

## complaint

Mr S complains that Specialist Motor Finance Limited (SMFL) didn't complete appropriate checks before accepting his application for a hire purchase agreement. He says had it done so it would have seen the lending was unaffordable.

Mr S also complains that after he requested to voluntarily terminate (VT) the agreement he shouldn't have had anything else left to pay. But SMFL said the car hadn't been returned in an acceptable condition and has charged him for this. He says SMFL has been chasing him for arrears and recorded incorrect information on his credit file.

## background

The background to this complaint was set out in my provisional decision dated 9 July 2020. My provisional decision is attached below and forms part of my final decision.

Mr S accepted my provisional decision and reiterated that debt collection agents had been harassing him to pay the outstanding debt SMFL claimed he owed, and this had resulted in a default being applied to his credit file.

SMFL didn't accept my provisional decision in response it said:

- *"Mr S's application stated he earned £3,000 net monthly income, lived in rented accommodation and was single." Income was verified using a third party's affordability calculator that checks income against stable sole turnover or recent validated salary. "The tool uses Current Account Turnover ("CATO") data, for which it has 98% market coverage including all major banks, and information shared by its members regarding recent validated application salaries to determine a view of income. Information provided includes a match status (High – Low) and a confidence level (1-9)."*
- *"Mr S's income was overstated by more than 10%. Accordingly an Income & Expenditure (I&E) was completed with Mr S. During the I&E assessment Mr S informed us he earned £2,200 net monthly income, which was later verified by the third party tool as not overstated. Mr S also informed us that he lived with his partner, and the Voters Roll information indicates that other adults were living in the property at the time. We identified that the total household expenditure was £1,625.00 and that the applicant was responsible for 75% of the household costs; £1,218.75. Mr S informed us he had £350 of personal borrowing commitments and we derived a disposable income of £2,200 - £1,218.75 - £350 = £631.25."*
- *"Mr S's credit file at the time showed a mixture of good and non-prime credit, including 2 well paid credit cards and several well paid current account and comms (sic) records. We specialise in providing finance to customers who may struggle to obtain finance elsewhere, we are aware that the finance we provide is to enable the purchase of a vehicle, which many customers require to be able to fulfil commitments around employment and family".*
- *"Although Mr S was in a debt management plan the adverse (sic) on his credit file was historic and there was one active Credit Card showing under debt management, which was discussed with Mr S during the I&E call. There was evidence there was a previous well paid Hire Purchase and some active well paid credit cards. Having*

*limited arrears would not automatically prohibit someone from obtaining finance where there is evidence it is affordable.”*

- *“Mr S’s circumstances demonstrated that he would have adequate disposable income to service our loan. Mr S had a stable job for the previous 7 months and prior to that had been employed by the same company for 9 years with no break in employment. Mr S’s credit file, application data, and affordability assessment demonstrated sufficient evidence of creditworthiness and affordability based on his circumstances at the time.”*
- *“The fact that Mr S did not miss any contractual monthly repayments would further confirm that the finance provided was both responsible and affordable.”*
- *“under the Consumer Credit Act 1974 the amount Mr S was required to pay to be able to terminate the agreement was 50%, however this can be increased to recompense the creditor where the debtor has failed to take reasonable care of the goods. SMFL established this by assessing what the vehicle should have been worth for its age and mileage against what the vehicle was sold for at auction.” ... “we ought to have been able to sell the vehicle for £5,900 and the actual sale price was £4,850, meaning that when it was sold it raised £1,050 less than the amount it should have. However, as a gesture of goodwill we confirmed we would accept £525 as full and final settlement of Mr S’s account. We would also note that the vehicle had a bid for only £4,200 on or around 15 May 2018, which further reflects the condition of the vehicle.”*

## **my findings**

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 I still think Mr S’s complaint should be upheld. I got in touch with SMFL on 28 August 2020 to explain why and asked it to make any further submissions before 7 September 2020. To date, I haven’t received a response. Bearing in mind a month has passed since this extended deadline, I’m satisfied that SMFL has had ample time to make any further submissions it wished to.

SMFL hasn’t been able to provide copies of the income and expenditure details taken at the initial application so it’s not clear what Mr S actually declared when he initially applied for the loan. Similarly, SMFL hasn’t been able to provide a copy of the credit check or TAC so I can’t see what SMFL saw before it agreed the lending.

Although I think these checks can sometimes be proportionate in certain circumstances, I would still expect a lender be able to demonstrate what it actually saw, in order to be satisfied that what the lender did went far enough. And in Mr S’s case I don’t think these checks on their own are sufficient.

