

Complaint

Miss P complains that Specialist Motor Finance Limited (SMFL) provided her with a hire purchase agreement in March 2017 that was unaffordable to her.

Background

The background to this complaint and my preliminary findings were set out in a provisional decision dated 11 February 2021 - a copy of which is attached and forms part of this final decision.

I invited both parties to provide me with any further comments they might have before I reached my final decision. Miss P responded to my provisional decision to indicate that she accepted my findings.

SMFL did not respond within the deadline that was set. It then responded setting out at some length why it didn't agree with my provisional decision. I've summarised its submissions as follows:

- It questioned why Miss P proceeded to take out finance, if she felt pressured and knew that she couldn't afford it. It pointed out that she had sought out finance herself and completed the initial application online 24 hours in advance of attending the dealership. In addition, there was a delay of three days before the finance was ultimately approved as SMFL had to check Miss P's address. Therefore, it said Miss P had plenty of time to contact SMFL to let it know of any concerns she had and express any reservations about proceeding with the application.
- It highlighted that Miss P had said that an initial monthly instalment of £280 was discussed, but Miss P didn't accept that as she knew she couldn't afford it. But when a monthly repayment of £266 was suggested, she accepted that because her children were excited about getting the new car. It said this indicated that Miss P had had an understanding of and considered her financial position and concluded that she could afford the monthly payment of £266. Any pressure she felt to go ahead with the agreement likely came from her children and not the dealership or SMFL.
- Equally, SMFL questioned how Miss P could have been led to believe that she could withdraw from the finance agreement at any point when the terms and condition didn't support this. It highlighted the responsibility was on Miss P to read the agreement before agreeing to be bound by its terms.
- It re-iterated that had it know Miss P was self-employed it would not have lent to her. It said there was no evidence she told the dealership this was the case and highlighted that she did not disclose it on the online application form. It questioned

why if Miss P believed this to be relevant, she didn't raise it sooner rather than waiting until three years before recalling the conversation at the dealership. It questioned whether I was suggesting that Miss P gave one set of details at the application stage and another at the dealership, which in turn suggested that Miss P had provided incorrect information on her application and that is something she should have declared and which SMFL were not aware of.

- It said it hadn't been able to provide all documentary evidence due to the passage of time, but it felt it had provided sufficient detail regarding Miss P's circumstances, which she had never questioned until she raised concerns about the finance being provided. It felt I was freely accepting Miss P's version of events over the documentary and factual evidence it had provided.
- It said that the historic CCJ, having been paid over a very short time, showed Miss P was in a financial position to settle the CCJ extremely quickly and would give it no cause for concern. And it said that the missed payment was in relation to a credit card with a low limit and balance. It commented that being only one payment in arrears raised no undue concern as revolving credit can allow for repayments to be more flexible and all of Miss P's other financial commitments were being maintained.
- It explained that it specialised in providing credit to customers who may struggle to get finance elsewhere for cars which many customers need to fulfil commitments around employment and family. So, having a recent payment arrangement wouldn't automatically prohibit someone from obtaining finance with it where there is evidence that it is affordable and sustainable. Specifically for Miss P, it said that all her credit commitments were accounted for in the affordability calculation, which showed that Miss P could afford the car. It said the application data, credit file and affordability assessment demonstrated sufficient evidence of creditworthiness and affordability based on her circumstances at the time.
- Having taken all of the above into account it didn't feel any further checks were required.
- It highlighted that the investigator who initially reviewed Miss P's bank statements has found she had a disposable income of £328.29 and so could meet the monthly repayment of £266.67. It highlighted that the investigator had taken Miss P's rent into account and wondered whether in fact, given Miss P's circumstances, she had been in receipt of housing benefit to assist with her rent.
- It said it appreciated that Miss P had provided this service with a copy of her bank statements that showed an average income of £1,300. But it believed Miss P had more than one bank account. It said this because Miss P's income was 'verified through TAC' as £1,900 and its records showed that Miss P had contacted it in April 2017 to inform it that the reason for non-payment on the account was that she had not transferred her money in time, which would suggest she had more than one account. It asked if I could confirm if Miss P had another account and how Miss P was receiving her benefits.
- It said regardless, even if Miss P's income had been verified at £1,300 it would have adjusted her expenditure based on her income and her disposable income would have been £313.75, with her monthly repayment on the loan being £266.67.

