

The complaint

Mr R has complained that STARTLINE MOTOR FINANCE LIMITED ('Startline') has recorded a default on his credit file and registered a marker against him at CIFAS – the national fraud database.

What's happened?

Mr R entered into a hire purchase agreement with Startline in July 2014, to buy a car. Roughly a week later, Mr R noticed several problems with the car. He reported them to Startline and the dealership which sold him the car.

Over the next few months, a series of back and forth interactions between Mr R, Startline and the dealership took place regarding the disputed issues with the car. During this time, all parties appear to have made proposals to try and resolve matters. But a resolution was never found.

Whilst the dispute was ongoing, contractual payments towards the hire purchase agreement were missed, which caused arrears to build on Mr R's account. As the arrears weren't cleared, Startline made the decision to issue Mr R with a default notice in January 2015. Startline terminated the hire purchase agreement in February 2015 and recorded a default on Mr R's credit file.

Shortly after Startline had terminated the hire purchase agreement, it instructed a third-party to recover the car. However, the car wasn't recovered until October 2018 – more than three years after recovery action began.

Because of the difficulties Startline faced when trying to recover the car, it reported Mr R to CIFAS, and a fraud marker was registered against him in December 2015. The marker was for misuse of facility due to the theft of an asset.

When Mr R complained to Startline about the default and CIFAS marker, it said:

- The default marker was applied correctly, as a result of Mr R failing to clear the arrears which had built up on his account. However, as a gesture of goodwill, it would reduce the outstanding balance on Mr R's account to zero and update the credit reference agencies to confirm the default had been satisfied.
- The CIFAS marker was applied correctly when Mr R failed to make the car available for collection after the hire purchase agreement had been terminated.

What Startline has told us:

- Mr R contacted Startline and the dealership in July 2014, to explain he was having issues with the car – specifically, with the air conditioning, the gearbox and the paintwork. He asked the dealership to cover the cost of the repairs or to swap the car. Shortly after this, Mr R provided a quote for the repairs which he'd obtained from an independent garage.
- The dealership said it wanted to see the car before agreeing to anything.

- Further conversations took place between Startline, Mr R and the dealership to try and find a resolution. However, Mr R kept changing his mind on what he wanted to resolve matters. For example, in mid-August 2019 he wanted to reject or swap the car, but then he changed his mind to say that he wanted to keep the car and have the dealership pay for the repairs.
- Startline told Mr R that it wouldn't authorise repairs to be completed elsewhere. But it offered another resolution. It said that if Mr R returned the car to the dealership, it would unwind the finance agreement and refund his deposit. It asked Mr R to get in touch if he wanted to accept this proposal, but it didn't hear back from him for a while.
- Arrears started to build up on Mr R's account very early on, but the only time it was able to speak to Mr R after the initial interactions in July and August 2014, was later on in November 2014. Mr R told Startline that he'd been in hospital but would look to clear the arrears. A new direct debit mandate was set-up but then there were further missed payments and Startline decided to terminate the hire purchase agreement in February 2015. It recorded a default against Mr R's account at this time, to provide an accurate reflection of the payment history on the account.
- Between February 2015 and October 2018, it instructed different third-party repossession agents to collect the car, but without success. Startline believes this was down to Mr R being evasive. For example, in January 2017, Mr R contacted it to say he'd been keeping the car in storage until Startline reimbursed him for any financial loss he'd incurred since the hire purchase agreement was taken out. On other occasions, he provided different versions of events, including telling the repossession agents that the car was in Birmingham. At one point, he said he wanted to be taken to court and wouldn't speak about the matter any further.
- Because of the difficulties it faced in recovering the car, Startline reported Mr R to CIFAS and a marker was recorded under the misuse of facility category – with the specific reason being a 'theft of asset'. It also started legal proceedings and obtained a 'return of goods' order in June 2018. A few months later, it successfully retrieved the car, sold it and used the sale proceeds to reduce the outstanding balance on Mr R's account. The hire purchase agreement was then closed and Startline confirmed that it wouldn't pursue Mr R for the shortfall.
- Startline is satisfied that the default and CIFAS markers were applied correctly. In relation to the CIFAS marker, it said that it legally owned the car. So, upon termination of the hire purchase agreement, Mr R was required to make the car available for collection – yet he failed to do this and over time was extremely evasive. This is despite the many requests and attempts by Startline to recover the car. Because the car was not returned and Mr R no longer had permission to retain the car, Startline believes it was right to say the car had essentially been stolen.

