DRN-5809933

Financial Ombudsman Service

## The complaint

Mr R is complaining that Specialist Motor Finance Limited (SMFL) acted irresponsibly in lending to him. Mr R's complaint has been handled by a representative, but for ease I've written as if we've dealt with him directly throughout.

## What happened

In June 2022, Mr R took out a hire purchase agreement with SMFL to finance the purchase of a car. He paid no deposit and borrowed £22,710 over a 60-month term, with monthly repayments of around £570.

In September 2024 Mr R complained to SMFL, saying they shouldn't have lent to him. He said they hadn't done enough checks and his credit file at the time showed SMFL shouldn't have lent to him.

SMFL didn't uphold Mr R's complaint. They said they support applicants who have a lower credit rating and said they'd done a proper assessment of affordability before deciding to lend to Mr R. They said their assessment considered the following:

- Mr R's application said he was a divorced tenant, had been in his current employment since the beginning of April 2022, and earned £2,714 per month after tax.
- The credit reference agency data (CRA) data showed he had nine up to date active credit items and five well-managed settled credit items. It also showed he had five defaults, the most recent of which was three years prior to the application.
- They verified Mr R's income using payslips, used the CRA data to estimate his monthly payments to creditors, and used statistical data to estimate his non-discretionary expenses. In this way, they said, they'd calculated his disposable income was around £570.

So, they said, they'd completed a reasonable assessment of creditworthiness, and determined that the agreement would be affordable for him.

Mr R wasn't happy with SMFL's response, so he brought his complaint to our service where one of our investigators looked into it. Our investigator initially thought Mr R's complaint should be upheld, because the amount of disposable income SMFL had calculated matched the amount he'd have to pay each month under the agreement and wouldn't leave anything for emergencies and other unexpected expenditure. SMFL reviewed their file again and told us they'd put in too low a value for Mr R's income when investigating his complaint – they also said they'd used too high a figure for his credit commitments. They provided a revised monthly disposable income figure.

Our investigator reviewed the complaint again. On balance, she said, she didn't think SMFL had carried out enough checks before lending to Mr R. But, having considered his non-discretionary expenses in more detail, her view was that if SMFL had done further checks, they'd still have been able to fairly decide to lend to Mr R. So she didn't uphold his complaint.

Mr R remained unhappy. He said it was clear from his bank statements that he was gambling extensively and therefore it wasn't responsible of SMFL to lend to him. Our investigator explained why she didn't think SMFL needed to have reviewed Mr R's bank statements before lending to him, but Mr R wasn't persuaded. He asked for an ombudsman's decision, and the complaint's come 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.

Having done so, and recognising it'll be disappointing for Mr R, I'm not upholding his complaint. Although my reasoning is somewhat different from our investigator's, it doesn't change the outcome. I'll explain further below.

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. CONC says a firm must carry out checks which are proportionate to the individual circumstances of each case.

*Did SMFL carry out reasonable and proportionate checks?*

SMFL verified Mr R's income using his payslips. And they used his credit file to estimate his spending on credit commitments, as well as reviewing his credit history. They estimated his other non-discretionary spending using statistical data. Whether or not these checks were enough depends on what the results showed.

I've looked at SMFL's copy of Mr R's credit file. It shows nine active accounts – two unsecured loans, two mail order accounts, one credit card, three current accounts (none of which had an overdraft facility), and a communications account. All of these appeared to be up-to-date and within their limits. Mr R had missed three payments within the preceding year – one on each of the mail order accounts, and one on one of unsecured loans. But each of these was a one-off and overall it would have appeared he was managing his existing credit well. His total debt was around £9,165, so Mr R didn't appear to be over-indebted at the time. The credit file also shows Mr R also had five defaulted accounts and one CCJ. The most recent of these defaulted in March 2020, over two years before SMFL's lending decision. So I can't say these defaulted accounts were indicative of Mr R's financial circumstances at the time of his application.

In his complaint, Mr R said he had cash advances, excess limits, defaults and credit limit increases in the six months preceding this agreement. But SMFL were entitled to rely on the CRA data they obtained, so I can't say they should have been aware of anything that might have been on a credit report from a different CRA.

Mr R's payslips show his net income was £2,714 per month. And the CRA report shows his credit commitments were around £400 per month. Deducting the £570 for this agreement as well would have left Mr R with around £1,744 to cover his cost of living. SMFL estimated his monthly housing costs would be around £810 and his other costs of living would be around £500, and they added a "buffer" of £100 - so they estimated his total cost of living was around £1,410 per month.

CONC specifically allows a firm to use statistical data to estimate a customer's expenditure unless they ought to be aware that the customer's actual non-discretionary spending is likely to be significantly higher than average. I haven't seen anything from the information SMFL obtained from Mr R's application or from the checks they did that suggested Mr R's expenditure might be significantly higher than average. And the calculation they carried out allowed for Mr R's non-discretionary spending to be up to £340 higher each month before the agreement would become unaffordable. In the circumstances then, I'm satisfied it was reasonable for SMFL to rely on statistical data in their assessment.

*Did SMFL make a fair lending decision given what they found?*

As I've set out above, SMFL's calculations suggested Mr R would have around £340 disposable income each month after paying for his essentials and making the repayments due under this agreement. So, I'm satisfied it was fair for SMFL to decide it would be affordable for him. In addition, I didn't see anything in the credit file that suggested Mr R was in, or had recently been in, financial difficulties at the time of applying to SMFL. So I can't say they acted irresponsibly in deciding to lend to him.

Mr R's told us he was gambling extensively at the time. And I can see that from the bank statements that he's supplied to us. But there's no general requirement for a firm to check bank statements before lending to an individual. As I've explained above, CONC requires a firm to carry out reasonable and proportionate checks to satisfy themselves that an applicant is likely to be able to make the repayments due under the agreement without having a significant adverse impact on their financial situation. I'm satisfied that SMFL did carry out reasonable and proportionate checks and made a fair lending decision given what they found. There's no reason they should have been aware of Mr R's gambling history at the time.

*Did SMFL treat Mr R unfairly in any other way?*

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 SMFL lent irresponsibly to Mr R or otherwise treated him 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**

As I've explained above, I'm not upholding Mr R's complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 28 October 2025.

Clare King
**Ombudsman**