DRN-4671855

The complaint

Miss C, who is represented by a third party, complains that Specialist Motor Finance Limited ("SMFL") irresponsibly granted her a hire purchase agreement she couldn't afford to repay.

What happened

In November 2018, Miss C acquired a used car financed by a hire purchase agreement from SMFL. She was borrowing £13,299. Miss C was required to make 59 monthly repayments of £358.19, with a final payment of £368.19. The total repayable under the agreement was £25,501.40.

Miss C says that SMFL didn't complete adequate affordability checks. She says if it had, it would have seen the agreement wasn't affordable. SMFL didn't agree. It said that it carried out a thorough assessment which included asking Miss C about her income, checking her expenditure using an external database and carrying out a credit check.

Our investigator recommended the complaint be upheld. He thought SMFL ought to have realised the agreement wasn't affordable to Miss C.

SMFL disagrees, saying that its checks were enough to demonstrate that it was likely Miss C had enough disposable income to be able to afford to repay the agreement.

The complaint has therefore been passed to me for a final decision.

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.

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

SMFL will be familiar with all the rules, regulations and good industry practice we consider when looking at a complaint concerning unaffordable and irresponsible lending. So, I don't consider it necessary to set all of this out in this decision. Information about our approach to these complaints is set out on our website.

SMFL caried out a credit check to establish what credit commitments Miss C already had. SMFL has said it lends to customers who might have fewer lending options available to them and who might be regarded by other lenders as a higher lending risk. So it says it uses its checks with these issues in mind. That said, SMFL needed to carry out checks that went far enough to establish that the borrowing was likely to be affordable as well as being something that could be repaid sustainably. This was a five year agreement that represented a significant financial commitment for Miss C.

SMFL's check showed four defaulted credit accounts in the previous five years. The most recent of these was in October 2017 and it looks to have been for a telecoms account so was for a relatively low sum. Miss C was also paying a mortgage – something which wasn't made clear on her application for the finance. SMFL allowed for Miss C paying only 50% of the mortgage cost. Whilst it's fair to say that Miss D appeared to have been managing the 9 credit accounts she already had reasonably well, I've seen that her bank account showed a debt of £6,300. That suggests she was making heavy use of her overdraft.

SMFL has explained that it verified Miss C's income by using an external data source to assess whether it had been overstated. I can understand that this would have provided a measure of reassurance to SMFL. But taking into consideration the size of the borrowing and term of the agreement together with potential issues shown by the several defaults in her credit history, as well as her current account debt, I think there was enough to suggest that Miss C might have been experiencing financial difficulties. So I agree that it would have been proportionate for SMFL to have got a more thorough understanding of Miss C's overall income, as well as her financial circumstances, before lending.

I have also seen that SMFL calculated Miss C's expenditure using statistical data in order to give typical spending figures based on her age and where she lived. The regulator allows firms like SMFL to use such data unless something shows or suggests that the estimated figures might be inaccurate. I think there was enough to show that Miss D may well have been struggling with her finances, or at the very least at risk of her financial position deteriorating. So again, I think it would have been reasonable and proportionate for SMFL to have taken steps to better understand Miss C's specific financial circumstances, rather than relying on an estimate.

It follows that I think it would have been proportionate for SMFL to carry out further verification as to Miss C's financial situation, looking at her income and her regular expenditure. That doesn't necessarily means that SMFL had to ask Miss C to provide them with bank statements, but in the absence of anything else I think it reasonable to place significant weight on the bank statements Miss C sent our investigator – and which have been passed to SMFL. I've focused in particular on the statements covering the three months leading up to the agreement as I think these provide a fair indication of what would most likely have been disclosed to SMFL at the time.

The statements show that Miss C was receiving an average net monthly employment income of around £1,900. But she was also receiving around £1,600 extra each month in cash payments, primarily from two individuals. Additionally I can see money coming in from at least two payday loan companies. Miss C's housing and mortgage costs, including utilities, insurance and car costs, was around £1,400 each month. Her various credit commitments came to around £1,600. This included what appears to be a previous car finance agreement she was still paying off. And this is without allowing for food costs. A key issue of concern is that Miss C was using her £6,000 overdraft consistently throughout this period, and incurring daily charges as a result. Overdraft usage of any kind is always a potential issue of concern. Here the situation appears to be that, even with money being given to her each month in addition to her earned income, Miss C wasn't able to make any significant inroads with reducing her overdraft. As pointed out by our investigator, Miss C was having returned direct debits throughout this time – one of which was her monthly mortgage payment. So she was heavily overindebted and would likely remain so even if one of her existing loans was due to finish soon after taking out the agreement.

To summarise, the statements show that Miss C wasn't able to meet her daily financial commitments from her employment income – and even with outside funds being given to her regularly and taking out short-term loans, Miss C appears to have overextended herself. I recognise that on the face of it, Miss C's credit situation may have seemed relatively well-managed. I think that's at least in part reflective of her wish not to be seen to be over-reliant on credit or incur any further adverse markings on her credit file. At the same time, her consistent reliance on her bank overdraft strongly suggests that she was in a position where her earned income wasn't enough to fund her essential living costs and day-to-day financial commitments. Were it not for the additional funds being given to her plus the borrowing she was using, the position would very likely be substantially worse .

I am therefore satisfied that the statements show that Miss C was struggling financially. I don't consider she was in a position to afford the repayments towards the new agreement without getting into even further financial difficulty by having to borrow more. Had SMFL completed proportionate checks, I think it's likely it would have discovered this too. It therefore didn't act fairly by approving the finance.

Putting things right – what SMFL needs to do

As I don't think SMFL ought to have approved the lending, I don't think it's fair for it to be able to charge any interest or charges under the agreement. Miss C should therefore only have to pay the original cash price of the car, being £13,299. Anything Miss C has paid in excess of that amount should be refunded as an overpayment.

To settle Miss C's complaint SMFL should do the following:

- Refund any payments Miss C has made in excess of £13,299, representing the original cash price of the car. It should add 8% simple interest per year* from the date of each overpayment to the date of settlement.

- Remove any adverse information recorded on Miss C's credit file regarding the agreement.

*HM Revenue & Customs requires SMFL to take off tax from this interest. SMFL must give Miss C a certificate showing how much tax it's taken off if she asks for one.

My final decision

I uphold this complaint and direct Specialist Motor Finance Limited to put things right in the manner set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss C to accept or reject my decision before 18 June 2024.
Michael Goldberg
Ombudsman