

## The complaint

Mr S complains that Startline Motor Finance Limited acted irresponsibly when it agreed to provide him with finance to fund the purchase of a used car and then treated him unfairly when he struggled to meet repayments.

## What happened

Mr S got this car under a hire purchase agreement (HPA) in May 2019. It cost just under £7,000. Mr S paid a deposit of £1,000 and agreed to repay about £8,200 (including interest) over 36 months at around £300 a month. In 2020 Mr S ran into financial difficulties. Startline agreed repayment plans but these weren't maintained and the account defaulted in 2021. Mr S thinks Startline was wrong to lend him the money in the first place - because he couldn't afford to pay it back. And he feels Startline treated him unfairly when it wouldn't reduce or defer repayments.

Startline says checks carried out before lending suggested that Mr S could afford to repay the finance so it wasn't wrong to lend. And it looked into his financial situation (when he reported problems) but couldn't offer a payment break - although Mr S was given extra time to pay, repayment plans were agreed and other options were explored, such as early termination. Mr S declined contact at times and failed to maintain arrangements but Startline was open to him keeping the car, if he paid off arrears.

Our investigator thought Startline should have done more checks before lending but it looked as if Mr S could afford the finance when he took it out - so, even if Startline had carried out further checks, it would probably still have agreed to lend. She wasn't persuaded that Startline treated Mr S unfairly when he ran into financial problems and she didn't recommend the complaint should be upheld.

Mr S asked for an ombudsman to review the complaint. In summary, he said:-

- if Startline had done more checks, it would have realised that the HPA wasn't affordable for him - because he had multiple debts and his current account was managed by collections;
- the income and expenditure amounts our investigator referred to in her view don't look right - he's never had that much disposable income;
- the broker that arranged the finance knew that he had other debts - including a £10,000 guarantor loan - and suggested Mr S should use some of the money he borrowed from another source to make payments towards this HPA; and
- the HPA wasn't affordable and he felt pressured into taking it out due to the broker's persistent approach.

Having considered the relevant information about this complaint I wasn't minded to uphold it. My reasons weren't quite the same as the investigator's so I issued a provisional on 19 January 2022 to let the parties see my provisional findings and make further submissions (if they wanted to) before I made my final decision. A copy of my provisional decision is set out below and this forms part of my final decision.

## **My provisional decision**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. In doing so, I've taken into account – amongst other things – the rules and guidance for lenders set out in the Consumer Credit Sourcebook (“CONC”) within the Financial Conduct Authority's handbook and guidance issued by the Financial Conduct Authority (FCA) in respect of the pandemic.

Where evidence is incomplete, inconclusive or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.

### *Was the lending affordable for Mr S at the outset?*

Startline was obliged to undertake enough reasonable and proportionate borrower focussed checks here to satisfy itself that Mr S would probably be able to repay the money he borrowed in a sustainable way. What's reasonable and proportionate will vary depending on several factors - including the amount of credit, the total repayable, the size of repayments, the duration of the agreement and the cost of the credit. The total repayable here was just over £8,000 with monthly repayments of around £300 over three years.

Startline says it looked at one recent payslip and completed a credit check in order to satisfy itself that Mr S could afford the finance repayments. I don't think that's unreasonable necessarily but, having considered Mr S's credit file at the time, I think Startline is likely to have been aware that he had numerous historic defaults. And I consider the number of defaults (and the amount of defaulted debt) should have alerted Startline to the fact Mr S might have some financial issues. I think it would have been reasonable for Startline to do some further checks in this situation. So, I've gone on to consider what's likely to have happened if Startline had carried out sufficient reasonable and proportionate checks.

To get some idea of Mr S's financial position at the relevant time I've looked at his bank statements for three months before he took out the HPA. I'm satisfied that he seemed to have a regular income of over £2,000 a month and his routine outgoings were about half that amount. I accept the statements show some payments to debt collectors - and I can see Mr S had taken out some payday loans as well - but this alone doesn't mean the HPA was unaffordable.

I think Mr S had (what seemed to be) a relatively secure job at the relevant time. He had no dependents. And, whilst I appreciate his income fluctuated (in that his basic pay would increase when he received sales commission at times), it looks as if he had regular disposable income of around £900 a month.

