPA and was in a lot of debt. But not all data is reported to all credit reference agencies. From the data SMFL were provided, I can't say they ought to have been aware of any cause for concern here.

Alongside the information from the credit file, SMFL gathered information from Mr L such as his marital, residential and employment status including his income. They said Mr L declared he was earning a net monthly income of £2,167.33 at the time.

Aside from the credit check and the information they'd gathered, SMFL used statistical data to estimate Mr L's expenditure. Based on Mr L's age, him being single and living in rented accommodation, SMFL estimated his expenditure to be around £1470 a month.

After including Mr L's committed expenditure to existing credit of around £128 a month and allowing for a buffer of £100, SMFL calculated Mr L was likely to have around £467 disposable income each month.

Despite SMFL's inclusion of a £100 buffer, the monthly repayment towards the agreement was within a penny to being equal to the disposable income figure they'd reached. Because of this, I'm not persuaded £100 was a sufficient buffer when ultimately, Mr L was taking out an agreement with a term of 60 months and with monthly repayments of around £470. I think SMFL ought to have got a better understanding of Mr L's actual expenditure, so I'm not satisfied their checks were proportionate.

But as I've explained above, that doesn't necessarily mean I can uphold Mr L's complaint – I now need to consider whether they'd have been able to fairly decide to lend to him if they had done proportionate checks.

<u>If SMFL had done proportionate checks, what would they have found?</u>

I think proportionate checks would have involved SMFL finding out more about Mr L's actual non-discretionary expenditure to determine whether he'd be able to afford the repayments in a sustainable way.

From the credit file data captured by SMFL, I can see Mr L held multiple current accounts at the time of the lending. Our service has asked Mr L for copies of this statements for each of those account for the months prior to the lending. I'm not saying SMFL needed to obtain bank statements as part of their credit worthiness checks. But in the absence of other information, I think bank statements provide me a good indication of Mr L's expenditure at the time the lending decision was made. But Mr L has only provided statements for one account he held – the account he received his salary into at the time.

I've looked at these statements for the three months prior to the agreement – unfortunately aside from some small payments towards a debt management company I've not been able to see what Mr L's monthly committed expenditure was at the time or for how much.

Neither has Mr L been able to provide a more detailed breakdown of his expenditure at the time. So here, my decision is based on the information I do have and on balance, what I think SMFL would most likely have found had they completed more checks.

SMFL say Mr L told them he was single and living in rented accommodation at the time and they used statistical data for a person fitting this profile when estimating his essential expenditure.

Mr L has explained to our service while he put single on the application because he wasn't married at the time, he was living with a partner, they would split the bills 50/50 and he would pay her amounts in cash or via transfer towards living expenses such as council tax and rent. I can see on Mr L's statements he would also receive transfers back from his partner which he has said were towards the cost of living.

So, while I don't think the buffer of £100 left by SMFL was a sufficient amount, I think had they done more checks, based on the information available to me I think they would've found that Mr L wasn't responsible for out goings such as rent, council or utilities in full as a single person. And instead, that his commitments to these expenses were shared and ultimately his outgoings were lower than SMFL had estimated.

I think it's important at this point to say I've considered what Mr L has mentioned about not agreeing additional income from both gambling and the buying and selling of vehicles should be included. I acknowledge Mr L says he used these funds to help cover the costs of his expenditure, but I can only focus on what SMFL would likely have seen prior to agreeing the finance, had they completed proportionate checks.

The bank statements show Mr L's income varied across the three-month period I've reviewed, but on average he received £1,985 a month from his employer. I can see from the credit file data provided by SMFL, Mr L was committed to paying around £111 a month towards his existing credit commitments and £134 a month towards car insurance.

In addition, on Mr L's bank account statement, I can also see he paid £65 to debt management companies. On the third month I reviewed, Mr L paid around £190 towards his credit card, and he transferred £900 to his partner. But I've not seen any such payments in the two months prior – so on average I can't say the amounts paid ought to have given SMFL concern about Mr L's affordability to repay the finance.

In summary, while I'm aware Mr L has told us how his income didn't stretch to covering his essential expenditure, I've not seen evidence of any additional bills being paid from the account I've reviewed, and I think it's reasonable SMFL would more likely than not have established he was only responsible for 50% of the bills towards cost of living and as such they would've more likely than not found he was left with enough disposable income to suggest the agreement was affordable for him.

So, while I think SMFL ought to have completed more checks, I think had they done, based on the limited information available to me, they, more likely than not, could have fairly decided Mr L was left with enough disposable income for non-essential and emergency spending and therefore that the agreement was affordable for him. So, I'm not upholding this complaint.

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

At the time of Mr L bringing his complaint to our service I can see he was experiencing some financial difficulties with regards to making his repayments towards the agreement, and I understand the car was later sold with the proceeds reducing the outstanding finance.

From the contact notes I've seen, I've not seen anything to suggest SMFL have treated Mr L unfairly or unreasonably in any other way. I can see that SMFL have previously offered to complete an income and expenditure review with Mr L however, I can't be sure this was ever completed.

But, as it's clear SMFL are aware of Mr L's financial difficulties, I'd remind them of their responsibility going forward to treat him with forbearance and due consideration.

I've also considered whether SMFL acted unfairly or unreasonably in some other way given what Mr L has complained about, including whether its relationship with Mr L might have been unfair under s.140A Consumer Credit Act 1974.

However, for the reasons I've already given, I don't think SMFL lent irresponsibly to Mr L or otherwise treated him unfairly. I haven't seen anything to suggest that Section 140A or anything else would, given the facts of this complaint, lead to a different outcome here.

My final decision

For the reasons I've explained above, my decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 9 September 2025.

Sean Pyke-Milne
Ombudsman