

The complaint

Mr B has complained Startline Motor Finance Limited (Startline) didn't treat him fairly when he asked for help.

What happened

Mr B acquired a car under a hire purchase agreement with Startline in 2017. The car cost around £16,500 and was due to be paid back over five years with instalments of around £400.

In May 2020 Mr B says he was made redundant as a result of Covid-19. He contacted Startline to ask for help in June, and it offered him a one-month payment deferral. After this, Mr B continued to pay his agreement using savings but contacted Startline in January 2021 to ask for further support. He requested a further payment deferral.

Startline and Mr B communicated over the next few weeks but weren't able to reach an agreement. Startline wanted to take steps to assess Mr B's affordability. Whereas Mr B wanted Startline to offer support that he thought the Financial Conduct Authority (FCA) had set out in its Covid-19 guidance for car finance firms – that is, for Startline to have given him the option of taking a six month payment deferral. Mr B started missing payments in January 2021. And in March, Startline issued a notice of its intention to terminate the agreement.

As things couldn't be resolved, Mr B complained and Startline sent its final response in April 2021. Its response essentially said it wasn't upholding Mr B's complaint because it had been unable to complete an income and expenditure review to make sure the assistance was appropriate. Mr B brought the complaint to our service to consider. And he was able to recommence making payments again in June 2021.

After Mr B brought his complaint to our service Startline issued a court claim in December 2021. The claim was for delivery up of the car and damages pursuant to termination of the agreement.

One of our investigators looked into things and upheld the complaint. She thought Startline acted fairly in 2020 by offering a one-month payment deferral. But she thought Mr B should have been eligible for up to six payment deferrals in total. She highlighted Mr B had missed a total of six payments (including the payment in 2020). She thought the FCA guidance was intended for immediate support, so didn't think Startline were required to carry out detailed checks before agreeing to the deferral, in Mr B's particular circumstances. She also thought the situation had caused Mr B a considerable amount of trouble and upset. In summary, our investigator recommended Startline:

- Treat Mr B's account as if he'd had a total of six payment deferrals.
- Remove adverse information from the credit reference agencies from January 2021 onwards.
- Remove any charges that had been applied as a result of the court action and the missed payments.
- Pay Mr B £250 compensation.

Startline didn't agree with the recommendation. In summary it said:

- It had acted responsibly and that it didn't think it would have been right to automatically grant payment deferrals to all customers who requested it.
- It attempted to review each request individually to make sure it treated customers fairly.
- It gave Mr B other options such as voluntary surrender or voluntary termination.
- Its enquiries were made to make sure the payment deferral was the best option for Mr B, and that the affordability checks were reasonable.
- Without carrying out the review of Mr B's situation, it had no way of knowing what the long-term impact of a payment deferral would have been, and whether it was in Mr B's best interests.

As things couldn't be resolved, the complaint has been passed to me to make a 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.

I first want to say I'm sorry to hear Mr B was negatively impacted by Covid-19. It can't have been easy, and I want to thank him for taking the time to bring his complaint to our service.

I also want to acknowledge that I've summarised the events of the complaint. I don't intend any discourtesy by this – it just reflects the informal nature of our service. I want to assure Mr B and Startline that I've reviewed everything on file. And if I don't comment on something, it's not because I haven't considered it. It's because I've concentrated on what I think are the key issues. Our powers allow me to do this.

When considering what is, in my opinion, fair and reasonable, I've taken into account relevant law and regulations; regulator's rules, guidance and standards; codes of practice; and what I believe to have been good industry practice at the relevant time.

Mr B acquired the car under a regulated hire purchase agreement, and our service is able to consider complaints relating to these sorts of agreements.

I think the key question I need to ask myself is did Startline treat Mr B fairly when he asked for help? Having reviewed everything that's happened, I don't think it did. I also think our investigator's recommendations are a fair way to put things right. And for largely the same reasons. I'll explain why.

Relevant rules and guidance

Relevant guidance includes the FCA's Consumer Credit Sourcebook (CONC) and in particular CONC 7, *Arrears, default and recovery (including repossession)*. CONC 7 says that firms should consider consumers in default or in arrears difficulties with forbearance and due consideration. This could be in the form of waiving interest, deferring arrears payments, accepting token payments etc.

Additional guidance was also introduced by the FCA in April 2020 – *Motor finance agreements and coronavirus: temporary guidance for firms*. This guidance introduced temporary measures for consumers whose finances had been impacted by Covid-19. The FCA states the additional guidance builds on Principle 6 ('A firm must pay due regard to the interests of its customers and treat them fairly').

In relation to payment deferrals or deferral periods – this guidance says:

“Where a customer is already experiencing or reasonably expects to experience temporary payment difficulties as a result of circumstances relating to coronavirus, and wishes to receive a payment deferral, a firm should grant the customer a payment deferral for 3 months unless the firm determines (acting reasonably) that it is obviously not in the customer’s interests to do so.

