DRN-3200278

The complaint

Mrs M has complained about credit granted to her by Startline Motor Finance Limited ("Startline"). She says she was in financial difficulty at the time and Startline didn't carry out adequate checks before lending to her.

What happened

Startline agreed credit for Mrs M on 7 June 2019 via an intermediary in order for her to acquire a car. The cash price of the car, as per the agreement, was £12,248. The total amount owing under the agreement, including £4,724 interest and charges, came to £16,972. I understand that Mrs M paid a £300 deposit and the remainder was to be repaid by 59 instalments of £278 and a final payment of £288 (all figures rounded).

The credit was granted under a hire purchase agreement meaning Mrs M would own the car when the credit had been repaid. Startline was the owner until that point and Mrs M was, in essence, paying for the use of it.

I can see from the account history that Mrs M made her first payment but further direct debits were returned. By December 2019, Startline had recovered and sold the car. It credited the proceeds to Mrs M's account, leaving an outstanding balance of over £8,700 owing.

Mrs M says that Startline should not have agreed to lend to her because she couldn't afford to meet the repayments. She says Startline would have declined her application if it had carried out further checks, given her existing debt. Furthermore, Mrs M says that she was vulnerable at the time she entered into the agreement due to her mental health.

Startline says that it carried out the necessary checks before entering into the agreement with Mrs M and that she didn't disclose any vulnerability at the time. Nevertheless, Startline says that its recovery team offered to reduce the outstanding balance she owed to £4,100 as a full and final settlement of her complaint.

Our investigator looked into what happened when Mrs M's finance was agreed and found that Startline had been irresponsible to enter into an agreement with her. They recommended that Mrs M's complaint be upheld and proposed that Startline refund Miss M's deposit and interest payments and waive the outstanding balance.

Startline didn't agree with this recommendation. It says its checks showed that the agreement would be affordable for Mrs M and her credit file didn't show she'd had problems managing her existing debt. It asked for the complaint to come to an ombudsman to review and resolve.

I issued a provisional decision on 25 October 2021 explaining why I planned to uphold Mrs M's complaint. I allowed some time for both parties to respond. Mrs M said she agreed with my conclusions but Startline did not agree. Both parties provided further points for me to consider when making my 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, and having carefully considered what both parties have said in response to my provisional decision, I remain of the view that Mrs M's complaint should be upheld. I appreciate that this will be disappointing for Startline and I've set out below the reasons I've come to this final conclusion.

As I'd said in my provisional decision, the Financial Conduct Authority (FCA) was the regulator when Startline lent to Mrs M. Its rules and guidance obliged it to lend responsibly. As set out in its rules and guidance, Startline needed to *"pay due regard to the interests of its customers and treat them fairly"* (PRIN 2.2.1R-6) and it would not be doing so if *"it targeted customers with regulated credit agreements which are unsuitable for them, by virtue of their indebtedness, poor credit history, age, health, disability or any other reason."* (CONC 2.2.2G).

Startline needed to check that Mrs M could afford to meet her repayments without difficulty before agreeing credit for her. In other words, it needed to check she could meet her repayments out of her usual income without having to borrow to meet them, while meeting any existing obligations and without the payments having a significant adverse impact on her financial situation. The checks needed to be proportionate to the nature of the credit and Mrs M's circumstances, and Startline needed to take proper regard to the outcome of that assessment in respect of affordability risk.

With this in mind, my main considerations are did Startline complete reasonable and proportionate checks when assessing Mrs M's application to satisfy itself that she would be able to make her repayments wihout experiencing adverse consequences? If not, what would reasonable and proportionate checks have shown? Did Startline make a fair lending decision?

Startline says it asked Mrs M for her net monthly income which she gave as £835, and it estimated from this that she had a salary of £10,209. It used a credit reference agency report to cross-check this income figure. It also checked Mrs M's credit file and noted that she'd paid a similar hire purchase agreement relatively well and that there was no other adverse information showing. Startline says that as Mrs M's husband was living at the same address, her household would have additional income and that she'd been in employent for over two and a half years.

Startline says that its checks were proportionate and it did not consider it was necessary to request further information from Mrs M about her income and expenditure. It says that there were no indicators in the information obtained to point towards the need for a more rigorous assessment. Startline says that this point demonstrates compliance with CONC 5.2A.21G.

