

## The complaint

Mr D complains that Specialist Motor Finance Limited (SMFL) failed to complete sufficient affordability checks prior to approving him for finance, resulting in him experiencing financial hardship.

## What happened

In November 2023, Mr D acquired a car through a Hire Purchase Agreement (HPA) with SMFL. The cash price of the car was £15,751. Mr D paid a deposit of £296, with the remaining amount of £15,455 provided as credit through the agreement.

The agreement required Mr D to make 59 monthly repayments of £423.45, followed by one repayment of £433.45 on month 60.

In October 2024, Mr D complained to SMFL that he'd experienced financial hardship as a result of them failing to carry out sufficient affordability checks before lending to him.

In November 2024, SMFL sent Mr D their final response letter, but they didn't uphold his complaint. In summary, SMFL said they'd completed adequate checks to assess Mr D's affordability to repay the loan and the information provided from those checks showed that the loan was affordable.

Mr D disagreed with SMFL's response, so he referred his complaint to our service.

One of our Investigators looked into things but said he didn't think SMFL had completed proportionate checks and that they should have queried Mr D's actual expenditure before deciding to lend to him rather than having relied on estimates from statistical data.

Our Investigator went on to say had SMFL completed further checks, he thought they would've found Mr D not to have had sufficient capacity to meet all his financial obligations, so they shouldn't have approved him for additional finance.

Mr D accepted our Investigator's opinion, but SMFL didn't, saying the checks they'd completed had been proportionate and they didn't believe further checks were required based on what they found from the results of those checks.

Because our Investigator's opinion remained unchanged and no resolution could be reached, this case has been passed to me to decide.

I sent both Mr D and SMFL my provisional decision on 19 November 2025. I explained I'd reached a different outcome to that of our Investigator. In my provisional decision I said:

*'How we handle complaints about irresponsible and unaffordable lending is explained on our website. It's this approach I've used when deciding Mr D's complaint. SMFL needed to ensure that 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 for him before agreeing to provide the credit.'*

*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 D 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 D fair?*
  - If they didn't, would reasonable and proportionate checks have shown that Mr D could sustainably repay the borrowing?*
- 2) Did SMFL act unfairly or unreasonably in some other way?*

*Did SMFL complete reasonable and proportionate affordability checks?*

*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 £25,713, with Mr D committing to make 60 monthly repayments of around £425. 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 D's existing financial circumstances and that aside from a couple of late payments towards his revolving credit, they saw no cause for concern.*

*Alongside the information from the credit file, SMFL gathered information from Mr D such as his marital and residential status and income.*

*Mr D has told our service he'd recently left an employment contract prior to applying for the lending and that he was yet to have started a new one. But he declared within his application he earned a net monthly income of £4,100 at the time.*

*SMFL verified this amount by using an external affordability tool provided by a credit reference agency (CRA), which confirmed the amount he'd declared could be matched against his current account turnover (CATO) data, and hadn't been overstated. So, I'm satisfied it was proportionate for them to have relied on the information they'd obtained and I don't think they needed to have done further checks here.*

*Aside from the credit check and the information they'd gathered, SMFL used statistical data to estimate Mr D's non-discretionary expenditure. Based on Mr D's age, him being married and living in rented accommodation, SMFL estimated his non-discretionary expenditure to be around £1,372 a month.*

*After including Mr D's committed expenditure to existing credit of around £702 a month and allowing for a buffer of £100, SMFL calculated Mr D was likely to have a disposable income of around £1,926 a month.*

*CONC allows the use of statistical data to estimate a customer's expenditure "unless it knows or has reasonable cause to suspect that the customer's non-discretionary expenditure is significantly higher than that described in the data".*

*The credit report data SMFL obtained showed Mr D had a large volume of historic and existing credit at the time of the application. While SMFL saw no sign that he'd defaulted on any of his agreements, they could see over the 12 months prior, he'd been at least two payments in arrears on two revolving credit accounts and at least one payment in arrears on five others. While most of these accounts had been brought back up to date by the time of the application, two still remained one payment in arrears.*