SMFL has explained that Mr S originally overstated his income as £3,000 and this was later amended to £2,200.

CONC 5.3.7 R explains:

*“A firm must not accept an application for credit under a regulated credit agreement where the firm knows or ought reasonably to suspect that the customer has not been truthful in*

*completing the application in relation to information supplied by the customer relevant to the creditworthiness assessment or the assessment required by CONC 5.2.2R (1).*

*[Note: paragraph 4.31 of ILG]"*

And CONC 5.3.8 G goes on to say:

*"An example of where a firm ought reasonably to suspect that the customer has not been truthful may be that the information supplied by the customer concerning income or employment status is clearly inconsistent with other available information."*

As SMFL has been unable to provide details about the original application, it's not clear how the discrepancy between Mr S's originally declared income and what SMFL's initial checks showed came about. But a £800 discrepancy in Mr S's declared income is significant.

SMFL has also confirmed it was aware Mr S was subject to an ongoing debt management plan. Although being in arrears shouldn't mean an application for credit is automatically declined, it's an indicator to a finance provider to take additional steps to establish any additional lending is affordable because the applicant is having difficulty repaying what they already owe. I'd also add that a debt management plan is an indication that any difficulty repaying was not short term or a one off but rather that Mr S proved unable to maintain the agreed contractual payments on some if not all of his financial commitments for a sustained period.

So, in these circumstances, I think SMFL ought to have done more to verify what Mr S's actual income and expenditure was before proceeding and if it could not get this information from Mr S decline the lending all together because of the inaccurate information provided at the initial application. SMFL's failure to have done more here means I'm not satisfied that the checks SMFL completed in this instance were proportionate.

As explained in my provisional decision I can't say for sure what SMFL would have seen if it completed further checks. But I've reviewed Mr S's bank statements and his credit file and have determined that his regular monthly financial commitments were in excess of £2,000. SMFL says it verified Mr S's regular income as £2,200 and my review of his bank statements suggested it was around £2,500. But whichever figure is used adding payments of £390.86 a month to Mr S's on-going financial commitments simply wasn't sustainable. And given that he wasn't at that time able to make his full contractual payments on all his debts, I don't think providing Mr S with further unaffordable borrowing at that level was fair and reasonable.

I note SMFL's comments on how long Mr S was able to keep up with the payments for but a customer keeping up with payments doesn't mean that they were able to afford them. This is especially the case in circumstances where some form of security exists, such as here, which might lead a customer to prioritise that debt over others. Mr S has said he needed to take out additional borrowing to keep up with repayments towards the agreement. What Mr S has told us is supported by his credit file which does show he took out short term loans after the lending was agreed by SMFL. SMFL's contact notes also show that he'd enquired about refinancing the agreement within a year and ultimately did end the agreement early.

So, I don't think the lending was affordable and to put things right SMFL should compensate Mr S in line with the recommendations in my provisional decision.

SMFL is correct in saying that the Consumer Credit Act 1974 makes provision for a finance provider to charge a consumer if they VT and they haven't taken reasonable care of the goods. But SMFL hasn't provided any substantive evidence which demonstrates that the car was returned in an unacceptable condition or that the car was returned in a condition any different from when Mr S obtained it. As no new evidence or arguments have been provided in relation to this, I don't intend to go into this in any more detail and I remain of the opinion that charge applied for the condition of the car is unfair and should be removed.

Mr S has explained that that debt for this charge has been sold to a collection agent and as he hasn't paid it, a default has been registered against him. SMFL should recall the debt if it can and attempt to ensure any adverse data recorded on Mr S's credit file in relation to this agreement is removed.

As I explained in my provisional decision, I think Mr S has been caused distress and inconvenience as a result of SMFL's handling of this issue and I think it should compensate him for that. I still think £250 is fair compensation to put that right.

### **my final decision**

I uphold this complaint. To put things right Specialist Motor Finance Limited should:

- refund any overpayments Mr S made towards the agreement after paying £6,800 adding 8% simple interest per year from the date of each overpayment to the date of settlement
- recall the debt from the collection agent and waive all the charges for the condition of the car
- liaise with the debt collection agent to remove any adverse data in relation this agreement from Mr S's credit file
- pay Mr S £250 compensation for the distress and inconvenience he experienced as a result of this matter.

If Specialist Motor Finance Limited considers tax should be deducted from the interest part of my award, it should provide Mr S with a certificate showing how much it's taken off. He can then reclaim that amount, assuming he is eligible to.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 12 November 2020.

