DRN-4787888

The complaint

Miss B is complaining that Specialist Motor Finance Limited (SMF) shouldn't have lent to her – she says they were irresponsible in doing so.

What happened

In June 2020, Miss B took out a hire purchase agreement with SMF to finance the purchase of a vehicle. She paid a deposit of £3,190.62 (including a part-exchange allowance) and borrowed £16,208.38 – the cash price of the car was £19,399. The agreement required Miss B to make 59 monthly repayments of £451.64, and a final instalment of £461.64.

In August 2023, Miss B complained to SMF, saying that she thought SMF had failed to conduct appropriate checks before lending to her.

In response SMF said when she'd applied, Miss B told them she earned £2,700 net monthly income, was single, and lived in rented accommodation. They said they'd been unable to verify her income automatically as they usually would, so asked her for payslips which confirmed her income. They added that they used statistical data to estimate her non-discretionary expenditure and credit reference agency (CRA) data to estimate her monthly credit commitments. They used these figures to calculate Miss B had disposable income of £1,022 per month so considered the loan repayments to be affordable for her. SMF added that they'd carried out a credit check before lending to Miss B, but as they specialise in providing credit to people who've previously experienced financial difficulty, some level of missed payments on a credit file wouldn't be a reason for them to decline an application.

Miss B was unhappy with SMF's response and brought her complaint to our service, where one of our investigators looked into it. Our investigator thought that SMF hadn't done proportionate checks. But she said if they had, they'd have been able to fairly decide the agreement was affordable for Miss B. So our investigator didn't uphold the complaint.

Miss B disagreed with our investigator's view. She said our investigator shouldn't have included her ad-hoc income in her affordability assessment. She said the investigator hadn't referred to her being a single parent and covering all outgoings from one salary. And she didn't understand how the numerous creditors and payday loans she had weren't considered an indicator of the financial difficulties she was in. She asked for a decision and the complaint was passed to me.

I issued a provisional decision on 10 April 2024 explaining why I intended to uphold Miss B's complaint. In that I said:

> **"***The Financial Conduct Authority (FCA) sets out in a part of its handbook known as CONC what lenders must do when deciding whether or not to lend to a consumer. In summary, a firm must consider a customer's ability to make repayments under the agreement without having to borrow further to meet repayments or default on other obligations, and without the repayments having a significant adverse impact on the customer's financial situation.*
>
> *CONC says a firm must carry out checks which are proportionate to the individual circumstances of each case.*

Did SMF carry out proportionate checks?

SMF said they reviewed Miss B's credit file and verified her income. And they estimated her disposable income using estimates of her expenditure based on statistical data and details from her credit file. Whether or not these checks were proportionate depends on factors like the size and term of the loan, and what SMF found. Under the agreement, Miss B needed to pay SMF over £27,000, over a five-year period. So it was important that the checks were thorough.

In relation to income, Miss B told SMF she earned £2,700 and SMF obtained a payslip from her to check this. The May 2020 payslip shows net income of £2,705, and the June 2020 payslip shows a higher amount but includes backdated pay. So I'm satisfied SMF did enough to check Miss B's income.

Looking at the credit report they reviewed, SMF would have seen that Miss B had one defaulted account. Although this dated from around twelve months prior to her application, there was still a balance outstanding. And the credit report also showed Miss B had recently missed payments on a mail order account and two separate credit cards. The credit report SMF reviewed didn't show any outstanding payday loans or unsecured loans so I can't say SMF should have been aware of those.

SMF say they calculated Miss B's monthly credit commitments at 5% of revolving balances. Having reviewed their file, I'm not persuaded that's the calculation they made. They calculated Miss B's monthly credit commitments as £278.16, including a hire purchase payment of £180 per month. But they later noted the hire purchase agreement had been settled. I think they should have calculated Miss B's monthly credit commitments at £203 – excluding the hire purchase agreement but including 5% of the balances on credit card and mail order accounts, as well as the defaulted account.

Finally, SMF said they used statistical data to estimate Miss B's non-discretionary expenditure. CONC allows a firm to use statistical data unless it has reasonable cause to suspect that the customer's non-discretionary expenditure is significantly higher than that described in the data. In this case, SMF had seen Miss B had recently missed payments across three different credit accounts. So they should have suspected her non-discretionary expenditure might be higher than that described by the data. I think SMF should have done more to understand Miss B's spending and why she'd recently missed several payments to creditors.

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

A proportionate check would have involved SMF finding out more about Miss B's expenditure to determine whether she'd be able to make repayments in a sustainable way.

I've looked at Miss B's bank statements for the three months around her application to SMF. I'm not saying SMF needed to obtain bank statements as part of their lending checks. But in the absence of other information bank statements provide a good indication of Miss B's financial circumstances at the time the lending decision was made.

The bank statements show Miss B was spending around £1,000 per month on rent, council tax and utilities, £210 per month on phone, TV and internet costs, and around £180 per month on insurances including life insurances. She was also spending around £600 per month on food and fuel, and around £120 per month on other commitments.

So, excluding payments to creditors, Miss B's non-discretionary and committed expenditure was around £2,110 per month. Adding on the credit commitments figure from *her credit file of £203 and the repayments under this agreement means she would have needed to make payments of £2,765 per month out of her income of £2,700.*

So, if SMF had discussed Miss B's expenditure with her, it's likely they'd have concluded the repayments wouldn't be affordable for her. It's possible Miss B might then have told SMF she had other income – around £80 per month in child benefit and around £200 per month in child maintenance. SMF might also have discovered Miss B had ad hoc income from cleaning and ironing work. But Miss B's statements show this wasn't at all regular so I don't think SMF could fairly have included this in an affordability assessment – instead it suggests Miss B was taking on extra work because she was struggling financially.

I think it's also likely Miss B's other creditors would have also come to light – she was making significant repayments against short term loans. The amounts varied but over the three months I looked at, she paid around £400 on average per month to these creditors. It appears Miss B was in a cycle of debt before SMF lent to her – using short-term lending to repay other creditors.

Taking everything together I'm inclined to say if SMF had done proportionate checks, they couldn't have fairly decided to lend to Miss B."

Miss B responded, saying she had nothing to add. SMF asked for copies of Miss B's bank statements but then provided no further comments.

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.

Neither party provided any substantive comments on my provisional decision so I've nothing further to add and my findings are unchanged from those set out above.

Putting things right

As SMF shouldn't have approved the loan, it's not fair for them to charge any interest or other charges under the agreement. But Miss B has had use of the car so it's fair she pays for that use. It appears Miss B has already paid amounts totalling more than the cash price of the car, so I'm satisfied SMF should transfer ownership of the car to her and refund any excess payments.

In summary, SMF should do the following to settle Miss B's complaint:

- End the agreement and transfer ownership of the vehicle to Miss B.
- Refund all the payments Miss B has made in excess of £19,399 (including the deposit and part-exchange allowance), adding 8% simple interest per year from the date of each overpayment to the date of settlement.
- If Miss B has paid less than £19,399 in total, put an affordable payment plan in place to collect the shortfall.
- Once any shortfall has been paid, remove any adverse information recorded on Miss B's credit file regarding the agreement.

If SMF consider tax should be deducted from the interest element of my award they should provide Miss B a certificate showing how much they've taken off so that Miss B can reclaim that amount, assuming she is eligible to do so.

My final decision

As I've explained, I'm upholding Miss B's complaint. Specialist Motor Finance Limited need to take the steps outlined above to settle the matter.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 6 June 2024.

Clare King
Ombudsman