In determining whether a 3-month payment deferral is obviously not in customers’ interests, firms should consider both customers’ need for immediate temporary support and the longer-term effects of a payment deferral on the customer’s situation, in particular the customer’s ability to repay any accrued interest once the payment deferral ends, and over what period”.

The FCA updated this guidance in July 2020. The update provided further guidance for firms, and more specifically advised on what considerations should be given to consumers that were given payment deferrals following its previous announcement. Eligible customers were able to ask for a further three-month payment deferral.

The guidance was updated again in September and November 2020. The November guidance said: *Eligible customers seeking a first payment deferral, and those eligible customers who have previously accessed payment deferrals that totalled less than 6 months under this guidance, can seek a new payment deferral up to 31 March 2021.*

And the guidance goes on to say the FCA expects firms to extend payment deferrals after 31 March 2021 to cover payments up to 31 July 2021 providing they are consecutive and that the customer is eligible.

Taking all this guidance into account, it seems to me that the overall intention of the guidance was to provide quick, short-term assistance to customers in difficulty without the need for prolonged discussions or detailed additional checks before agreeing a payment deferral. And that providing Mr B was eligible he should have been given a further payment deferral when he asked for one in January 2021.

Did Startline treat Mr B fairly?

As a starting point, I think Startline acted fairly by granting Mr B a payment deferral when he asked for one in 2020. So I don’t think I need to go over that again here. I’ve next thought about the support it offered in 2021.

On the one hand, I can understand why Startline had some concerns about Mr B’s ability to sustainably repay the agreement. He said he’d been made redundant in May 2020 and by January 2021 he’d not got back to the position where he could make payments. And, generally speaking, establishing a customer’s income and expenditure is a common practice for a lender to carry out when deciding what support to offer someone in financial difficulties.

But on the other hand, I have to bear in mind Mr B got in touch with Startline because he, like many other people, was facing a period of reduced income and uncertainty. From what I’ve been told, prior to the impact of Covid-19, Mr B had not had any issues paying the agreement since taking it out in 2017. It looks like Covid-19 was the reason he was in financial difficulties. So I think the guidance was intended for customers like Mr B.

Moreover, the guidance was there to offer some immediate temporary support for customers impacted by Covid-19. I don’t think there was a blanket requirement for Startline to carry out detailed checks before offering support. I think it would have been fairer, in this particular

case, for Startline to have offered Mr B the option to take out a further payment deferral. As it turned out, Mr B recommenced his payments from June 2021. So, in total, his requirement was for a six-month deferral.

Startline has repeatedly said it didn't want to offer something to Mr B that was not in his best interests. But the FCA guidance says Startline should have granted the deferral unless it determined (*acting reasonably*) *that it is obviously not in the customer's interest to do so*. I think this is a subtle but important difference. I don't think that 'acting reasonably', in this particular case, meant Startline had to carry out affordability checks. And I'm not persuaded that granting Mr B the deferral in January 2021 was obviously not in his best interests. So I think Mr B should have been given the deferral. Or indeed had it applied retrospectively once he started to recommence his payments. To put things right, I think he should be put in the position he would have been in, had he been given the deferral, which includes ensuring his credit file doesn't show a worsening status. Startline should come to a suitable arrangement with Mr B to enable him to clear the deferred payments.

Does Startline need to take any further action.

I agree with our investigator the matter has caused Mr B a lot of worry and upset that, to my mind, could have been avoided. He's worried about the impact on his credit file. This happened when he had the added worry of being out of work for some time as a result of Covid-19. He's had the further worry of a court claim sent to him. And he's had to go to court on occasions to explain what's happening.

Startline also took the view that as the debt was with its legal team there was no activity Startline was *involved in to influence*. Frankly, that's unhelpful to say the least.

Moreover, and importantly, I think it's disappointing to see Startline commenced court proceedings at the time it did. CONC 7.15.10R says:

A lender must not initiate legal proceedings in relation to a regulated credit agreement where the lender is aware that the customer has submitted a valid complaint or what appears to the firm may be a valid complaint relating to the agreement in question that is being considered by the Financial Ombudsman Service.

I can't stop Startline from carrying out legal proceedings, but taking everything into account, I think it should strongly consider bringing the debt back from its legal team. I agree any fees or charges in relation to the court action or missed payments should also be removed. And I agree Startline should also compensate Mr B £250 for the distress and inconvenience caused.

My final decision

My final decision is that uphold this complaint and direct Startline Motor Finance Limited to:

1. Treat the 2021 missed payments as if they were deferred.
2. Remove adverse information from the credit reference agencies from January 2021 onwards.
3. Remove any fees or charges that have been applied as a result of the court action and the missed payments.
4. Pay Mr B £250 compensation.

Startline should also contact Mr B to make a suitable sustainable arrangement for him to clear the deferred payments. I'd remind Startline to treat Mr B with forbearance and due consideration if he's unable to clear the deferred payments in one go.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 7 June 2022.

Simon Wingfield
Ombudsman