- It noted that I had commented that it looked like Miss P had changed employer on three occasions between November 2016 and November 2017. It said Miss P may have changed her employer in March 2017, but it wouldn't have been aware of what happened after it made the decision to lend, but it had been aware she had been in her current employment for one continuous month.
- It said that although after entering into the agreement Miss P did unfortunately have a change in circumstances which resulted in her being in and out of hospital, its records showed it had set up arrangements, offered extensions and it has previously removed fees to assist Miss P. In June 2018 when Miss P told it she had lost her job due to being in and out of hospital, it referred her to its specialist team. It discussed options with her such as voluntarily surrendering the car, providing a settlement figure, and payment arrangements for either four or six months. However, at that time Miss P wanted to keep the car and continue to pay the monthly instalment.
- In September 2019 [sic] it discussed voluntary surrender again with Miss P and in October 2018 sent Miss P an income and expenditure form for Miss P to complete to gain an understanding of her financial situation to determine the most appropriate course of action, but Miss P did not return the form. It said following Miss P's request to voluntarily surrender the car and despite not receiving the income and expenditure form back, in July 2019, it agreed that she could pay £50 per month to be reviewed once Miss P was back in employment.
- It sympathised with the fact that Miss P had been unwell but noted that Miss P had advised she was entering into education for the next three years and felt this may have been a factor in why Miss P had raised concerns about the finance three years after entering into it.

SMFL asked that I provide comments on what it had said before issuing a final decision.

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've reached the same conclusion I reached in my provisional decision, and for broadly the same reasons.

SMFL has made lengthy submissions in response to my provisional decision. I have considered all of what it has said. The response included a series of questions and challenges to the conclusions I had reached, but in the main, didn't provide any new material or significant evidence for me to consider. I'll address what I consider to be the main points SMFL has raised and explain why these don't change the outcome I've reached.

SMFL has objected to what Miss P has said about feeling pressured at the dealership about the sale. It has highlighted that Miss P had ample opportunity to change her mind and also her behaviour at the dealership, for example not accepting the initial higher monthly payment, shows she understood her financial situation.

I have not made a finding about whether or not there was a pressurised sale at the dealership. Nor have I made a finding on whether Miss P was led to believe that she could withdraw from the agreement. In fact, I explicitly made it clear in my provisional decision that I was not deciding the latter issue.

That said, I think the thrust of what SMFL is saying here is that there is evidence to suggest that Miss P had an understanding of her finances and also that she had time to stop the sale going ahead, if once away from the dealership she reflected and felt that she had concerns about the sales process and the affordability of the agreement.

And I agree with that to an extent. I think it is reasonable to expect consumers to consider carefully whether or not they can afford credit that they are being offered. But sometimes, circumstances can mean that a consumer might make a wrong decision, perhaps having not thought through the reality of the financial implications attached to borrowing.

That is why reasonable and proportionate checks by the lender at the time of lending are so important and the regulatory obligation lies with SMFL to ensure that the lending is affordable.

SMFL re-iterated that it would not have lent to Miss P had it known she was self-employed. It said she didn't declare it on the application form and there was no evidence that she told the dealer. It questioned whether Miss P had given one set of details on the application form and another to the dealer, and therefore provided incorrect information on the application and if that were the case, Miss P should have flagged that sooner.

SMFL also felt that I was accepting what Miss P had said, sometime after the loan was taken out, over documentary evidence and detail it had provided, while acknowledging it hadn't been able to provide all the relevant documents due to the passage of time.

Where evidence is missing or incomplete, I look at what I think is most likely to be the case.

As I set out in my provisional decision, it is unfortunate that the online application form isn't available. I don't think it unreasonable for SMFL to have been able to produce a copy of this given the timeframe between the application and when Miss P first raised her complaint.

As a result of the form not being available, I am unclear as to the depth of the initial online application, the questions involved or how they or the application itself was framed. For example, I don't know how the employment question was framed and whether there was even an option for Miss P to record that she was self-employed. And, by not being able to provide the application form, SMFL hasn't provided me with persuasive evidence as to how the question around income was framed, for example as an annual or monthly amount or as a net or gross figure.

I simply don't know how clear the questions were or what opportunity Miss P was given to expand on things. So, I don't think I can fairly draw a conclusion that Miss P was dishonest or provided incorrect information on the application form.

Moreover, and rather alarmingly in my view, SMFL has suggested that even if Miss P had declared an income of £1,300 on her application form, it still would have gone on to lend to her. So, it seems to me the extent to which the income declared by Miss P on the application form impacted on the decision to lend in this case was limited, if it impacted at all.

But even if there were inconsistencies or incorrect information on the application form, crucially here, and as I set out at length in my provisional decision, I think given the size and term of the loan, what SMFL knew of Miss P from its initial credit check and the inconsistency around time in employment meant SMFL could and should have delved deeper into Miss P's circumstances before agreeing to lend to her.

Those conversations and enquiries should have taken place at the dealership and before any decision to lend was made. Clearly, neither I nor SMFL were at the dealership to understand exactly how the sale unfolded and we struggled to get in touch with the dealership for an account from it. And as above, where evidence is missing or incomplete, I look at what I think is most likely to be the case.

Having spoken to Miss P, about her time at the dealership, although she doesn't recall exactly what was discussed, I found her to be credible and I think it likely that Miss P gave accurate information in her conversations there.

I think it likely further questions were asked about her financial circumstances as would be usual when an agreement of this size and term is brokered and I think this is evidenced by the fact information that Miss P had only been in her current role for about a month came to light.

I think that Miss P likely responded honestly to any questions she was asked, about time in and nature of her employment, and about her expected earnings, which should then have been made available to SMFL by the dealer/broker.

