

The complaint

Mr W is unhappy with how Startline Motor Finance Limited dealt with his request for assistance as a result of the Coronavirus (Covid-19) pandemic.

What happened

In August 2018, Mr W was supplied with a used car through a hire purchase agreement with Startline. The agreement was for £19,732 over 60 months; with 59 monthly repayments of £328.71, and a final payment of £338.71.

In April 2020 Mr W contacted Startline to ask about a payment deferral as his income had reduced due to the Covid-19 pandemic. He said Startline agreed a one-month deferral and he had to contact them again to agree a second month. He said his request for a third month deferral was declined, with Startline instead moving his payment date back towards the end of the month.

In July 2020, he called Startline to ask about a further deferral. He said he was told this would only happen if he gave Startline immediate access to his bank accounts through an open banking application. He didn't want to do this as he felt they would unfairly use the bank account information to decline the request and add interest to his payments.

He said he told them he wouldn't be making any payments until they'd resolved his complaint – and this meant he missed the August 2020 payment.

He said he felt that Startline were aggressive in their approach, and not helpful, even though he'd explained his salary had been reduced by 20% and he was no longer receiving any bonus. He also said that his mortgage provider had granted him a payment holiday following the loss of his income due to Covid 19.

He said they only gave him two options – pay around £3,000 to exit the agreement, or return the vehicle to Startline and pay any shortfall due after Startline had sold it at auction.

Startline said they granted Mr W a one-month deferral for his May 2020 payment and agreed to review the situation at the end of May 2020. This led to a second payment deferral for June 2020. They said a third deferral wasn't possible but agreed to move the payment date back from 1st of the month to 23rd to allow more time for payment.

They said Mr W contacted them again on 21 July 2020, after the latest guidance from the Financial Conduct Authority (FCA) for the motor finance industry had been issued. They said they offered to do an affordability check via a third-party open banking app. They said that they were looking for changes in his income so that they could consider the most suitable option for him. But they said Mr W refused to do any form of affordability check.

They said without this they were limited in the options they could provide to help Mr W. They said they were willing to consider a plan to include the repayment of the missed payments, but they couldn't agree to defer any more payments without an affordability assessment.

Mr W was unhappy with their response, so he brought his complaint to the Financial Ombudsman Service for investigation.

Our investigator didn't think Startline had acted fairly. She accepted that Startline were entitled to make enquiries into Mr W's circumstances. But she didn't think it was reasonable for them not to accept other evidence from Mr W that his income had been reduced, such as payslips, especially when he'd requested a deferral for four consecutive months. She didn't think this was in the spirit of the FCA guidance.

Startline disagreed and asked for an ombudsman's decision. They asked for more time to respond: that deadline has passed, and they still haven't provided any reasons, evidence or information.

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've reached the same overall conclusions as the investigator, and for broadly the same reasons. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome.

I think it's important that I explain my role isn't to punish businesses – that's the role of the regulator. My role is to look at issues that a consumer – in this case Mr W – may have experienced and see if the business – in this case Startline – has done anything wrong. If it has, I look to put the consumer back in the position they would've been in if the mistakes hadn't happened.

In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and (if appropriate) what I consider was good industry practice at the time. Mr W was supplied with a car under a hire purchase agreement. This is a regulated consumer credit agreement which means we're able to look into complaints about it.

As stated above, the FCA issued temporary guidance, that came into effect on 27 April 2020, for customers who were faced with payment difficulties as a result of Covid-19. The purpose of the guidance was to provide "*exceptional and immediate support to customers facing payment difficulties due to circumstances arising out of coronavirus*".

The guidance also advised businesses, like Startline, that there was no expectation that they must make "*enquiries with each customer to determine the circumstances surrounding a request for a payment deferral, or whether this is not in the customer's interests. Firms can, however, choose to make the enquiries they consider necessary in order to satisfy themselves that the customer is eligible for support and to identify whether the customer would benefit from any additional support, provided that this does not delay the provision of timely support.*"

I've highlighted these two paragraphs as I think they clearly set out the purpose and spirit of the guidance: to provide exceptional and immediate support to allow consumers breathing space while the pandemic unfolded.

The initial deferral request

The guidance says a firm providing motor finance agreements should grant a payment deferral for "*3 months unless the firm determines (acting reasonably) that it is obviously not*

in the customer's interest to do so."