Mr S told us he took on some other significant debts around the same time as this HPA. I think it's unlikely that these would have shown up on any credit check Startline did – because it takes a little time to update credit records. But, Mr S says he told the credit broker that arranged the HPA about this additional borrowing and some other issues he had at the time. If that's right, then I think it's something Startline would have needed to take into account so we asked the credit broker for the relevant call recordings.

I've listened to several calls between Mr S and the broker that set up the HPA. I think these seem to deal with the whole process, from the initial enquiry to Mr S being accepted for the finance. I'm satisfied that Mr S was asked about his income and how much he felt he could afford to pay each month. I can't see that any additional borrowing or financial (or other) problems were raised or discussed. It looks as if Mr S made a number of other credit applications around this time and I think he may have mistaken what was said during these

particular calls.

Based on the information I have, I'm satisfied that Mr S had enough income left each month to meet the repayments due under this HPA sustainably (even taking his additional debt repayments into account). And I'm not persuaded that Startline acted unfairly or irresponsibly when it agreed to provide the HPA.

### *Financial difficulties*

Mr S had a number of repayment issues during the course of this HPA. I understand he's also had some other problems and I appreciate he feels Startline didn't act fairly and should have provided more support. I'm sorry to hear about everything that Mr S had been through. I can see he's had a difficult time. I've considered the evidence supplied by the parties in order to decide if Startline complied with its obligations in respect of customers like Mr S who are having financial issues.

As a starting point, I reviewed Startline's customer contact notes - which seem to be contemporaneous and reasonably detailed. I can see that Mr S contacted Startline in February 2020 because he'd fallen behind with his repayments. He said he had been off work due to illness and his employer didn't pay sick pay. The account was two months in arrears at that point and Startline offered to spread the arrears over the next three months - so Mr S would pay £400 a month, to bring things up to date. Based on the information Startline had at the time, I don't think that sounds unreasonable.

Mr S was unable to maintain the agreed repayments unfortunately. He got in touch with Startline again in July 2020 and said he was struggling financially. He explained that he had not been paid since February - because his employer asked employees to take unpaid leave - and then, due to the impact of the pandemic, he lost his job. Mr S wanted a payment break but Startline said this wasn't possible, due to lack of contact, arrears and concerns about affordability. Startline agreed to put a payment plan in place - for Mr S to pay £400 a month over the next 6 months - but it also issued a notice of default.

Mr S managed to bring things up to date sufficiently to avoid the default and he told Startline that he was working again - in September 2020 - so he should be able to maintain his repayments going forward. I think Mr S did his best to keep up but he struggled to make his payments on time over the next few months and Startline issued another default notice in November. It looks as Startline discussed some other termination options with Mr S around this time - that would mean he could hand the car back with nothing else to pay - but Mr S declined as he wanted to keep the car because he needed it for work.

Mr S was able to satisfy the default and he asked to repay additional arrears over the next three months. Startline seems to have been open to that but it was unable to get in touch with Mr S and no arrangement was put in place. Mr S raised a complaint around this time, saying he thought the finance unaffordable from the start. And, by January 2021, the arrears were nearly £1,000.

Startline issued another default notice and, in February 2021, Mr S explained that he found speaking to staff overwhelming. Startline agreed to provide email contact only - which I think was fair. Mr S emailed the following day to say he would make two payments (totalling about £600) over the next two weeks and he should be able to meet his monthly payments from March onwards and pay a separate amount to reduce the arrears. Mr S made the two payments and Startline agreed to spread the remaining arrears over three months (at an additional £200 a month) up to the end of the HPA in May 2021.

Mr S paid £500 in March as agreed but he missed the April payment. He told Startline that

he'd been the victim of card fraud and asked for more time. Startline reminded Mr S that the HPA was due to come to an end in May and offered to add the arrears to the end of the agreement (over the following two months) if Mr S made one payment. Mr S paid £355 at the end of June 2021 but no further payments were received and the account defaulted in August with a balance of £655. Startline told Mr S that he could keep the car if he was able to pay the outstanding balance – and Mr S made the final payment in November 2021.

*Should Startline have done more to support Mr S?*

The Financial Conduct Authority (FCA) had issued guidance in respect of financial difficulties arising as a result of Covid-19 by the time Mr S got in touch with Startline in July 2020 for “exceptional and immediate support to customers facing payment difficulties due to circumstances arising out of coronavirus”. This guidance came into effect on 27 April 2020 and said *eligible* customers should be able to request a payment deferral for a period of three and up to six months (from July 2020). The guidance also says “where a customer was in pre-existing financial difficulty, our existing forbearance rules and guidance in CONC would continue to apply.”