SMFL has said that the satisfied historic CCJ and the fact that her credit card was one month in arrears gave it no undue cause for concern. While I do not suggest that it means that SMFL is prohibited from lending in circumstances where such adverse credit information arises, I do think that in the circumstances of this case they act as indicators that Miss P might have been struggling with existing financial commitments.

While I acknowledge the CCJ was settled about 18 months before SMFL lent to Miss P, it still indicates that Miss P had been significantly struggling with a financial commitment in the 24 months before the loan. After all a CCJ is generally the last step taken by a lender in relation to a failing debt. And this, taken together with the fact that Miss P has missed a recent credit card payment, makes me think it wasn't reasonable or proportionate for SMFL to rely on statistical data to estimate Miss P's expenditure.

SMFL has said that it specialises in providing credit to customers who may struggle to get finance elsewhere. That may be so, but having regard to the regulatory obligations on it to carry out a borrow-focused check, I'd expect it to have taken additional steps where repayment difficulties are apparent as I think they were here, particularly when they sit alongside the other information that came to light as part of its checks about Miss P.

Overall I remain satisfied that, given the size and term of the loan, the cost of credit, what SMFL knew of Miss P from her credit report, and the apparent inconsistency about her time in employment, I think SMFL should have conducted further enquiries before it lent to Miss P to satisfy itself that Miss P could sustainably afford to maintain the loan. I also think SMFL could have made better use of the information that was available to it.

SMFL questioned whether Miss P's financial circumstances were such that in fact she had a disposable income to meet the loan repayments. It again highlighted the TAC check confirmed an income of £1,900. It also questioned whether Miss P had been in receipt of housing benefits or if she had a second bank account.

Miss P has confirmed she had only two bank accounts at the time and I have looked at Miss P's credit file which shows only two bank accounts in existence at the time of the

lending. I have reviewed the statements for both of these accounts. One account had a zero balance throughout the period in question. I have conducted a manual review of Miss P's main account and set out my findings in my provisional decision.

Having conducted a review of Miss P's financial circumstances, I'm satisfied that reasonable and proportionate checks and a reasonable assessment by SMFL, would more likely than not have shown that Miss P would not have been able to make the repayments to this loan without borrowing further and/or suffering undue difficulty and therefore sustainably maintain the loan.

For the sake of completeness, benefits were paid into Miss P's main account and I took those into account as income when I conducted my manual review. Miss P has said that she wasn't on housing benefit at the time, which is supported by her bank statements.

I acknowledge what SMFL has said about the TAC tool and it seems quite adamant that it verified an income of £1,900 net into Miss P's account. Clearly, my description of Miss P's finances as I have set out in my provisional decision does not marry up to an income into her bank account of £1,900 net income per month.

I can't explain this anomaly. It could be something as simple as the income figure or that fact that it was net as opposed to gross has been mis-typed or mis-recorded at some point. Although I do note in other correspondence SMFL told this service that its TAC check confirmed that *a minimum of the amount stated* was being received into Miss P's bank account, which indicates that it may operate to not confirm the full amount being received into an account. Moreover, I don't know that it actually confirms what of that account income was derived from employment or whether it also takes into account other income, such as for example, any benefits paid into the account.

Ultimately, it just isn't clear. But in the absence of anything further, I think the disparity between what SMFL says the TAC check showed and what Miss P's actual statements show helps to demonstrate the caution to be applied in relying too heavily on tools of this nature.

Equally, SMFL's suggestion that even if it verified Miss P's income at £1,300 it would have adjusted her expenditure based on her income to give a disposable income that met the cost of the loan causes me concern. I can't see how a lower income would automatically equate to a lower expenditure and it clearly wouldn't have in the case of Miss P. So again, I think this demonstrates the need for caution when relying on a standardised data source for assessing expenditure.

Standardised tools and data sources may well suffice or be a good starting point for lenders in assessing affordability in some cases, but that is subject, in my view, to proportionality and considerations such as, for example, the size and term of the loan and what a lender knows of the applicant.

I acknowledge what SMFL has said about the fact that Miss P's circumstances changed after she took out the agreement. And while that may be the case, it doesn't negate my findings above, that reasonable and proportionate checks and a reasonable assessment by SMFL, would more likely than not have shown that Miss P would not have been able to make the repayments to this loan without borrowing further and/or suffering undue difficulty and therefore sustainably maintain the loan.

And although I can see that SMFL showed some forbearance in its dealings with Miss P, as I set out in my provisional decision, I think it could have gone further to assist Miss P as a customer in ill health and in financial difficulties.

Finally, SMFL asked that I provide my comments on its submissions before issuing a final decision. I wrote to SMFL to ask it why that might be. I explained that having carefully considered all it had set out in its submissions, nothing it had said had caused me to depart from my provisional findings. I said that as it hadn't provided me with any new or material information, I thought I could fairly address its submissions in this final decision. However, I did agree to pause on issuing my decision to allow it to expand or comment further. SMFL did not respond within the time frame given. This complaint has gone on for some time. I think the matter now needs to be and can fairly be brought to a conclusion.