CONC 5.2A.21G states that certain factors might point to a more rigorous assessment and others towards a less rigorous one and lenders need to weigh up the factors before deciding what type of assessment is required. CONC 5.2A.24G follows and states that the exact steps taken depend on the affordability risk arising out of the agreement. CONC 5.2A.25G then states that potential indicators that the affordability risk may be high include circumstances where the total value of the consumer's outstanding debts relative to their income is high.

I provisionally upheld Mrs M's complaint because I found that Startline didn't carry out appropriate checks and, had it done so, it was likely to have learned that Mrs M wouldn't be able to meet her repayments without difficulty. Ahead of this final decision, I shared summary figures from Mrs M's bank statements with Startline which show that Mrs M didn't have a surplus (or enough of a surplus) each month to meet these loan repayments.

In response to my provisional decision and information Startline said:

- Mrs M's previous hire purchase agreement was showing as settled three months prior to Startline accepting her application. This settled finance agreement was for £271.00 per month and Mrs M's payment history demonstrated an ability to repay the new finance application made to Startline which was for a similar monthly rental amount of £277.70. It was reasonable to assume that if Mrs M could afford her previous finance arrangement, then she could do so with the new arrangement she had applied for with Startline.
- Mrs M's credit history fell in line with its risk appetite, and it evaluated her application in accordance with the information provided by her at the time.
- Startline assessed Mrs M's income using an industry standard proven affordability tool, where it could see and evaluate the income, exclusive of inter-account transfers.
- The funds paid into Mrs M's account for March, April and May 2019 were significantly higher than the maternity pay she was receiving, which would indicate that she was in receipt of other forms of income.
- Mrs M's declared expenditure within the finance application was £150.00 per month, which is different to the expenditure of £550 that Mrs M advised to this Service. Mrs M admitted to Startline that she purposely excluded information from her application in the attempt to obtain credit. Startline said that this deliberate manipulation of information reassured it that Mrs M was fully aware of the decision she was making in entering into the agreement.
- Four days prior to accepting and paying the agreement, a separate application was received by Startline for Mrs M via a different introducer (online). This application was declined on the basis it was not affordable for Mrs M, being a rental of £414.34 per month. This demonstrates the effectiveness of Startline's affordability evaluation process and assessment criteria.

Whwn making my provisional decision, I began by reviewing the information provided by Startline. Mrs M's credit file report from the time showed that she had missed payments on her previous hire purchase agreement and one of her existing credit cards. The two credit cards showing are near their limits and I can see a two year old credit card default with over £600 outstanding.

I note that Startline said Mrs M's credit history fell within its risk appetite but this doesn't automatically mean that her credit history didn't reveal any affordability risk to her. Nevertheless, I'd provisionally concluded that Mrs M's credit file information alone wouldn't have raised concerns for Startline to the extent it should have declined to lend to her and I remain of this view.

Startline highlighted that Mrs M's credit file showed a recently settled hire purchase agreement which had a similar monthly repayment amount to its agreement. I had considered whether or not it was reasonable to lend to Mrs M on the basis that she'd recently had a similar agreement. However, as I said in my provisional decision, Startline also needed to consider Mrs M's circumstances when making this lending decision. Mrs M would be required to pay over a third of her (declared) wages each month for, potentially, five years to meet her repayments under the agreement. Entering into this agreement with Mrs M meant increasing her overall debt (as seen on her credit report) to almost twice her estimated salary.

In this case, as I said in my provisional decision, I don't think Startline should have agreed to lend to Mrs M without seeking reassurance through further checks that she would be able to meet her repayments without experiencing adverse consequences because the affordability risk to her was demonstrably high. I appreciate that Startline checked what Mrs M said about her income using a credit reference agency tool to analyse deposits into her bank account. However, I think it needed to do more in this case, given the risk, to check that Mrs M was actually in receipt of the income she'd declared.

Furthermore, I don't think it was reasonable or proportionate for Startline to have assumed anything about how household income or expenses were shared. Startline says that Mrs M wasn't truthful in what she'd said at the time about her expenses – she'd declared a total monthly expenditure of £150. I don't think it was proportionate of Startline to have relied on what Mrs M said about her expenses, given that the repayments would have a significant impact on her monthly wages. And I don't think that the information Mrs M declared at the time negates the requirement for Startline to have assessed the risk to her of not managing to meet her repayments.