The guidance gives examples of where this might be the case. It seems to me that it's in circumstances where it will leave customers with "*a greater overall debt burden compared to other solutions*". The guidance says that a firm may give a shorter payment deferral period if the loss of income is for a shorter period. Startline said they only offered a deferral on a month to month basis, because of "*uncertainty when payment would be made under the government grant scheme*".

Mr W sought a payment deferral under the guidance published by the FCA. He explained he'd been furloughed, so it seems clear to me that he was eligible for a payment deferral, as intended by the FCA guidance. I haven't seen any reasonable explanation why Startline considered that a three-month deferral wasn't appropriate in these circumstances. So I don't think they acted fairly when refusing to grant a three-month deferral.

When it reviewed the request in May 2020, the FCA had published its guidance so there was an opportunity here for Startline to grant a three-month deferral. But it didn't take that opportunity, and I can see no reason why that didn't happen.

The second deferral request

Startline said they were prepared to offer a further deferral, but only if Mr W agreed to an affordability check through a third-party open banking application.

Where a customer is unable to resume full payments, the guidance states:

Where, after an initial payment deferral, and at any time before their first payment is due, a customer indicates they remain in temporary payment difficulties and cannot resume full payments immediately, a firm should offer a full or partial payment deferral to reduce payments for a period of 3 months to a level the customer indicates they can afford. If the customer is in temporary payment difficulties but is unable to afford any payments, the firm should offer them a full payment deferral where this is in the customer's interests.

Startline explained that it wanted to assess Mr W's affordability to ensure it was providing the right option for him. They said they believed they'd implemented and applied the FCA guidance correctly. They said the guidance allowed them to use other sources, such as open banking sources to understand the customer's circumstances. That is true, but the same paragraph in the guidance also makes clear that they aren't required to do this. And they ignore the point that if they do choose to use other information, they can use information held by the firm – they already had Mr W's payment history, showing he hadn't missed any payment prior to the Covid situation.

The guidance also says that where a customer like Mr W tells them that they're still in temporary financial difficulty, they should offer a further deferral for three months. And they should consider the same question as at the first request – is it in the customers best interests. There was no information or evidence that I've seen that would give Startline any indication that a three-month deferral would not be in Mr W's best interests.

I can see that Startline told Mr W that they needed to verify his lost income – and that if they felt the payment was still affordable they would expect the payments to be maintained. It appears to me that the overall intention of the guidance was to provide prompt assistance to customers in short term difficulty without the need for prolonged discussions or detailed additional checks before agreeing a payment deferral.

So I don't think it was fair or reasonable for Startline to insist on Mr W signing up to an opening banking app before considering granting him a payment deferral. They had other information available to them they could've relied on.

Mr W has said he didn't trust Startline. I've no reason to doubt their intentions were good, but as I've explained I don't think what they required of Mr W was necessary under the guidance. I appreciate that Startline wanted to ensure that Mr W's future higher payments were affordable. But as I said above, the guidance was directed at firms so that they could help customers like Mr W, who had been furloughed because of the Covid-19 pandemic and sought a deferral to help him through this difficult, and temporary period of reduced income.

I think once the FCA guidance was published, Startline could've allowed Mr W to take a three-month payment deferral, and then granted a second deferral period. This would've likely been of great help to him and would be fully in line with purpose of the guidance.

Putting things right

Startline terminated the agreement, and repossessed the car, despite Mr W's apparent willingness and ability to resume payments, and to discuss an appropriate plan for repayment of the arrears. So I can't put him back in the position he would've been in had Startline treated him fairly and in line with the FCA guidance.

I'm satisfied it's more likely than not that had Startline provided Mr W with the payment deferral's requested, he would not have missed further payments and accrued the arrears that led to Startline terminating the agreement.

I think Mr W should make the payments for the time he had the car. This to reflect the usage he had of the car. I appreciate that he says he didn't use the car, but he had the opportunity to do so, and I think it's fair he pays for that.

To put things right Startline must:

- Remove any arrears or payments owed from the date they repossessed the car:
- Remove any adverse credit relating to the agreement from Mr W's credit file:
- Pay Mr W £150 to compensate him for the distress and inconvenience they caused him.

My final decision

For the reasons explained, I uphold Mr W's complaint. Startline Motor Finance Limited must follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 24 February 2022.

Gordon Ramsay
Ombudsman