Having carefully considered everything that SMFL has said, nothing it has said has given me cause to depart from the findings in my provisional decision which I consider to be fair and reasonable in the circumstances of this complaint. As such, I intend to uphold this complaint.

My final decision

My final decision is that I uphold this complaint against Specialist Motor Finance Limited. To settle it, Specialist Motor Finance Limited should:

- limit Miss P's liability to £3,325;
- if Miss P hasn't met this liability SMFL should allow Miss P to continue to pay any arrears by way of a reasonable repayment plan;
- if Miss P has paid more than £3,325 – including the £200 part-exchange/deposit – SMFL should refund anything paid over £3,325 along with 8% simple interest per year from the date of payment to the date of settlement;
- remove any adverse information about the agreement from Miss P's credit file;
- pay Miss P £200 in compensation.

If SMFL does not pay this £200 compensation for inconvenience and distress within 28 days of the date on which we tell it Miss P accepts my final decision then it must also pay 8% simple yearly interest on this from the date of my final decision to the date of payment.

If SMFL considers that it's required by HM Revenue & Customs to withhold income tax from the interest part of my award, it should tell Miss P how much it's taken off. It should also give Miss P a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss P to accept or reject my decision before 28 June 2021.

Siobhan Kelly
ombudsman

Copy of provisional decision

Complaint

Miss P complains that Specialist Motor Finance Limited (SMFL) provided her with a hire purchase agreement in March 2017 that was unaffordable to her.

Background

In early March 2017, Miss P took out a hire purchase agreement for a used car. She said she saw the car advertised online and following an online query, she was initially accepted for finance, but said that it was only available for a 24-hour period. Miss P travelled to the dealership (some distance from her home). She said she traded in her old car as part of the deal. She signed the agreement, but said she later realised she couldn't reasonably afford the monthly repayments.

She said she felt pressured by the salesperson into taking out the agreement but believed that if her circumstances changed and she found payments difficult she at least had the opportunity to pull out of the agreement and return the car with no penalty.

At the time she said she had only been in self-employed work for two weeks. Since then she suffered periods of ill health and hospitalisation. She said she only managed to pay about 13 payments in the 20 months or so that she had the car.

Miss P complained to SMFL. It issued its final response letter in October 2018. In respect of the lending checks conducted, SMFL said Miss P's application for finance was submitted through a broker and based on information in that application and relevant credit checks it had completed to assess her creditworthiness, Miss P fitted with its affordability model and so was subsequently approved for the finance. It invited Miss P to contact it to discuss her current financial circumstances.

Unhappy with SMFL's response, Miss P asked this service to look at her complaint. At around the same time, she agreed to the voluntary surrender of the car, which left her with an amount to pay of about £9,875. She entered into discussion with SMFL about a suitable repayment plan.

Our investigator didn't uphold Miss P's complaint and Miss P asked for an ombudsman to review her complaint.

Having reviewed the complaint, I've reached a different conclusion to that of our investigator and I am minded to uphold this complaint for the reasons I'll set out in detail below.

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.

SMFL lent to Miss P while it was authorised and regulated by the Financial Conduct Authority. The Financial Conduct Authority's Principles for Business set out the overarching requirements which all authorised firms are required to comply with.

The principles themselves are set out in PRIN 2.1.1R. The most relevant principles here are PRIN 2.1.1R(6) which says: *A firm must pay due regard to the interests of its customers and treat them fairly;* and PRIN 2.1.1R(7) which says: *A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.*

The Consumer Credit Sourcebook (CONC) sets out the rules and guidance which apply to providers of consumer credit like SMFL. SMFL will be familiar with those rules and variations in those rules over time. In this decision, I have referred to the rules and guidance as they were at the time of SMFL's decision to lend to Miss P.

Taking into account the relevant rules, guidance, good industry practice and law, I think there are two overarching questions I need to consider in order to decide what's fair and reasonable in the circumstances of this complaint. These questions are:

- Did SMFL complete reasonable and proportionate checks to satisfy itself that Miss P would be able to repay her loan in a sustainable way?
 - o If so, did it make a fair lending decision?
 - o If not, would those checks have shown that Miss P would've been able to do so?
- Did SMFL act unfairly or unreasonably in some other way?

If I determine that SMFL didn't act fairly and reasonably in its dealings with Miss P and that she has lost out as a result, I will go on to consider what is a fair way to put things right.

Did SMFL complete reasonable and proportionate checks to satisfy itself that Miss P would be able to repay her loan in a sustainable way?

The regulatory framework in place at the time Miss P's finance was provided requires SMFL to have carried out a proportionate and reasonable assessment, based on sufficient information, of whether Miss P could afford to repay her loan with it in a sustainable manner.

This affordability assessment had to be borrower focused. This means that it wasn't enough for SMFL's checks to consider only whether it would get the amounts due under the agreement. Rather than focusing on the credit risk for SMFL, the assessment needed to have sufficient checks to satisfy SMFL that Miss P would be able to repay her loan sustainably and without the repayments having a significant adverse impact on Miss P's financial situation.