What Mr R has told us:

- The car he obtained on finance had several issues from the start.
- When he raised these issues with the dealership and Startline, he was treated poorly.
- Because an agreement couldn't be reached about how to sort out the issues with the car, he was told the finance agreement could be cancelled and he would get his deposit back. But this didn't happen. After this, Startline started to take payments from his bank account via direct debit.
- He contacted Startline and asked for any monies to be returned, but this didn't happen.
- Because of all the problems with the car and his dealings with Startline and the dealership, his health suffered.
- He recalls receiving contact from a company who asked for the whereabouts of the car. He confirmed that he would return the car to Startline as soon as any monies owed to him were returned. He was also contacted at some point by the local police,

but they said this was a civil matter and ceased their involvement.

- He received correspondence from a bailiff linked to the court informing him a court order had been issued. He says he didn't know anything about court action but after visiting court, he arranged for the car to be delivered to Startline.
- It was only after the car had been returned that he found out default and CIFAS markers had been applied against him.
- He's received correspondence from Startline confirming he doesn't owe anything further on the hire purchase agreement.
- Both markers have had a massive impact on him as they have ruined his credit rating, resulting in him being unable to obtain credit elsewhere.

What did our investigator say?

He accepted there was an ongoing dispute about the condition of the car linked to the finance agreement but pointed out that Mr R was still obliged to meet his contractual payments. As Mr R had failed to make these contractual payments, our investigator was satisfied that Startline had fairly defaulted his account.

However, our investigator wasn't persuaded that Startline had done enough to justify the CIFAS marker. So, he recommended that Startline remove the CIFAS marker and pay Mr R £250 in compensation for the trouble and upset the marker had caused him.

Both parties disagreed with our investigator. Mr R said the CIFAS marker had a significant impact on him and mentioned again how it affected his ability to obtain credit elsewhere. Startline said that Mr R had kept possession of the car for several years after the hire purchase agreement had been terminated, and it believes Mr R intentionally withheld the car. So, it maintained that the CIFAS marker was correctly applied.

The complaint was passed to me to decide.

My provisional decision

I issued my provisional decision on 10 March 2022. I'll set out what I said below.

Default marker

It's my understanding that the default marker is no longer on Mr R's credit reference file, due to the passage of time. But I've still considered whether it was fair for Startline to apply it in 2015.

Having done so, I agree with our investigator that Mr R's account was fairly defaulted when contractual payments were repeatedly missed, and arrears accrued on the account that were not cleared. I do appreciate that there was a breakdown in the relationship between the parties, caused by a dispute about the quality of the car Mr R obtained on finance. It's clear that both parties have different perspectives on what was said and done once Mr R raised his concerns about the car. But Mr R still had an obligation to ensure he was maintaining the contractual payments on the hire purchase agreement – even as the dispute was ongoing. From the evidence I've seen, that doesn't appear to have happened.

I'm also satisfied that the timeframe within which the account was defaulted was reasonable. It seems that contractual payments were missed from the start of the hire purchase agreement. But I can see that after Mr R got in touch with Startline in November 2014, it hoped that the accrued arrears would be cleared and contractual payments would be maintained going forwards – a new direct debit mandate was set-up to assist with this. So even though several contractual payments had already been missed at this stage, I think it

was reasonable for Startline to give Mr R the opportunity to rectify the account. However, the evidence I've seen shows that contractual payments were missed again and, by this stage, I think the relationship between Startline and Mr R had broken down to the point where Startline couldn't reasonably expect any further payments to be made. So, I'm satisfied that it was fair for Startline to default the account in February 2015.

From what I've seen, I'm persuaded that Startline sent a default notice to the address it held on record – which is the same address as the one listed on the finance agreement and held by our Service – as it was required to do. It's possible that Mr R didn't receive the default notice for one reason or another but, on balance, I'm not satisfied that Startline failed in its obligations here.

CIFAS marker

I understand that the CIFAS marker was applied in December 2015. As it has been more than six years since then, the marker should no longer be visible. So, just as with the default marker, there is no need for me to reach a decision on whether the marker should be removed. But again, I have considered whether it was fair for Startline to apply the marker in the first place.

The CIFAS marker was for misuse of facility. Startline says that there had been a theft of an asset (the car associated to the finance agreement) because Mr R failed to ensure the car was recoverable after the finance agreement was terminated.

Startline needed to have more than a suspicion or concern in this respect. It needs to be able to show that it had reasonable grounds to believe that a fraud or financial crime had been committed or attempted, backed up by evidence which would support it being reported to the authorities. The question is whether Startline had sufficient grounds to conclude that Mr R intentionally attempted to commit fraud – in other words, did he intend to steal the car. To make a reasonable decision on this, I need to look at the wider picture.

This entire matter began with a dispute about the quality of the car Mr R purchased under the finance agreement in 2014. There were unsuccessful attempts to resolve the dispute from both parties and, unfortunately, the situation escalated – ending in Mr R saying he would not return the car to Startline until he had been fully reimbursed for any losses he'd incurred.

