DRN-4842873

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.

Mrs R has been represented by a third party. But for clarity, I've only referred to Mrs R throughout this decision.

What happened

In August 2019 SMFL provided Mrs R with finance to purchase a used car. The car cost £14,100 and Mrs R paid a deposit of £295. She entered into a hire purchase agreement to finance the remaining £13,805. After interest and charges the total amount due was £23,385.20, repayable in 59 monthly instalments of £384.67 followed by one repayment of £394.67. Mrs R struggled to make the payments and then in March 2023 sold the car and settled the finance.

In September 2023 Mrs R complained to SMFL saying that they didn't undertake appropriate affordability checks – and had they done so, SMFL would have realised the agreement was unaffordable. 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. Although he didn't think SMFL's checks had been proportionate, it was his view that proportionate checks would have shown that the agreement was affordable for Mrs R. For this reason, he didn't think the complaint should be upheld.

Mrs R didn't agree with our investigator's view. She said it wasn't reasonable to include a student loan instalment she received in April 2019 in an analysis of her income and expenditure and likened it to repaying one loan with another. Mrs R said at the time of lending, she was the sole earner in the household and thus responsible for all the household expenditure. Mrs R asked for an ombudsman's decision – and the complaint came to me.

I issued a provisional decision on 25 April 2024, saying I was inclined to uphold Mrs R'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 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 said she'd been working for the NHS for around three years, earning £1,750 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 did enough to verify Mrs R's income.

SMFL used statistical data to calculate Mrs R's likely outgoings. CONC allows lenders to use statistical data in this way unless they have reason to believe it would be inappropriate to do so. Here, I think Mrs R's credit history ought to have led SMFL 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 three credit cards with an overall credit limit of £1,850 as well as two mail order accounts with a combined limit of £3,050. She was close to or exceeding the limits on all five accounts, showing a dependency on credit. She'd also recently missed payments on one of the accounts.

Mrs R had three unsatisfied defaults with the most recent just under four years before her application. The credit report further showed a satisfied County Court judgment (CCJ). It doesn't appear that Mrs R was making payments towards her outstanding defaults. This in combination with the size of the lending, the monthly repayments and the length of the agreement means 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?

I've already set out that I'm persuaded SMFL did enough to verify Mrs R's income of £1,750. I'm satisfied that SMFL not including Mrs R's student loan when calculating her income was appropriate given the student loan wasn't recurring income.

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.

The bank statements show Mrs R was spending around £424 a month on council *tax and utilities, £101 per month on phone, TV and internet costs, and around £83 per month on insurance including pet insurance. She was also spending around £259 per month on food and transport costs, and around £10 per month in other commitments.*

The bank statements Mrs R provided didn't show any rent payments. She explained that she was solely responsible for all household costs at the time and was paying £380 in rent from an account she no longer has access to. I can see transfers of at least this amount from her main bank account to another account in her name, so I'm inclined to accept Mrs R's testimony on this point and say SMFL would have included £380 for rent had they done proportionate checks.

SMFL say they calculated Mrs R's monthly credit commitments at 5% of revolving balances. I think the approach is reasonable, given that CONC requires a firm to assume that revolving credit is repaid over a reasonable term. However, having reviewed SMFL's calculations, I'm not persuaded they're correct. For example, the repayment SMFL allowed for credit card repayments is closer to 2.5% of the outstanding amount.

In addition, SMFL only included repayments for debts shown on Mrs R's credit file. Her bank statements show repayments to a 'buy now, pay later' (BNPL) provider. I don't think SMFL needed to include the BNPL repayments because I could see the repayments were rapidly decreasing month on month. And so I think it's more likely than not that Mrs R had either fully repaid, or was about to fully repay, the outstanding amount.

Mrs R had also taken out an additional loan shortly before entering into the finance agreement. If SMFL had asked Mrs R about her credit commitments I think she'd have told them about this loan, and SMFL would have included the repayments of around £119 per month in their expenditure calculation. In total, I think SMFL ought to have allowed £345 to meet Mrs R's monthly credit commitments. This figure includes the loan repayments and 5% repayments on existing credit but excludes her existing hire purchase and BNPL repayment.

So, Mrs R's non-discretionary and committed expenditure was around £1,602 per month. Adding on the repayments under this agreement means she would have needed to make payments of around £1,987 per month out of her verified income of £1,750.

Overall, I'm inclined to say that if SMFL had undertaken proportionate checks it's likely 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 disagreed with the provisional decision and said, in summary:

- Mrs R was making significant payments to and from her other account. Her not being able to provide statements for her other account means we don't have a full picture of her finances and it would therefore not be reasonable to determine an outcome when we don't have all the facts.
- Having a vehicle is essential to everyday living and it's clear Mrs R needed one for her day-to-day living, so the cost of the car could be classed as a priority outgoing.
- The statements show Mrs R was eating out regularly and going abroad, which isn't committed expenditure and not reflective of someone who was struggling financially.

- Mrs R paid a cash deposit of £295 at the point of sale and maintained all her payments without missed or late payments for over two years. The missed payments that followed were due to a change in circumstances.

Mrs R didn’t respond to my provisional 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.

SMFL said Mrs R made significant payments to and from her other account. I reviewed her statements again, and I can only see one payment back into her main account – all other payments are from the main account to the other account. I note that the receipt from the other account came just prior to paying a substantial bill.

Overall, I’m satisfied with Mrs R’s explanation about paying rent from her other account. But even if I wasn’t, it wouldn’t change the outcome here. Taking out the rent payment, Mrs R’s committed expenditure would be £1,222 against a confirmed income of £1,750, leaving her with around £143 disposable income after factoring in the monthly repayment due under the agreement. This wouldn’t have left her with much to cover the cost of running the car and any unforeseen or emergency expenditure.

I don’t dispute that Mrs R needed a car – and I think that’s likely why Mrs R ensured she kept up with the monthly repayments until a change in circumstances meant she could no longer do so. I note SMFL’s comments about Mrs R’s discretionary spending. I haven’t included discretionary spending such as eating out in my calculation of Mrs R’s expenditure. How an individual chooses to spend their money is ultimately their choice. 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.

In summary, I find that 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.

Putting things right

As SMFL shouldn’t have approved the lending, it’s not fair for them to be able to charge any interest or charges under the agreement.

Mrs R has already paid more than the cash value of the vehicle to SMFL, having sold it and settled the finance in March 2023. SMFL should do the following to settle Mrs R’s complaint:

- Calculate how much has been paid in total under the agreement; including the deposit and final settlement.
- Deduct the cash price of the vehicle 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 Mrs R's 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 8 July 2024.

Anja Gill
Ombudsman