The extent and scope of an assessment will depend on an number of factors, proportionate to the individual circumstances, such as the amount of credit, the duration of the loan, the cost of credit, the monthly repayments, the financial position of the customer at the time of seeking the credit, the customer's credit history including any indications that the customer is experiencing or has experienced financial difficulties, and the vulnerability of the customer.

In terms of the lending checks conducted, SMFL, in its final response letter to Miss P, said that her application for finance was submitted through a broker on 4 March 2017. It said she was asked '*for personal details and credit information*' to be passed to a panel of lenders. Relevant credit checks were completed to assess her creditworthiness and based on the information and documentation provided, Miss P fitted with its affordability model and so was subsequently approved for the finance.

SMFL provided further detail to this service on the level of checks it conducted and what those checks revealed.

It said Miss P's application was manually underwritten and was subsequently approved on 7 March 2017. It wasn't able to provide a copy of her online application stating this was due to the passage of time. But it said Miss P had confirmed she was single, living in rented accommodation and employed as a sales manager. In earlier correspondence it provided the name of the employer as shown on Miss P's bank statement. In later correspondence, it referred to a different employer.

It said Miss P declared a net monthly income of £1,900 and her annual salary was confirmed as £22,800. It said it completed a TAC income check. It explained that this was a tool provided by one of the credit reference agencies (CRA's) to verify income information provided by a consumer. It said this was achieved by comparing data held by the CRA in its 'over-indebtedness initiative' which all major banks contribute to and used current account turnover data and recent application data shared by its members in order to provide a view of income and confidence stability.

As the TAC check confirmed the details Miss P provided, no further proof of income was required. In other correspondence, it said the TAC check verified Miss P's net monthly income of £1,900 and that

is was not overstated. Based on the information provided, Miss P passed its TAC check which it said confirmed that a minimum of the amount stated was being received into Miss P's bank account.

SMFL said based on Miss P's occupation status, region and income band it assumed 73% of the Miss P's income as total non-discretionary expenditure (£1,387). It was also aware of an additional £37.25 credit commitment. Once this was deducted from Miss P's income, it left a disposable income of £475.75. However, SMFL said it had a cap in place which meant that no customer could borrow more than 25% of their net income – so the amount it was prepared to lend to Miss P was therefore capped at £475 per month, with Miss P's actual monthly payment being £266.67.

SMFL further explained that when the application went through its underwriting process Miss P's CAIS (credit file) data was considered. It said that Miss P's credit file showed historic satisfied defaults from 5 years ago. There was one credit card that was '1 down' but this had a small balance and was 'under an arrangement'. It provided a screen shot of the information it had retrieved from the CRA.

SMFL maintains therefore that appropriate checks were completed in order to establish Miss P's creditworthiness and the affordability of the agreement at the outset.

Our investigator also contacted the credit intermediary who brokered the agreement to see if she could get more information about the application itself, but its systems didn't allow it to access data from the time of Miss P's application. It said she was auto-accepted by SMFL after a soft search on her credit file. It didn't have any record of the part-exchange of Miss P's old car and suggested our investigator contact the dealership about this, commenting that it no longer conducted business with this dealership. Our investigator tried to contact the dealership to no avail.

I am grateful for the detail SMFL has provided in setting out how it assessed the affordability of the agreement for Miss P, which it provided over different pieces of correspondence, which was confusing to unpick and at times appeared to provide contradictory information. There were also some delays between when I asked it for the information and when it provided it and sometimes it didn't address all that I had asked. This made getting to grips with exactly what SMFL had done here challenging. It wasn't easy to get a clear understanding of exactly how SMFL had carried out its creditworthiness assessment and the way in which it weighed up and considered the information it had.

However, having read carefully what SMFL said about the checks it did before lending to Miss P, I think they can be summarised as that it received its information about Miss P through an online application and information compiled by the car dealership and credit intermediary. It then manually assessed Miss P's application. It relied on Miss P's self-declared income, which it cross-referenced by using a CRA tool that looked at her current account turnover. It also seems that SMFL used some sample data available to it from another company in its group to assume a likely non-discretionary expenditure figure for Miss P. In addition, it weighed up the adverse information on Miss P's credit file and it capped the amount it was willing to lend Miss P at 25% of her monthly net income.

I acknowledge that SMFL has relied on what appears to be standard industry tools or collated data in undertaking its creditworthiness assessment here. Those tools and data sources may well suffice or be a good starting point for lenders in assessing affordability in some cases. But that is subject, in my view, to proportionality and considerations such as, for example, the size and term of the loan and what a lender knows of the applicant.

Moreover, credit checks or other information gathered might reveal something that requires or should prompt further investigation, beyond standardised tools or sample data, so that a lender can be satisfied that the lending is sustainable and won't have an adverse impact on the consumer or place them into financial difficulties.