I'm satisfied that Mr S was in arrears before he was asked to take a pay cut in February 2020 and the payment arrangement that he agreed to then (to clear outstanding arrears) wasn't complied with. So, I don't think it was unreasonable of Startline to consider that Mr S was in “pre-existing financial difficulty” at this stage, meaning it should continue to treat him with forbearance and consideration - in line with its obligations under CONC. Amongst other things, CONC 7.3.4 and CONC 7.3.6 provide that “a firm must treat customers in default or in arrears difficulties with forbearance and due consideration” and “where a customer is in default or in arrears difficulties, a firm should allow the customer reasonable time and opportunity to repay”.

I'm satisfied that Startline did offer some flexibility here - by allowing Mr S additional time and agreeing several payment plans. I think Startline also kept Mr S reasonably informed about arrears and I can see it directed him to free sources of debt help at various times. I don't think it was unreasonable to issue default notices when the arrears built up. These seem to have been sent in line with the requirements set out in the Consumer Credit Act 1974. And Mr S was able to bring the arrears up to date and avoid default on two occasions.

I consider it was reasonable for Startline to discuss early termination options with Mr S in November 2020. This included a process known as voluntary termination (VT) which would have enabled him to hand the car back with nothing further to pay (provided he'd taken care of it). I appreciate Mr S needed the car and rejected this option but I don't think it was unfair of Startline to let him know that it was available at the time.

The FCA issued further guidance in January 2021 which included customers who were in financial difficulties before the pandemic but experiencing further issues arising out of the coronavirus and I've considered this as well. I'm satisfied that the arrears on Mr S's account were almost £1,000 by the start of January 2021. And I don't think it was unreasonable of Startline to issue a further default notice at this stage. I can see Startline agreed further payment arrangements after that - and offered to add payments to the end of the HPA, in May 2021, which seems fair. It's unfortunate that Mr S was unable to maintain these arrangements and the account defaulted. But, as far as I can see, Startline acted fairly again by delaying steps to re-possess the car so that he was able to pay off arrears and keep it.

Looking at everything that happened, I think it might have been helpful for Startline to try and find out a bit more about Mr S's circumstances at various points – in July 2020 especially. Startline could have asked him to complete an income and expenditure form to assess his financial situation in a bit more detail and possibly considered offering breathing space

(which would have meant no payment was required for a time). Startline wasn't obliged to do this however. And, even if it had done so, I'm not persuaded it's likely to have made any material difference to the outcome overall.

Ultimately, I think Startline showed forbearance and treated Mr S sympathetically when he experienced financial problems. It was fair of Startline to agree to various payment arrangements when Mr S needed more time. And I don't think it was unreasonable to accept his offers about how much he could afford in these particular circumstances.

I think Startline seems to have reviewed Mr S's situation regularly and tried to contact him when it thought there might be a problem. I'm satisfied it also signposted help and considered other termination options such as VT, in the way that we'd expect. It looks as if Mr S didn't always respond to Startline which, I appreciate, was probably because of the other difficulties he's told us about. But, Mr S doesn't seem to have told Startline about those until much later on in the process. And I'm satisfied that Startline took steps then to change the way it communicated with Mr S and treat him appropriately.

Taking everything into account, I think Startline treated Mr S sympathetically and showed forbearance when he experienced financial problems, in line with its obligations. For the reasons I've set out above, I don't think it was irresponsible of Startline to provide the finance. So, whilst I'm sorry to disappoint Mr S, I'm not presently persuaded that there are sufficient fair and reasonable grounds to uphold this complaint. And I'm unable to require Startline to provide a refund or do anything else.

### **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.

I invited the parties to consider my provisional decision and let me have any further any further comments and information by 9 February 2022. I explained that I would look at all the available evidence after that and make my final decision.

The time I set for responses has now passed. Mr S hasn't responded or raised any objection to my provisional findings and Startline accepts my provisional decision. I see no reasonable grounds to depart from my provisional conclusions in these circumstances. So, for the reasons set out above, I am unable to uphold this complaint.

### **My final decision**

For the reasons I've given, my decision is I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 11 March 2022.

Claire Jackson  
**Ombudsman**