*As I've explained above, the statistical data SMFL used, estimated Mr D had around £1,926 disposable income each month. But I think the numerous missed payments on Mr D's credit report data suggested that his non-discretionary expenditure might have been significantly higher than the statistical averages. Because of this, I'm not satisfied it was proportionate for SMFL to have relied on statistical data on this occasion. I think they ought to have got a better understanding of Mr D's actual expenditure.*

*But as I've explained above, that doesn't necessarily mean I can uphold Mr D'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.*

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

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

*I'm not saying SMFL specifically needed to obtain bank statements as part of their credit worthiness checks. I don't think they did. SMFL could have simply asked Mr D what his essential expenditure was, rather than relying on statistical data.*

*But in hindsight and in the absence of other information, I think bank statements provide me a good indication now, of Mr D's essential expenditure over the three months prior to when the lending decision took place.*

*I'm satisfied Mr D's bank account statements show his average monthly expenditure towards his essential commitments was around £1,745. Approximately each month on average this consisted of £1,050 towards rent, £275 towards council tax, £117 towards utilities, £281 towards telephone and television contracts and £22 towards what looked to be life assurance.*

*Put together with Mr D's actual commitments to existing credit of around £702, which SMFL obtained from his credit file data, it left him with around £1,653 per month, or after accounting for the repayment towards the new HPA in question and the £100 buffer SMFL included, around £1,128.*

*I'm aware Mr D says his expenditure was much higher and as such his disposable income much lower. But I think it's important to remember that I'm now reviewing the data on his bank statements in hindsight and my role isn't to identify every specific transaction.*

*It's sometimes difficult to differentiate between payments towards for example fuel, groceries or childcare and other non-essential spending Mr D might've made. Because of this I've not included any spend towards things such as food, transport or travel, nor could I see an obvious commitment towards car insurance which Mr D says was £105 a month, rather than*

£75 as estimated by SMFL.

*But I'm satisfied the average disposable income of £1,128 he appeared to have, would have been sufficient to cover these costs, as well as any other essential commitments he might have declared such as towards the cost of living or towards childcare.*

*I'm aware the gambling seen on Mr D's statements has been questioned as to why it wouldn't have been seen as a red flag to SMFL. But as I've explained, while I do think SMFL ought to have found out more about Mr D's actual non-discretionary expenditure, I'm not satisfied additional checks, proportionate to the circumstances here, would've meant these transactions came to their attention.*

*In summary, from what I've seen, I'm satisfied Mr D would've been left with around £1,128 per month from which to cover any non-discretionary expenditure such as food, travel and childcare and other commitments such as his car insurance. While I understand Mr D might well have had many other outgoings, I'm not including any spend on what's generally considered non-essential expenditure when calculating his disposable income. I'm satisfied had SMFL found out more about Mr D's non-discretionary expenditure, they could have fairly decided the agreement was affordable for him.*

*So, I'm satisfied SMFL's lending decision was fair and I don't intend to uphold this complaint.*

*Did SMFL act unfairly or unreasonably in some other way?*

*Mr D has experienced some financial difficulties with regards to making his repayments towards the agreement, such as in October 2024, when he fell into arrears due to a change of employer.*

*Having considered the contact notes I've seen, I've not seen anything to suggest SMFL have treated Mr D unfairly or unreasonably in any other way. When falling behind, I can see SMFL assisted Mr D by reviewing his income and expenditure and agreeing payment plans to reduce any arrears.*

*That said, going forward, I'd remind SMFL of their responsibility to continue treating him with forbearance and due consideration should he remain in financial difficulty or find himself in the same situation again.*

*I've also considered whether SMFL acted unfairly or unreasonably in some other way given what Mr D has complained about, including whether its relationship with Mr D 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 D 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.'*

Mr D responded to say he disagreed with my provisional decision, and he didn't understand where I'd got the disposable income figure I'd reached from, adding that he was paying a finance repayment towards another car at the time of the application which I'd not included.

