

The complaint

Mr S complains that Startline Motor Finance Limited (SMFL) irresponsibly granted him a hire purchase agreement he couldn't afford to repay.

What happened

In May 2016, Mr S acquired a used car financed by a hire purchase agreement from SMFL. Mr S paid a £600 deposit and was then required to make 60 monthly repayments of £138. The total repayable under the agreement was £8,869. Mr S terminated the agreement in July 2017.

Mr S says that SMFL didn't complete adequate affordability checks. He says if it had, it would have seen the agreement wasn't affordable. SMFL didn't agree. It said that it was able to establish sufficient affordability from Mr S' credit file and so further proof of affordability wasn't requested.

Our adjudicator recommended the complaint be upheld. He thought SMFL ought to have realised the agreement wasn't affordable to Mr S.

SMFL didn't respond to our adjudicator's view and so the case 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.

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.

SMFL has said that it carried out a credit check and this information combined with Mr S' cash deposit meant he met its affordability criteria. SMFL hasn't provided a copy of the credit check it completed. Mr S has provided a copy of a recent credit report but this contains limited information from the when the agreement was provided.

The agreement had a term of 60 months and while I note SMFL's comments about not requiring further checks, a credit check won't have indicated what Mr S' regular income and living expenses were. Without knowing this, SMFL wouldn't have got a reasonable understanding of whether the agreement was affordable or not. It therefore didn't complete proportionate checks.

I think it would have been proportionate for SMFL to have found out more about Mr S' income and committed expenditure, such as his living costs. I can't be sure exactly what SMFL would have found out if it had asked. In the absence of anything else, I think it would be reasonable to place significant weight on the information contained in Mr S' bank statements as to what would most likely have been disclosed.

I've reviewed three months of bank statements leading up to the lending decision. Mr S has provided copies of his statements from his sole account and his joint account. Mr S' bank statements show he had an income of around £1,100. Mr S transferred around £600 to the joint account each month for payments of bills and had further committed expenditure for items such as petrol, food and other credit commitments of around £400. This demonstrates that taking Mr S' income and expenses into account Mr S didn't have enough disposable income to afford the additional borrowing.

Putting things right

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. But Mr S did have use of the vehicle for around 14 months, so I think it's fair he pays for that use. But I'm not persuaded that monthly repayments of £137.80 a month are a fair reflection of what fair usage would be. This is because a significant proportion of those repayments went towards repaying interest.

There isn't an exact formula for working out what a fair monthly repayment would be to reflect Mr S' usage. But in deciding what's fair and reasonable I've thought about the amount of interest charged on the agreement, Mr S' likely overall usage of the car and what his costs to stay mobile would likely have been if he didn't have this car. In doing so I think a fair amount Mr S should pay is £75 for each month he had use of the car. This means SMFL can only ask him to repay a total of £1,050.

To settle Mr S' complaint SMFL should do the following:

- Refund all the payments Mr S has made (including the deposit), less £1,050 for fair usage.
 - If Mr S 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 Mr S 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 Mr S' credit file regarding the agreement.

My final decision

I uphold this complaint and direct Startline 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 Mr S to accept or reject my decision before 13 April 2022.

Jane Archer
Ombudsman