Altogether, I remain of the view that Startline's checks weren't proportionate on this occasion.

I've reviewed information provided by Mrs M including what she's told us about her circumstances to understand what proportionate checks would likely have revealed about her ability to meet her repayments. Mrs M explained that she'd just returned to work from maternity leave and her first month's pay was in July 2019. She's provided her July payslip which confirms this and shows her basic pay as £857 before tax. Mrs M also provided her bank statements for the three months preceding the agreement, March to May 2019. These confirm that Mrs M was in receipt of statutory maternity pay of less than £600 a month.

The bank statements also show that Mrs M spent an average of over £150 a month over this period repaying credit and store cards and buy-now-pay-later purchases. There are other identifiable costs such as gym membership, petrol and food, along with payments to her partner which Mrs M says were contributions to rent, food and purchases for their child. There are also what appear to be clothes purchases and cash withdrawals. In summary, I can see that Mrs M was spending what she earned and I don't think further checks would have provided any reassurance to Startline that she would be able to meet her repayments without difficulty.

As mentioned, ahead of this final decision, I shared monthly summary figures from Mrs M's bank statements with Startline which shows that Mrs M didn't have a surplus (or enough of a surplus) each month to meet these loan repayments. Startline says that the funds paid into Mrs M's account for March, April and May 2019 were significantly higher than the maternity pay the customer was receiving, which would indicate that she was in receipt of other forms of income.

I've looked again at Mrs M's bank statements from the months before the agreement began and can see that the deposits into her account comprised her maternity pay, transfers in from two people and ad-hoc Paypal payments. Mrs M says the transfers were loans from her husband and her mother, and I can see that she returns this money each month, usually in a lump sum following her maternity pay deposit. There are two anomalous cash withdrawals in these months following transfers, which Mrs M said was paid towards rent or household costs. Mrs M explained that she sold her clothes and other possessions through various online sites and was paid through Paypal. She said *"I was selling my clothes, bags, gifts I had off people in the past on these accounts to make any money I could."*

Mrs M has been consistent in what she's said about her circumstances at the time and her mental health issues, and I am persuaded that she didn't have another source of income. It seems to me she borrowed money and sold items, but this doesn't mean she had additional income available to meet her loan repayments and, from the information available, I can't see that Mrs M clearly indicated that she would utilise assets to meet her repayments. (see CONC 5.2A.12R). Mrs M was the sole borrower and responsible for her loan payments and I remain of the view that the loan was not sustainable for her.

I've noted what Startline said about declining a previous application from Mrs M where the repayments would have been £414 a month – I don't know the details of that application so I don't know what factors influenced that decline. As I've explained, I think proportionate checks would likely have shown that Mrs M would potentially be spending half her basic monthly pay on repaying existing debt plus this agreement, and would be taking on the additional cost of running a car alongside her other costs which I've mentioned above. I don't think Startline would have agreed credit for her under these circumstances, and so I find it was irresponsible to have done so

As explained above, Mrs M fell into arrears almost immediately and within six months the agreement was cancelled and the car was repossessed. Mrs M has been left owing a significant sum having had the use of the car for a short time, and her credit file is likely to have been adversely impacted. I think these consequences for Mrs M were foreseeable, and Startline needs to take steps to put things right for her.

Putting things right

Startline says that the car was recovered on 24 October 2019 and had been driven over 5,200 miles since the agreement began. The account history shows that Mrs M paid a deposit of £300, a monthly payment of £278 and a card payment of £40, which amounts to £618 in total.

Mrs M had the use of the car for almost five months and I currently think that the amount she's paid, about £124 a month, is a fair charge for her use of the car. So I don't think it's fair that Startline refunds anything to Mrs M as I think she would have incurred some costs to stay mobile.

In summary, to put things right for Mrs M Startline should:

a) Remove the outstanding balance owing and consider the debt settled; and
b) Remove any adverse information about this finance agreement from Mrs M's credit file.

My final decision

For the reasons set out above, I'm upholding Mrs M's complaint about Startline Motor Finance Limited and require that it put things right for her as I've outlined.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 1 March 2022.

Michelle Boundy
Ombudsman