Mr D said SMFL hadn't done adequate checks and had they done they'd have seen he wasn't the statistical average, adding bank statements going back further would have shown payday type loans, missed payments, debt and gambling, which was so high it would have been noted. Mr D also asked what evidence I'd seen to show his missed payments, saying he'd missed multiple in the months prior to the application, not the two I'd mentioned.

Regarding his income, Mr D said he wasn't working at the time of the application and was asked for no proof of income. He also said SMFL knew he was a contractor and said a calculation should be made to account for sickness and days off as this would impact his income by around £300 a day.

Lastly, Mr D said, aside from one repayment plan, SMFL weren't helping to support him at all with his financial difficulties and have told him to sell the car despite there being finance on it still. Mr D says he would now have to default or sell the car leaving him in a never-ending cycle of debt.

SMFL didn't respond to my provisional decision, so I have taken that as they have nothing further to add.

### **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, while I know this will come as a disappointment to Mr D, I've seen no reason to reach a different outcome to the one I reached previously. I'll explain why.

But first, I'm aware I've summarised Mr D's response in less detail in parts than has been provided, and I've done so using my own words. No discourtesy is intended by this. Instead, I've concentrated on what I think are the key issues here. Our rules allow me to do this.

This reflects the nature of our service as an informal alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. It may be that there are specific points I'm satisfied I've already covered in my provisional decision and that I don't need to repeat or comment on every detail here, to be able to reach what I think is the right outcome, reasonable in the circumstances of this complaint.

While overall I'm not of the opinion the checks carried out by SMFL prior to their lending decision were reasonable and proportionate, it's important I'm clear on what level of checks I do think would have been.

I've explained in my provisional decision I don't think SMFL needed to do more than they did before accepting Mr D's declared income. He told them he earned £4,100 net each month and they were able to verify his figure hadn't been overstated via a CATO check, so I don't think they needed to do more here. Had Mr D earned less or not have been earning at all at the time, I would have expected him to have declared as such when making the application.

The credit check completed by SMFL gave them a proportionate understanding of Mr D's existing outstanding credit accounts. This data told them Mr D had actual commitments to his existing credit of around £702 a month. This amount included the existing HPA Mr D refers to, therefore was part of both SMFL's and my calculations.

But the credit check also showed Mr D missed numerous payments towards his credit in the 12 months prior. It's here SMFL saw he had been at least two months in arrears on two accounts and one month in arrears on five others - with two accounts remaining one month in arrears at the time. So, as I've said, while I think it was proportionate for them to use his actual credit commitments obtained from the CRA, the missed payments meant I don't think the use of statistical data for his remaining essential expenditure was and I think they needed to have done more.

Having reviewed Mr D's bank statements, I've explained what I think they show his average

monthly spend towards his other essential expenditure was and I've not been provided anything to persuade me had SMFL asked Mr D about this spend, the information they would have found out would have been substantially different.

I understand Mr D says statements looking further back would have shown his financial struggles including a high level of gambling transactions, but, as I've explained, while I've looked at bank statements now, I don't think SMFL needed to have gone this far for their checks to have been proportionate at the time of the application. I said I think SMFL could have just asked Mr D about his other essential spending and my position here remains.

Finally, I've considered what Mr D has shared about the support he is being offered or rather lack of it. My provisional decision explained why previously I'd not seen anything to suggest they'd treated Mr D unfairly and it's not for me within this decision to decide on the fairness of how they've treated him since. It's not the crux of why this complaint was brought.

I would suggest Mr D reach out to SMFL directly to discuss both the difficulties he is facing and the support they might be able to offer. And my reminder to SMFL of their responsibility to continue treating him with forbearance and due consideration remains.

### **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 D to accept or reject my decision before 6 January 2026.

Sean Pyke-Milne  
**Ombudsman**