Chris Bick  
**ombudsman**

### ***provisional decision***

#### ***complaint***

*Mr S complains that Specialist Motor Finance Limited (SMFL) didn't complete appropriate checks before accepting his application for a hire purchase agreement. He says had it done so it would have seen the lending was unaffordable.*

*Mr S also complains that after he requested to voluntary terminate (VT) the agreement he shouldn't*

*have had anything else left to pay. But SMFL said the car hadn't been returned in a good condition and has charged him for this. He says SMFL has been chasing him for arrears and recorded incorrect information on his credit file.*

### **background**

*Mr S acquired a used car in July 2015 and financed this through a hire purchase agreement with SMFL. The cost of the car was £12,500 and Mr S paid a £100 cash deposit in addition to part-exchanging his old car for £500. The total amount repayable was £24,496.60, with monthly payments of £390.86*

*In March 2018 Mr S contacted SMFL in writing and asked to VT the agreement and called to chase this up a few days later. SMFL then sent him a letter to confirm the VT arrangements.*

*After collecting the car SMFL sold the car at Auction in June 2018. It said the car wasn't returned in an acceptable condition and asked Mr S to pay £1,050.00. Mr S disputed he should pay this and explained that when the car was collected, he was told it was in an acceptable condition. He also complained that his credit file hadn't been updated to show the agreement had been settled.*

*In November 2018 Mr S made another complaint to SMFL. He said it should have completed more checks before agreeing to lend to him and the lending was unaffordable.*

*SMFL issued a final response in January 2019. It said it completed income and expenditure details during a call with Mr S in July 2015, that he signed a Confirmation of Affordability Declaration and that it completed the appropriate checks before agreeing to lend to him. So, it didn't agree the lending was unaffordable.*

*SMFL also explained that:*

*"The car must also be in a reasonable state of repair with a valid MOT. If the vehicle docs require any rectifications to bring it up to standard, you will be liable for these as per the terms and conditions of your agreement"*

*SMFL said the price it charged Mr S was calculated by taking the "clean price" from a well-known industry guide on car prices (I'll refer to as C) and deducting the price the car was sold for at auction. It says this is the cost of what would have been required to put the vehicle into a good condition.*

*SMFL didn't agree it had made a mistake but as a gesture of goodwill advised Mr S it would accept £525.00 as full and final settlement of the account so long as he made an arrangement to pay within 14 days.*

*Mr S didn't accept SMFL's response so referred his complaint to this service.*

*The investigator who looked into Mr S's complaint didn't think SMFL had acted irresponsibly by providing the loan. But she said the charges it had applied for damage were unfair because SMFL hadn't provided any photos to show that any damage to the car was chargeable. She also concluded the method SMFL used to calculate the costs of the damage wasn't fair or in line with the agreement terms and conditions.*

*To put things right she recommended SMFL:*

- *waive the outstanding amount it asked Mr S to pay.*
- *confirm in writing the account has been settled with nothing further to pay.*
- *remove any adverse information it had recorded on Mr S's credit file as a result of this issue.*

SMFL accepted her assessment but Mr S didn't. He explained he didn't think that the lending was affordable when provided. Because Mr S didn't accept her assessment it's been passed to me to decide.

### **my provisional findings**

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 I think the complaint should be upheld. I've explained why in more detail below.

Before offering borrowing lenders need to consider whether repayments to a loan are affordable and sustainable. This is set out in the FCA Handbook - Consumer Credit Sourcebook (CONC):

CONC 5.2.1R(2) says a firm must consider:

*"(a) the potential for the commitments under the regulated credit agreement to adversely impact the customer's financial situation, taking into account the information of which the firm is aware at the time the regulated credit agreement is to be made; and*

**[Note: paragraph 4.1 of ILG]**

*(b) the ability of the customer to make repayments as they fall due over the life of the regulated credit agreement, or for such an agreement which is an open-end agreement, to make repayments within a reasonable period.*

**[Note: paragraph 4.3 of ILG]"**

And CONC 5.3.1G says:

*"(2) The creditworthiness assessment and the assessment required by CONC 5.2.2R (1) should include the firm taking reasonable steps to assess the customer's ability to meet repayments under a regulated credit agreement in a sustainable manner without the customer incurring financial difficulties or experiencing significant adverse consequences.*

