DRN-4828945

Financial Ombudsman Service

The complaint

Mrs R complains that Specialist Motor Finance Limited (SMFL) irresponsibly entered into a hire purchase agreement with her. She says she was struggling financially at the time and couldn't afford the repayments.

What happened

In August 2018 SMFL provided Mrs R with finance to purchase a used car. The car cost £10,494 and Mrs R entered into a hire purchase agreement to finance the full amount. After interest and charges the total amount due was £17,551.60, repayable in 59 monthly instalments of £292.36 followed by one repayment of £302.36. Mrs R missed some repayments, and the account is currently in arrears.

In July 2023 Mrs R complained to SMFL saying that they shouldn't have agreed to lend to her, as she was in financial difficulties at the time. SMFL didn't agree with Mrs R's complaint. In their view they carried out reasonable checks which showed that the payments for this agreement were affordable for Mrs R, and they lent on this basis.

Mrs R remained dissatisfied with SMFL's response and referred the complaint to our service, where it was considered by one of our investigators. Our investigator thought SMFL's checks hadn't been proportionate in the circumstances of Mrs R's application. And it was her view that proportionate checks would have shown that the agreement wasn't affordable for Mrs R. For this reason, she thought the complaint should be upheld.

Mrs R accepted the investigator's assessment. SMFL initially didn't respond to the investigator, other than to say they'd already set out their additional reasoning as to why they didn't think they needed to undertake further checks in relation to Mrs R's application.

SMFL later asked to review the bank statements the investigator had relied on when reaching her outcome. They then sent a further response and said, in summary:

- In respect of one current account ('account A'), it wasn't true to say it wasn't joint and was dormant, because the statements showed it was jointly held and being used at the time of application.
- In respect Mrs R's other current account ('account B'), at times this showed a balance of £3,500 and so SMFL asked how the investigator concluded the repayment of £292 wasn't affordable.
- Providing the finance afforded Mrs R access to a vehicle, without which she may have struggled to complete day-to-day tasks.

As no agreement could be reached the complaint came to me to decide.

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.

Having done so, I'm upholding Mrs R's complaint. I'll explain why.

The Financial Conduct Authority (FCA) sets out in a part of its handbook known as CONC what lenders must do when deciding whether 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. What's proportionate depends on the specific circumstances of each application. We'd expect lenders to think about the nature of the credit (the amount repayable and the term, for example) and about the applicant's individual circumstances. I'd expect a lender to find out more about a prospective borrower's ability to repay if for example, a borrower's income was low, the amount lent was high, or the borrower's credit file reveals an impaired credit history.

Were SMFL's checks proportionate?

Mrs R's finance application shows she was married and lived in rented accommodation. She was employed as an office manager, earning £1,800 per month. SMFL used data from one of the credit reference agencies (CRA) as well as current account turnover analysis to check Mrs R's income hadn't been overstated. I'm satisfied SMFL's checks to verify Mrs R's income were reasonable and proportionate.

SMFL used statistical data to calculate Mrs R's likely outgoings. In their email to our investigator SMFL pointed out that CONC allows lenders to use statistical data in this way unless they have reason to believe it would be inappropriate to do so. But here, the information SMFL gathered during the credit check ought to have led them to think Mrs R might have been struggling financially.

Looking at Mrs R's financial position at the time of her application, this showed she held two credit cards with an overall credit limit of £5,050 as well as two mail order accounts with a combined limit of £2,060. Her credit utilisation across the four accounts was just under 90%, indicating a dependency on credit. SMFL's credit check showed Mrs R was in an arrangement with one of the mail order providers, and six months in arrears on one of her credit cards.

Furthermore, Mrs R had one unsatisfied default which occurred around nine months before her application. Overall, I think there were clear signs that Mrs R might be struggling financially, and so I think it would have been proportionate for SMFL to do more to understand Mrs R's expenditure rather than relying on estimates. In summary, I'm satisfied SMFL didn't carry out reasonable and proportionate affordability checks before lending.

If SMFL had carried out proportionate checks, what would they have shown?

A proportionate check would have involved finding out more about Mrs R's committed expenditure. There are different ways a lender can go about checking a prospective borrower's committed expenditure. I can't be sure what SMFL would have done had they decided to conduct further checks, or what Mrs R would have told them. In the absence of anything else, I've placed significant weight on the information contained in Mrs R's bank statements for the three months leading up to her application as an indication of what would most likely have been disclosed.