Lenders should be mindful of the fact that standardised checks are, by their nature, not customer specific. So, they should be particularly keen to scrutinise discrepancies when they appear, particularly where the creditworthiness assessment has highlighted any other risk factors.

Having carefully thought about the extent of the checks carried out by SMFL, I don't think they were proportionate in these particular circumstances. I'll explain why I've arrived at that provisional position.

The cash price of the car here was £7,216. The APR was 37.9% and the total amount payable was £13,245, with the total charge for credit being £6,029.16 including fees. The loan was scheduled over 49 months with one payment of £250, then 47 payments of £266.67 and a final payment of £461.67. There is no deposit/advance payment showing on any of the paperwork. It seems that although Miss P said she traded in a previous car that she said she was told she'd get £200 for – that didn't generate any deposit/advance payment on any of the paperwork for this agreement.

In thinking about what proportionate checks might reasonably look like here, I keep in mind that the loan was for 4 years, the amount of credit was over £7,000 and the cost of the credit was around £6,000. In addition, as a proportion of Miss P's income, the monthly repayments were not an insignificant monthly commitment at £266 each month. I've also taken into consideration what SMFL knew about Miss P through the credit search and other checks that it conducted.

Significantly in this case, the credit search SMFL conducted revealed that Miss P was already in arrangement to pay with another lender. An arrangement to pay, I think, is an indicator that Miss P may have been struggling to meet existing financial commitments and that should have given rise to further enquiry.

SMFL also highlighted that Miss P had some historic satisfied defaults from five years ago and that during the application process Miss P's CAIS (credit file data) and any county court judgements 'were underwritten'. Although the defaults were historic, they are still relevant information. I can see from the information provided by SMFL that one communications account defaulted in 2011 for £152 and had been partially satisfied and another for £836 in 2012, but I couldn't see anything to show that the account had been satisfied.

Although SMFL said it considered any county court judgements, it didn't mention whether there had actually been any. Miss P's own credit file shows that Miss P had a county court judgement obtained against her around 20 months before SMFL lent to her (and satisfied about 18 months before the lending) and I think a reasonable credit reach would or should have revealed that.

This taken together with the fact that it seems Miss P's defaults – albeit historic - weren't fully satisfied, is again in my view evidence to indicate that Miss P may have been struggling to manage her finances.

In light of what Miss P's credit file revealed, I don't think it was reasonable for SMFL to rely on standardised tools to assess income or statistical data to estimate Miss P's expenditure. I think the credit search results should have prompted SMFL to find out more about Miss P's financial circumstances to be sure that she could sustainably afford to repay the agreement.

In addition to this, I can see from SMFL's system notes that '*time in employment is actually 1 mth not 3 years.*' I take this to mean that her time in employment was in fact one month and not three years, as suggested by the initial information it had. This was an important piece of apparently contradictory information and gave rise to questions over Miss P's time in employment.

CONC has rules and guidance about this type of scenario. It sets out that a firm must not accept a credit agreement where it suspects the customer has not been truthful in completing the application. It gives an example of where the customer has provided inconsistent information about their employment status.

SMFL could have gone on to decline Miss P's application when this erroneous information regarding her time in employment came to light. But despite those inconsistencies, it seems SMFL decided to proceed with Miss P's application – and having decided to do that, I think it was under a heightened obligation to ensure that everything was as it should be.

In response to my questions to SMFL, asked whether Miss P had potentially provided falsified information as part of the application process, highlighting that Miss P told this service that she had been self-employed for two weeks, and it would not have approved an application for someone in this position.

I can see how a shift from being employed to self-employed might matter to a lender and why it might have declined to lend had it known this. And I think it is clear that borrowers should be honest when they apply for credit and lenders are entitled to expect that honesty.

It is unfortunate that the online application form isn't available. I'm unclear as to the depth of the initial online application, the questions involved or how they or the application itself was framed. It made getting to grips with what was disclosed and in what context difficult. For example, I don't know how the employment question was framed and whether there was even an option for Miss P to record that she was self-employed.

Without SMFL being able to provide the form itself, I am unable to assess the extent and impact of this more fully. So, I don't think SMFL has provided persuasive evidence of exactly what Miss P was asked at the application stage.

Moreover, and significantly, having spoken to Miss P about her time at the dealership, although she doesn't recall exactly what was discussed, I think it likely that Miss P gave accurate information in her conversations at the dealership, responding honestly to any questions she was asked, about time in and nature of her employment, and about her expected earnings, which should then have been made available to SMFL by the dealer/broker.

Miss P also seemed adamant that the income figure that SMFL had for her is higher than anything she would have given. Again, I don't have the application form available to explore more fully what Miss P was asked about her income at the application stage, so as above SMFL hasn't provided persuasive evidence of exactly what Miss P was asked. And as above, I think Miss P likely gave accurate information about her expected earnings in her discussions at the dealership and before the lending decision was made.