**[Note: paragraph 4.1 (box) and 4.2 of ILG]**

*(3) A firm in making its creditworthiness assessment or the assessment required by CONC 5.2.2R (1) may take into account future increases in income or future decreases in expenditure, where there is appropriate evidence of the change and the repayments are expected to be sustainable in the light of the change.*

**[Note: paragraph 4.9 of ILG]"**

CONC 5.3.1G(6) goes on to say:

*"For the purposes of CONC "sustainable" means the repayments under the regulated credit agreement can be made by the customer:*

- (a) without undue difficulties, in particular:
  - (i) the customer should be able to make repayments on time, while meeting other reasonable commitments; and*
  - (ii) without having to borrow to meet the repayments;**
- (b) over the life of the agreement, or for such an agreement which is an open-end agreement, within a reasonable period; and*
- (c) out of income and savings without having to realise security or assets; and*

*“unsustainable” has the opposite meaning.*

*[Note: paragraph 4.3 and 4.4 of ILG]”*

*So, I’ve thought about the checks SMFL completed and whether they were proportionate*

*Did SMFL complete proportionate checks?*

*Mr S was required to repay £24,496.60, with payments of £390.86 each month, a significant commitment with large monthly payments. So, in these circumstances, I would expect a lender’s checks to have obtained a detailed understanding of Mr S’ income, expenditure and disposable income before offering borrowing.*

*SMFL has provided its contact notes which say:*

*“Income Confirmed @ £2200”*

*and*

*“I&E completed. Confirmed all debts under debt management, lives with partner and income accounted for in split, in line with credit file disp (sic) income £550.”*

*But I can see SMFL also sent Mr S a letter titled “Affordability and Employment Declaration” this letter recorded Mr S’s net pay as £3,000 per month and said he was single. I haven’t seen any explanation from SMFL for the differences in Mr S’s recorded income or marital status.*

*The fact Mr S was on a debt management plan showed SMFL that he had had previous difficulty repaying credit as he hadn’t been able to make the contractual payments towards at least some of his creditors. This should have put SMFL on notice that it would have been proportionate to do more than it might normally in order to understand whether Mr S would be able to make his payments. And I don’t think that relying on Mr S’ declared income and expenditure alone was proportionate here.*

*SMFL says its underwriting team completed some further checks, I’ve asked for information about what it checked and any documentation it saw at the time. But SMFL hasn’t been able to provide anything else.*

*Overall, I’m not satisfied SMFL did enough to verify Mr S’s income and expenditure bearing in mind the circumstances. So, I don’t think it completed proportionate checks before agreeing to lend to him.*

*was the borrowing affordable?*

*Because I don’t think SMFL’s checks were proportionate I’ve thought about what it would have seen had it completed sufficient checks. I can’t say for certain what documentation SMFL would have seen had it completed proportionate checks, but I’ve reviewed a recent copy of Mr S’s credit report and his bank statements from the time the borrowing was agreed. I’ve done this not because I’m saying that SMFL needed to obtain bank statements at the time but because as we’re now some years after the event, Mr S’s bank statements contain the information I need in one place.*

*Mr S’s bank statements show he was paid weekly, and this ranged from £445.59 to £796.35. He was paid a total of £2,927.42 in May 2015 and £2,581.33 in June 2015. I don’t know if SMFL based its decision to lend to Mr S based on a monthly income of £3,000 or £2,200, as both are recorded. Either way I haven’t seen that SMFL asked Mr S for any explanation of why his wages differed from what had been declared. I think if SMFL had completed the checks it should have, it would have seen Mr S’s monthly pay fluctuated and it couldn’t rely on this being much more than around £2,500 a month. I certainly can’t see that it could conclude Mr S had a regular income of £3,000 a month as noted in the Affordability and Employment Declaration letter it sent Mr S.*

*I've also thought about Mr S's expenditure. SMFL hasn't been able to provide any evidence of what expenditure Mr S declared, but I can see it determined he had £550 disposable income each month. Mr S has told this service his monthly expenditure was between £2,000 and £3,000 a month, that his partner generally paid their utility bills and he was supporting his step-daughter at university and sending her £100 a week.*

*Mr S's credit report shows that he had agreed arrangements to pay with two of his creditors - a credit card and a catalogue shopping account. This means he wasn't making the full monthly contractual payments required. At the time SMFL agreed to lend to Mr S, the outstanding balance for his credit card was £1,313 and he was making payments of £6 a month towards the account. It's not clear what the outstanding balance for the catalogue shopping account was, but I can see from Mr S's bank statements he was paying £58 a month towards the account at the time.*

