

## **The complaint**

Miss D, 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 April 2018, Miss D acquired a used car financed by way of a hire purchase agreement from SMFL. She was borrowing £4,711, having paid a cash deposit of £400. Miss D was required to make 53 monthly repayments of £149.96, with a final payment of £159.96. The total repayable under the agreement was £8,507.84.

Miss D 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 an assessment which included verifying her income and checking her credit commitments and expenditure.

Our investigator initially didn’t uphold the complaint but following further review decided to uphold it. He thought SMFL didn’t do enough to establish that Miss D would be able to afford to repay the agreement sustainably.

As SMFL hasn’t responded to our investigator’s finding, the complaint has 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.

Having done so, I’m upholding this complaint for broadly the same reasons as our investigator. I will explain why.

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.

Miss D provided some information when she applied for the finance. She said her income was around £1,100 and that she was living with her partner in a rented property. SMFL used this information to help it to carry out its own checks to see if the repayments under the agreement would be affordable. This included using a credit check to establish what credit commitments Miss D already had in place.

SMFL 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 the checks it used are done with these issues in mind. That said, SMFL needed to carry out checks that were enough to establish that the borrowing was likely to be affordable as well as being something that could be repaid sustainably. The agreement was to run for a total of 54 months and so

represented a significant financial commitment for Miss D that she would have to be able to sustainably repay over the whole period. So I think SMFL's checks needed to be reasonable and proportionate in order to establish that Miss D would be likely to consistently meet her repayments over the full duration of the loan.

SMFL's credit checks showed that a credit account had defaulted in the five months leading up to the agreement. A second default also found but this was old enough to be treated as being historical. Other than that, Miss D was operating five credit accounts which had all been paid up to date. However, given that Miss D had recently been in financial difficulty that had led to a default, there was a real likelihood in my view that her overall financial situation was at risk of deterioration.

SMFL has explained that it verified Miss D'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. I have also seen that SMFL calculated Miss D'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.

SMFL says it calculated whether Miss D could afford the finance using assumptions it was able to make from its checks. Essentially, SMFL took Miss D's net monthly income and then deducted from that what it understood to be her credit commitments and non-discretionary expenditure – that is, the things aside from credit repayments that Miss D had to meet each month, such as household and motor costs. SMFL also made allowance for the fact that Miss D only co-habiting and so wasn't responsible for bearing all of the household outgoings, aside from the credit she already owed.

Based on all this, SMFL was satisfied after allowing for her net monthly income and credit commitments, that she would be left with around £560 in disposable income. That means she could comfortably meet the monthly instalments for the agreement out of that and still be left with around £330 in disposable income.

My role in deciding whether a business makes a fair lending decision is to look at what was taken into account from evidence and information that was available at the time about Miss D's financial circumstances. SMFL based its figure for disposable income on the result of a calculation that was itself based on assumptions. But I think it would have been reasonable and proportionate for SMFL to have taken steps to better understand Miss D'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 D's financial situation, looking at both her income and her regular expenditure 'in the round'. That doesn't necessarily mean that SMFL had to ask Miss D 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 D sent our investigator. 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 D was receiving an average net monthly employment income of around £1,100. It seemed in fact from her bank statements that her total income was around £200 more each month than what she told SMFL, due to state benefits. So the total average income figure for each month was around £1,380. Her payments towards credit worked out at around £440 each month whilst her household costs, including bill contributions made to her partner, worked out to around £700. This would leave her with

around £240 in disposable income, out of which the cost of the new agreement, being £149.96, would have to be met. So she would be likely to be left with around £90.

SMFL has taken issue with the figure of £96.73 from our investigator's calculation as being a fair basis for upholding the complaint. That's because in their initial review, our investigator had thought that the figure of £108 for disposable income would be adequate. I think that determining the adequacy or otherwise of disposable income depends very much on the specific circumstances of each consumer. In Miss D's case, I can see that that in the previous 12 months she had found it necessary to take out several high cost loans, which she was still repaying, in addition to making payments to a debt recovery service. And we already know that she'd had default on an earlier similar loan, taken out in 2016. A further concern is that Miss D was already making use of her overdraft. Given her level of debt and existing day-to-day spending commitments, I think that's a fair indicator that she was already experiencing difficulty with her financial situation.

Against this background, and given the term of the loan and the significant financial commitment she was taking on, I think the figure SMFL had allowed for disposable income was too low. At the very least, Miss D would have to meet the running and servicing costs of the new car. She also needed to be in a position to meet unexpected and emergency costs. I also don't consider it unreasonable to expect consumers to occasionally wish to fund a moderate amount of leisure spending. But my overriding concern here is that Miss D would before too long find herself having to borrow again to meet her daily costs and accommodate the new repayment. In short, I think Miss D was over-extending herself by taking on this amount of borrowing.

This all leads me to conclude that on balance this agreement was unlikely to be affordable to her and sustainable in the long term. I don't consider Miss D 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.

I've considered whether the relationship between Miss D and SMFL might have been unfair under S.140A of the Consumer Credit Act 1974. However, I'm satisfied the redress I have directed below should be carried out for Miss D results in fair compensation for her 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 – 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 D should therefore only have to pay the original cash price of the car, less her deposit - £4,711. However, Miss D did have use of the car for around 50 months, so I think it's fair she pays for that use. But I'm not persuaded that monthly repayments of over £149.96 a month as required under the agreement are a fair reflection of what fair usage would be. This is because a proportion of those repayments went towards repaying interest.

There isn't an exact formula for working out what a fair usage should be. In deciding what's fair and reasonable I've thought about the amount of interest charged on the agreement, Miss D's likely overall usage of the car and what her costs to stay mobile would likely have been if she didn't have the car. In doing so, I think a fair amount Miss D should pay is £95 for each month she had use of the car. This means SMFL can only ask her to repay a total of £4,750. Anything Miss D has paid in excess of this amount should be treated as an overpayment.

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

- Refund all the payments Miss D has made, less £4,750 for fair usage.
  - If Miss D has paid more than the fair usage figure, SMFL should refund any overpayments, adding 8% simple interest per year\* from the date of each overpayment to the date of settlement.

Or;

- If Miss D has paid less than the fair usage figure, SMFL should arrange an affordable and sustainable repayment plan for the outstanding balance.
- Once SMFL has received the fair usage amount, it should remove any adverse information recorded on Miss D's credit file regarding the agreement.

\*HM Revenue & Customs requires SMFL to take off tax from this interest. SMFL must give Miss D a certificate showing how much tax it's taken off if Miss D 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 D to accept or reject my decision before 7 August 2024.

Michael Goldberg  
**Ombudsman**