I should start by explaining that I've only reviewed the statements for account B when considering Mrs R's likely committed expenditure. This is because Mrs R told us that while account A was an account she held jointly with her husband, she wasn't actively using it. She explained that one of her friends (Ms K) didn't have a bank account with a debit card, so Mrs R allowed Ms K to pay money into account A and let her use the debit card. Looking at the statements for account A, I can see it was funded by transfers from Ms K, and so I accept Mrs R's testimony on this point.

Mrs R said she split the household bills with her husband. They each paid half of the rent, with Mrs R transferring her share to her husband at the end of each month. She also paid council tax, the TV licence fee, food and petrol. The remaining bills were covered by her husband. The statements for account B support this. They show Mrs R was spending £622 on rent and council tax. She spent an average of around £326 per month on food, £147 on petrol and £42 on her mobile phone and £60 on other committed items such as subscriptions and recurring charges.

SMFL say they calculated Mrs R's monthly credit commitments at 5% of revolving balances unless the credit report showed a different payment amount due. I think this approach is reasonable, given that CONC requires a firm to assume that revolving credit is repaid over a reasonable term. Using this approach, SMFL calculated Mrs R's credit commitments to be around £472 per month.

So, Mrs R's non-discretionary and committed expenditure was around £1,669 per month. Adding on the repayments under this agreement means she would have needed to make payments of around £1,961 per month out of her verified income of £1,800. So, if SMFL had undertaken proportionate checks they would have concluded the repayments wouldn't be affordable for Mrs R. It follows that they couldn't have fairly decided to lend to Mrs R.

SMFL argue that account B at times held as much as £3,500 in it and asked how the repayment of just over £292 could be deemed unaffordable in light of this. I don't think the account balance is relevant here. CONC 5.2A.12R states that lenders must consider the customer's ability to make repayments under the agreement out of the customer's income unless there's clear intention to make repayments (wholly or partly) using savings. I haven't seen anything to suggest that Mrs R intended to pay some or all of the amount due under the agreement using savings or other assets. It follows that SMFL needed to ensure that Mrs R's income was sufficient to allow her to make repayments sustainably as they fell due. I don't think SMFL have demonstrated they did so here.

I don't dispute that having a car benefitted Mrs R – and I think that's likely why Mrs R ensured she kept up with the monthly repayments as best as she could. But it's SMFL's obligation to lend responsibly – and if they can't demonstrate that lending is affordable, they shouldn't agree to lend. If SMFL had decided not to lend to Mrs R, she could have explored other options such as seeking a cheaper car or using alternative methods of transport.

Did SMFL act unfairly or unreasonably in some other way?

I've also considered whether SMFL acted unfairly or unreasonably in some other way given what Mrs R has complained about, including whether their relationship with Mrs R might have been unfair under s.140A Consumer Credit Act 1974.
However, I'm satisfied the redress I have directed below results in fair compensation for Mrs R in the circumstances of her complaint. I'm satisfied, based on what I've seen, that no additional award would be appropriate in this case.

Putting things right

As I don't think SMFL ought to have approved the lending, I don't think it's fair for them to be able to charge any interest or charges under the agreement. But Mrs R's had use of the vehicle and it's fair she pays for that use.

Looking at her repayment history I can see Mrs R has already paid more than the cash value of the vehicle to SMFL. So, to resolve the complaint SMFL need to:

- Transfer ownership of the car to Mrs R and end the agreement with nothing further to pay.
- Calculate how much has been paid in total under the agreement.
- Deduct the cash price of the vehicle (being £10,494) from the total paid.
- Pay Mrs R the difference, adding 8% simple interest per year* from the date of each overpayment to the date of settlement.
- Remove any adverse information recorded on Mrs R's credit file regarding the agreement.

*HM Revenue & Customs requires SMFL to take off tax from this interest. SMFL must give Mrs R a certificate showing how much tax they've taken off if Mrs R asks for one.

My final decision

For the reasons I've explained, I'm upholding this complaint. Specialist Motor Finance Limited need to settle the complaint as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs R to accept or reject my decision before 1 August 2024.

Anja Gill
Ombudsman