*Mr S's bank statements also show he was making regular payments to a debt management plan of around £68 a month. It's not clear what debts these payments were directed to and Mr S hasn't been able to provide a copy of his debt management plan, but it seems likely this was for the credit card and catalogue shopping account.*

*I can also see from his credit file that Mr S had another two credit cards, with combined credit limits of £3,760. He was using the majority of the available balances and making the contractual monthly payments of around £210.*

*At the time SMFL agreed the lending Mr S had recently settled another catalogue shopping account and also had a number of active contracts with telecommunications suppliers.*

*His bank statements show that Mr S's regular monthly expenditure, including his rent, the money sent to his step-daughter and food and petrol was around £2,112 in May 2015 and £1,815 in June 2015.*

*Those figures don't include payment for clothes and Mr S has also explained his council tax payments were £119 a month -but I can't see any of these payments on the statements provided.*

*Overall, I think it would be reasonable to say Mr S's regular monthly expenditure was at least £2,100 and this was with him making less than the required payments on two accounts.*

*As I think Mr S's actual income doesn't appear to be any more than £2,500 a month and his actual expenditure was at least £2,100, I think he had around £400 disposable income each month. As the payments required towards his hire purchase agreement were £390.86, And this doesn't even take into account the associated running costs such as insurance, MOT and any other payments required for the upkeep of the car. In these circumstances, I think that proportionate checks would more likely than not have shown SMFL that these payments weren't sustainable for Mr S, so I don't think it should have provided the finance for Mr S in these circumstances.*

*As I don't think the loan was affordable for Mr S I think SMFL needs to do something to put this right.*

*did SMFL handle Mr S's request to VT correctly?*

*The right to VT an agreement is set out in sections 99 and 100 of the Consumer Credit Act 1974. It allows the consumer to hand goods back to the finance provider during the term of the agreement if they've paid more than half the total amount payable under the agreement. A consumer can VT at any point but will always need to pay at least half of the amount payable and make up any arrears.*

*In Mr S's cases he asked to VT in April 2018. At this point he had £11,529.94 left to pay under the agreement - so he had paid more than half the total £24,496.60 due and was up to date with payments. So, he was entitled to hand the car back with nothing further to pay towards the agreement. But section 100(4) allows a lender to charge the borrower to put things right if the borrower contravenes an obligation to take reasonable care of the goods. So, if upon inspection the*



*car was returned in a poor condition or damaged, SMFL could charge Mr S to put that right. This is set out in the terms and conditions of the agreement:*

*"5.1 On termination of this agreement you will return the Goods, in good repair and condition, to us at such place as we may specify. If you do not, we shall be entitled to repossess the Goods from you (subject to CCA 1974).*

*5.2 To be in good repair and condition, the Goods must comply with the following;*

- the service records must be returned with the Goods which must record that the Goods have been fully serviced by a reputable garage;*
- the Goods must have a current MOT certificate If required by law, and require little or no work for the issue of a new certificate and*
- the Goods must require no refurbishment to be ready for retail resale, be free from mechanical or body damage. In their original paintwork and trim, with the Interior to original specification free from damage.*

*If the Goods are not in good repair and condition when they are returned to us, you must pay to us the amount needed to put them in good repair and condition."*

*So, if I thought Mr S had returned the car in an unacceptable condition, I think it would be fair for SMFL to charge him to put that right.*

*So, the first thing I've thought about is whether the damage was potentially chargeable. The British Vehicle Rental & Leasing Association ('BVRLA') guide 'The Industry Fair Wear & Tear Standard' sets out industry standards for acceptable damage for drivers of leased and financed cars, so I think it's relevant industry guidance that I should consider.*

*The guidance explains:*

*"if the BVRLA member intends to charge you for damage or missing equipment when the vehicle has been inspected, you must be advised of those charges no later than **four weeks** after the vehicle was returned. The BRLA member must provide you with a summary breakdown of the charges, an explanation of how the charges have been calculated and photographic/video or other documentary evidence supporting why the charges have been made."*

*I can see that Mr S dropped the car off on 13 April 2018. From the account notes it doesn't look like SMFL made Mr S aware it was intending to charge him for the condition of the car until 15 June 2018 - well outside the four weeks.*

*Despite requests from this service SMFL also hasn't provided a copy of the invoice detailing what Mr S is being charged for. And it's been unable to provide a report or any photos showing the condition of the car.*

