

The complaint

Mr H complains that Specialist Motor Finance Limited trading as Specialist Motor Finance (Specialist Motor Finance) irresponsibly granted him a hire purchase agreement that he couldn't afford to repay

What happened

In March 2018 Mr H acquired a vehicle financed by a hire purchase agreement from Specialist Motor Finance. Mr H was required to make 59 monthly repayments of £271.79 followed by a final payment of £281.79. The total amount repayable under the agreement was £16,317.40. Mr H believes Specialist Motor Finance failed to complete adequate affordability checks. Mr H says that if it had it would've been clear the agreement wasn't affordable at the time.

Specialist Motor Finance disagreed. It said it carried out an adequate assessment which included statistical estimation of his non-discretionary expenditure as well as a credit check. It said these searches showed Mr H had accounts which had missed payments in the run up to the lending decision, and two accounts which had exceeded their credit limits.

Our Investigator recommended that the complaint should be upheld. They thought Specialist Motor Finance's checks weren't proportionate in the circumstances given the adverse data recorded close to the date of the lending decision. After performing further checks our Investigator felt that the decision to agree to lend was unreasonable as the agreement did not appear to be affordable for Mr H in the circumstances. Our Investigator recommended that Specialist Motor Finance do more to put things right.

Mr H agreed. However, Specialist Motor Finance did not confirm acceptance or rejection by the given deadline and so the case was passed for an Ombudsman to issue a final decision on the matter.

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.

Where evidence is incomplete, inconsistent, or contradictory, I reach my decision on the balance of probabilities – in other words, what I consider most likely to have happened in light of the available evidence and wider circumstances.

We explain how we handle complaints about irresponsible and unaffordable lending on our website. I've used this approach to help me decide Mr H's complaint. Specialist Motor Finance needed to ensure that it didn't lend irresponsibly as per the rules set out in the FCA's Consumer Credit Sourcebook (CONC). In practice, what this means is that Specialist Motor Finance needed to carry out proportionate checks to be able to understand whether any lending was affordable for Mr H before providing it.

In this case, there are two overarching questions that I need to answer to fairly and reasonably decide Mr H's complaint. These two questions are:

1. Did Specialist Motor Finance complete reasonable and proportionate checks to satisfy itself that Mr H would be able to repay his loan without experiencing significant adverse consequences?
 - If so, did it make a fair lending decision?
 - If not, would those checks have shown that Mr H would've been able to do so?
2. Did Specialist Motor Finance act unfairly or unreasonably in some other way?

Did Specialist Motor Finance complete a reasonable and proportionate affordability check?

Specialist Motor Finance needed to take reasonable and proportionate steps to assess whether a borrower could afford to meet its repayments in a sustainable manner over the lifetime of the agreement. This was set out in its Consumer Credit Sourcebook (CONC).

CONC 5.3.1(G) stated that:

1. *In making the creditworthiness assessment or the assessment required by CONC 5.2.2R (1), a firm should take into account more than assessing the customer's ability to repay the credit.*
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.*

Repaying debt in a sustainable manner meant being able to meet repayments without undue difficulty - using regular income, avoiding further borrowing to meet payments and making timely repayments over the life of the agreement without having to realise security or assets (CONC 5.3.1G (6)).

The FCA didn't specify what exact level of detail was needed to carry out an appropriate assessment. But it did say that the level of detail depended on the type of credit, the amount of credit being granted and the associated risk to the borrower relative to the borrower's financial situation (CONC 5.2.4G (2)).

So, I'd expect Specialist Motor Finance to require more assurance the greater the potential risk to Mr H of not being able to repay the credit in a sustainable way. It is from this standpoint and criteria that I've approached my decision.

Specialist Motor Finance says that its checks didn't raise any concerns about the affordability of the agreement for Mr H. I understand Specialist Motor Finance made the decision to lend on the basis that it felt his accounts were being managed well enough and found the risk this posed to itself as acceptable. But I'm not satisfied enough consideration was given to the personal risk posed to Mr H.

I say this because the missed payments and exceeded limits Specialist Motor Finance found in its own checks all ought to have indicated Mr H may have been struggling financially. So, I would've expected it to take further consideration of Mr H's specific financial situation before approving any lending. But the checks completed at the time do not seem to have sought an understanding of Mr H's specific expenditure compared to his income.

I want to be clear that I've considered Specialist Motor Finance's position about the checks that it did complete. And I understand that its searches attempted to approximate what Mr H's expenditure would be. However, considering the possibility of financial difficulties in his specific circumstance I'm not satisfied that these checks adequately gathered a proportionate amount of information as they failed to answer how much he actually had left to spend after his existing commitments.

Given the size of the lending, the monthly repayments, the length of agreement, and the information in Mr H's credit file, I think it would have been proportionate for Specialist Motor Finance to have verified Mr H's specific expenditure. This includes costs such as food, petrol and housing. Without knowing what his regular committed expenditure was Specialist Motor Finance couldn't have got a reasonable understanding of whether the agreement was affordable for his circumstances.

I'm satisfied Specialist Motor Finance didn't complete proportionate affordability checks, but this doesn't automatically mean it failed to make a fair a lending decision.

Would reasonable and proportionate checks have shown that Mr H would be able to repay the agreement in a sustainable way?

I've considered what Specialist Motor Finance would likely have found out if it had completed reasonable and proportionate affordability checks. I can't be certain what Mr H would have told Specialist Motor Finance had it asked about his regular expenditure. I don't think Specialist Motor Finance necessarily needed to request bank statements, but in the absence of anything else, I've placed significant weight on the information contained in Mr H's statements two months prior to the finance being approved as an indication of what would most likely have been disclosed.

These statements show that Mr H's monthly income averaged at around £2,675, which is in line with what Specialist Motor Finance confirmed in its own checks. His average monthly expenditure was around £2,390. This includes credit commitments, housing, insurances, food, and petrol. It meant Mr H was left with around £285 in disposable income before paying towards the agreement. The amount of disposable income after factoring in the finance, around £67, did not allow enough for emergency or unexpected costs.

Taking these figures into account, it appears to show the agreement wasn't affordable for Mr H. For this reason, I'm not persuaded that Specialist Motor Finance acted fairly when approving the finance. I'm satisfied that if Specialist Motor Finance had completed proportionate checks it would have likely revealed Mr H was unable to sustainably afford the repayments owed under the agreement. So, I'm satisfied that it now needs to put things right.

Did Specialist Motor Finance act unfairly or unreasonably in some other way?

I'm not persuaded from the submissions made to date that Specialist Motor Finance acted unfairly or unreasonably in some other way.

Putting things right

As I don't think Specialist Motor Finance 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. The agreement has ended and Mr H has already paid above the original cash price of the vehicle. So, I'm satisfied that any amount in excess of the vehicle price should be refunded.

To settle Mr H's complaint Specialist Motor Finance should do the following:

- Refund any payments Mr H has made in excess of £10,641 representing the original cash price of the vehicle. 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 Mr H's credit file regarding the agreement.

*HM Revenue and Customs requires Specialist Motor Finance to deduct tax from the interest payment referred to above. Specialist Motor Finance must give Mr H a certificate showing how much tax it's deducted if he asks for one.

My final decision

My decision is that I uphold this complaint and direct Specialist Motor Finance Limited trading as Specialist Motor Finance to put things right in the manner set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 20 June 2024.

Paul Clarke
Ombudsman