But in any event, given the size and term of the loan, the cost of credit, what SMFL knew of Miss P from her credit report, and the apparent inconsistency about her time in employment, I think SMFL should have conducted further enquires before it lent to Miss P to satisfy itself that Miss P could sustainably afford to maintain the loan. I also think SMFL could have made better use of the information that was available to it.

Overall, I am not satisfied that the checks SMFL undertook were proportionate in the circumstances or that it undertook a reasonable assessment of what it did know about Miss P before taking the decision to lend.

Would reasonable and proportionate checks have shown that Miss P would be able to repay the loan in a sustainable way?

As reasonable and proportionate checks weren't carried out for this agreement, I need to decide whether it is more likely than not that a reasonable and proportionate check would have told SMFL that the agreement would be affordable and sustainable for Miss P given Miss P's financial circumstances at the time.

I think at the very least SMFL could reasonably have asked Miss P more about her income, employment status and her actual expenditure, which may have in turn have led it to further questions and investigation. As I set out above, there were some, in my view, obvious questions to have been asked and checks undertaken.

Miss P has provided us with evidence of her financial circumstances at the time she applied for the agreement in the form of her bank statements, which provide some more detail about her income and

expenditure. I appreciate different checks might show different things and just because something shows up in the information Miss P has provided, it doesn't mean it would've shown up in any checks SMFL might have carried out.

But in the absence of anything else from SMFL showing what steps it took to confirm affordability, I think it's fair and reasonable to place considerable weight on the information provided by Miss P as an indication of what Miss P's financial circumstances were likely to have been at the time.

Miss P told this service that she is and was at the time a single mother of two primary school children. Miss P's bank statements show that she was in receipt of working tax credit and child benefits, but also that she had salaries coming in from different sources in the months leading up to the lending. It looks like her employer changed on three occasions between November 2016 and March 2017, so her monthly income fluctuates.

Miss P's bank statement show an average monthly income (including benefits payments) in the three months leading up to the loan (December to February) of around £1,300 and this figure broadly reflects her overall income for February 2017, the month before the agreement was taken out.

Although Miss P's rent and council tax didn't appear on her statements, our investigator asked Miss P more about these outgoings. In relation to her council tax, she provided her council tax bill and said that she was in a significant amount of debt with her council tax as she couldn't afford to pay it at that time.

Miss P also provided her rent agreement and explained that she paid this in cash, with her step-father and mother it seems from the paperwork being the landlords for her flat. There are some cash withdrawals on the account and some transfers to her mother and step-father and I've no reason to doubt what Miss P has said here.

In any event, even if there was a degree of informality about how and when payments were made (I can see Miss P told SMFL in August 2018 that she was in arrears with her rent) – Miss P has provided information to show that these payments were contractually due, so I think they can fairly be taken into account in assessing her expenditure.

Miss P's bank statements show that she was in and out of her overdraft in the months leading up to the loan, incurring interest and charges. In the month before the loan was taken out, she paid £80 in bank account fees. The account was overdrawn both at the beginning and middle of that month and at the time she took the agreement out.

Looking at Miss P's bank statements and what she has told us about her rent and council tax in February 2017, Miss P's financial situation was such that her disposable income after only deducting her fixed/committed monthly expenditure was about £300. This didn't meet the monthly repayment under the agreement, let alone cover the cost of petrol, food, childcare and clothing - as well as everyday living expenses.

And of course, whether Miss P could afford to repay the loans is more than just a strict pounds and pence calculation. It is whether she could repay the loan in a sustainable manner. Miss P had accrued arrears elsewhere, including on a credit card bill and her council tax and she told us that she had incurred overpayments on her benefits around this time which she needed to repay. Indeed, her bank statements show that in February 2017, her energy, water and insurance direct debits were returned unpaid. In addition, Miss P's expected monthly income wasn't guaranteed.

I can see that Miss P struggled almost immediately with the payments, missing the first one - it being returned unpaid in April 2017. What's more, it seems from SMFL's system notes, that Miss P struggled to meet the required payment under the agreement when unexpected (but common) expenses, such as a car repair and a boiler problem, arose.

Taking all of this into account and looking at the overall picture, I'm satisfied that reasonable and proportionate checks and a reasonable assessment by SMFL, would more likely than not have shown that Miss P would not have been able to make the repayments to this loan without borrowing further and/or suffering undue difficulty and therefore sustainably maintain the loan. As such, I don't think SMFL acted fairly or reasonable when it decided to lend to Miss P in March 2017.

Did SMFL act unfairly or unreasonably in some other way?

As mentioned above, it is clear from looking at the statement of account that Miss P struggled to maintain the account from the outset with the initial payment made by Miss P on 3 April 2017 returned unpaid. The statement of account showed that Miss P missed a good number of the monthly payments in the time she had the car. So, I've looked at how SMFL treated Miss P as a customer in arrears.

I can see from the system notes that Miss P kept in touch with SMFL letting it know when she struggled to make payment and when she would bring the account back up to date. She also told it that she had both employment and health issues.

I can see that SMFL showed some forbearance in that it allowed Miss P time to bring the account up to date when it fell into arrears and Miss P usually brought the account back up to date later that month or the following month.