*In cases like this when the customer has taken ownership of a second-hand car, I would expect there to be some evidence of the condition of the car at the point of sale, such as an inspection report and/or photos. Without such evidence there's no way of knowing if any damage was there before the customer collected the car. In this instance the car was around three years old when Mr S collected it, so would already have suffered from some wear and tear and possibly damage, I can't see that there was any report on the car's condition at the time Mr S collected it or from when he dropped it off.*

*So, I don't think SMFL has followed good industry practice when charging Mr S for the condition of the car. Mr S has said the car was returned in good condition. SMFL can't say what condition the car was in when Mr S collected it, what was wrong with the car when it was returned or why this was outside of fair wear and tear. So, I don't think it's reasonable for Mr S to be charged anything for the condition of the car.*

*I think it's also important to address the method SMFL says it used to calculate how much Mr S should pay for the condition of the car.*

*SMFL said:*

*"The vehicle was returned and was independently appraised (taking into account general wear and tear) and was sold at auction for the best possible price. We would not repair the vehicle prior to being sold at auction and therefore the vehicle should be returned in a retail condition and in accordance with 5.2 of the terms and conditions of the agreement you would be liable for the difference between the C Clean Price (Car Auction Price, so what price it is expected to make at auction) and the actual sale price. We can confirm the C Clean price was £5,900.00 and the actual sale price was £4,850.00, therefore your liability is £1,050.00*

*The terms and conditions of the account don't explain that this is how charges for the condition of the car will be calculated so I don't think it would be reasonable for this approach to be used, even if SMFL was able to show the car wasn't returned in the condition it should have been.*

*The price a car is able to achieve at auction will vary depending on the price people who attend are willing to pay on the day. I note SMFL declined bids at the initial auction it attempted to sell the car at because it didn't think they were high enough. I don't think it would be fair to penalise Mr S for the difference between a generic valuation and what was actually achieved at auction.*

*Overall, I don't think SMFL treated Mr S fairly after he VT'd the agreement. I don't think it's fair for him to be charged anything for the condition of the car and the agreement*

*what should SMFL do to put things right?*

*Because I don't think the lending should have been provided to Mr S, I don't think it's reasonable for SMFL to apply any interest or charges to the agreement. But Mr S did benefit from the use of the car and I think it's fair he pays for that. I'm not persuaded monthly repayments of almost £400 a month are a fair reflection of the use Mr S had of the car. This is because a significant proportion of those repayments went towards repaying interest - which made up around half the total amount due under the agreement.*

*There isn't an exact formula for working out what a fair monthly repayment would be to reflect Mr S's use of the car. But in deciding what's fair and reasonable I've thought about the type of car, its age and mileage when Mr S acquired it, the amount of interest charged on the agreement, Mr S's likely overall usage of the car and what his costs to stay mobile would likely have been if didn't have this car. In doing so I think a fair amount Mr S should pay is £200 for each month he had use of the car.*

*Mr S collected the car in July 2015 and returned it in April 2018, so had use of it for around 34 months. This means SMFL can ask him to repay a total of £6,800. As Mr S has already paid more than this back SMFL should treat everything over this that Mr S has paid as an overpayment. It should refund each overpayment adding 8% simple interest per year from the date of payment until the date of settlement.*

*As Mr S shouldn't have been given the borrowing, it isn't fair for him to have any adverse information recorded on his credit file about this debt. SMFL should therefore arrange to remove any adverse data in relation to this agreement from Mr S's credit file.*

*Since the VT was accepted, I can see Mr S has been chased for payment and had late payments and a default recorded on his credit file, which wouldn't have happened were it not for SMFL's mistakes. Given that Mr S was already in some financial difficulty I think he would have found this upsetting and I can see he's made a number of calls to SMFL to try and sort this out. So, I think SMFL needs to do something to put this right. Examples of awards for this type of compensation can be found on our website. I think the distress and inconvenience experienced by Mr S would fall into the moderate category of awards and SMFL should pay him £250 to put this right.*

***my provisional decision***

*Subject to any further submissions I receive, I'm minded to uphold this complaint. To put things right Specialist Motor Finance Limited should:*

- *refund any overpayments Mr S made towards the agreement after paying £6,800 adding 8% simple interest per year from the date of each overpayment to the date of settlement*
- *waive all the charges for the condition of the car*
- *remove any adverse data in relation this agreement from Mr S's credit file*
- *pay Mr S £250 compensation for the distress and inconvenience he experienced as a result of this matter.*

*If Specialist Motor Finance Limited considers tax should be deducted from the interest part of my award, it should provide Mr S with a certificate showing how much it's taken off. He can then reclaim that amount, assuming he is eligible to.*