But really this manner of account management wasn't tenable or sustainable for Miss P given her circumstances and especially given as I have found above, the agreement was likely unaffordable to Miss P in the first instance. By January 2018, she was no longer working and it seems had been frequently unwell, on occasion requiring hospitalisation, which Miss P let SMFL know about.

Looking at the system notes and how SMFL monitored Miss P's account, I am not sure that I can see evidence of SMFL properly monitoring Miss P's payment record, in line with its obligations as set out in CONC. There were, for example, opportunities for SMFL to delve further into Miss P's financial situation, such as perhaps by conducting a full income and expenditure review when she repeatedly failed to meet the payment on the account. This would have in turn allowed SMFL to consider how it could fairly assist Miss P when she fell into arrears.

There were additional forbearance options that SMFL might have been able to offer Miss P after a more thorough review of her circumstances – such as, for example, rescheduling some of the arrears, allowing a payment holiday or an installment plan, waiving some fees, interest or charges or even reducing or waiving some of the debt if on assessment that appeared to be appropriate. So, I'm not satisfied that SMFL acted in Miss P's best interests in the forbearance measures it considered in respect of her or that it treated her fairly and with due consideration as a consumer who was regularly in arrears.

I also have some concerns about the fact that Miss P elected to voluntarily surrender the car as opposed to voluntarily terminate the agreement, which would have been around £2,000 cheaper for Miss P. However, given my findings on affordability I don't propose to explore that further at this stage. But I would remind SMFL of the need to be able to provide consumers such as Miss P with sufficient information – in a clear and unambiguous manner - so as to allow a fully informed choice about exit options available and what they would likely cost a consumer. This is in line with Financial Conduct Authority's Principles for Business as set out above.

Finally, I note Miss P says that she was led to believe by the credit broker that she could exit the agreement at any point without penalty. But given my finding on affordability and the redress I propose, I don't think I need to consider this complaint point further.

Putting things right

Ideally, where an agreement is unaffordable we'd look to put the person in the position as if they hadn't entered into the agreement – so unwind the agreement and take the car back – refunding any payments made by the consumer and making a deduction for usage. But this isn't always possible.

Here, SMFL has already taken back the car from Miss P and brought the agreement to an end.

In thinking about how to put things right, I've thought about what Miss P has already paid towards the agreement. As set out above, Miss P handed in her old car and said she was told she'd get £200 which would somehow be offset towards the new agreement. We tried to contact the dealership to ask it more about this, but it didn't reply. I have no reason to doubt Miss P here, particularly given the value she attached to her old car was so low.

Miss P also appears to have paid about 14 payments under the agreement and post-termination she has been paying in monthly amounts to reduce the arrears. I also need to take account of the fact that Miss P had fair use of the car for about 19 months.

Taking everything in the round, I think the simplest way to put things right here is to ask SMFL to refund everything that Miss P has paid towards the agreement (including what she has paid post termination of the agreement), less a deduction for usage which I think can be fairly set here at £175 per month. In setting what I think is a fair amount for usage, I've taken into account the general cost of keeping mobile in a car, the cash price of the car, the monthly amount Miss P paid and the likely element of this that reflected the interest attached to this loan.

If this results in a refund to Miss P, I also think that SMFL should pay 8% interest on any refunded amount. It should also remove any adverse information from Miss P's credit file.

In addition to this, and as I have set out above, I think Miss P really struggled to maintain the payments under the loan – dealing as she was with poor health and a period of unemployment. I think SMFL could have done more to alleviate the stress of that by showing greater forbearance. Instead, it exacerbated matters by adding charges to the monthly amount Miss P was already struggling to meet. In addition, having ended the agreement I think Miss P has suffered the stress of having to maintain a significant debt while financially vulnerable and in ill-health, which she wouldn't have had to manage had it not been for SMFL's mistakes. So, I think SMFL should pay Miss P £200 to compensate for all of this.

My provisional decision

I am currently minded to uphold this complaint against Specialist Motor Finance Limited and tell it to:

- limit Miss P's liability to £3,325;
- if Miss P hasn't met this liability SMFL should allow Miss P to continue to pay any arrears by way of a reasonable repayment plan;
- if Miss P has paid more than £3,325 – including the £200 part-exchange/deposit – SMFL should refund anything paid over £3,325 along with 8% simple interest per year from the date of payment to the date of settlement;
- remove any adverse information about the agreement from Miss P's credit file;
- pay Miss P £200 in compensation.

If SMFL does not pay this £200 compensation for inconvenience and distress within 28 days of the date on which we tell it Miss P accepts my final decision then it must also pay 8% simple yearly interest on this from the date of my final decision to the date of payment.

If SMFL considers that it's required by HM Revenue & Customs to withhold income tax from the interest part of my award, it should tell Miss P how much it's taken off. It should also give

Miss P a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

I now invite both parties to provide me with any further comments that they wish me to consider by 11 March 2021.

Siobhan Kelly
ombudsman