I understand that the terms and conditions of the hire purchase agreement required Mr R to return the car upon termination of the agreement. And I accept that, on face value, Mr R appears to have disregarded this requirement. Taking everything into account, I don't think Mr R's actions helped matters. But having considered everything that happened, I'm not persuaded that the steps he took were an attempt to commit an act of fraud or financial crime. I don't think he intended to steal the car. Instead, I think his actions were a misguided attempt at resolving a dispute that, to Mr R at least, hadn't been settled in the way it should've.

In support of this finding, I've seen that the matter was reported to the police, and they ruled it a civil, rather than criminal matter. And I note that Mr R returned the car to Startline after court action took place in 2018. If Mr R's sole intention from the outset was to steal the car and never return it, I'm not sure that he would've returned it to Startline regardless of whether there'd been any court proceedings.

Overall, I'm not persuaded that Startline had sufficient grounds to apply the marker, or that the marker was fair.

The marker itself should have dropped off by now, due to the amount of time that's passed since it was registered. But I can still consider the impact of the marker and whether it would be fair for Startline to do anything further to put things right.

Mr R has said that the CIFAS marker has meant that he's been unable to obtain credit elsewhere and has caused him trouble and upset. I'm very sorry to hear about any negative impact on Mr R. However, on this occasion, I don't think it would be fair to require Startline to take any further steps. This is because, but for the CIFAS marker, I think that Mr R would still have had a similar experience.

Mr R has given us some correspondence from a finance company which says:

"Unfortunately, our decision has not changed and until the CIFAS marker and default are removed we will not be able to assist you..."

I think this shows that the default was as much of a concern to this finance company as the CIFAS marker and, from what I know about credit and lending, I think that other financial institutions would've most likely taken the same position. As I've already explained, I don't think that Mr R's account was defaulted unfairly or unreasonably. For these reasons, I'm not persuaded that the registration of the CIFAS marker caused any additional detriment to Mr R when it comes to things such as consequential loss.

It's clear to me that Mr R feels very strongly about this matter. He's told us about the impact the situation has had on his health. And he's explained that he's incurred a financial loss in terms of the car he part-exchanged, the deposit he paid and the contractual payments he made. I'd like to assure Mr R that I've taken all of this into account and thought very carefully about what he's said. However, I'm persuaded that there have been mistakes on both sides here. I don't think that Startline applied the CIFAS marker fairly. But Mr R was contractually obliged to maintain repayments under the hire purchase agreement and return the car to Startline when the agreement was terminated, yet he didn't. Unfortunately, the situation has escalated and gone unresolved for many years.

In an attempt to bring the matter to a close, Startline sold the car after it was recovered in 2018, using the sale proceeds to reduce the outstanding balance on Mr R's account then writing-off the shortfall. Overall, I'm satisfied that this action was sufficient to address its own error and the trouble and upset it caused, as well as any financial loss Mr R may have incurred during the dispute. And I'm not minded to award any additional compensation on this occasion.

For the reasons I've explained, I've provisionally decided that Startline has done enough to resolve this complaint, so it need not do anything further.

Responses to my provisional decision

Startline did not respond to my provisional decision.

Mr R replied to say that he isn't happy with my provisional decision and doesn't think it's fair. In summary, he said:

- I haven't read the case correctly or considered all the evidence.
- Startline cancelled the finance agreement so there shouldn't have been any money owed to it. He said he would return the car to Startline once it had given him his money back. But Startline sent agents to collect the car without returning his money, and they went to the wrong property. This is the reason the CIFAS marker was loaded. He begged Startline to remove the marker, but it refused to do so. So, it has

impacted on his life for many years and now I have provisionally decided that it wasn't fair for Startline to register the CIFAS marker.

- Startline ruined his credit reference file and he couldn't open an account elsewhere.
- He's lost in excess of £3,000.
- This situation has left him in financial hardship.
- He believes he should be compensated.

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.

Firstly, I would like to reassure Mr R that I considered all the evidence provided by both parties in reaching my provisional decision. I'm sorry to hear that Mr R wasn't happy with what I said, and I can fully appreciate how strongly he feels about this matter. But, in responding to my provisional decision, I don't think he's given me any new information that I haven't already had the opportunity to consider or that would change my mind.

As I explained in my provisional decision:

- Startline offered to cancel the finance agreement as a means of resolving the dispute but, ultimately, it wasn't cancelled because Startline didn't hear back from Mr R for a while. I'm satisfied that Mr R's account was fairly defaulted in February 2015.
- I'm not persuaded that Startline had sufficient grounds to apply the CIFAS marker, or that the CIFAS marker was fair. The marker itself should have dropped off by now. But for the CIFAS marker, I still think Mr R would have had a similar experience in terms of opening new accounts and consequential loss.
- I understand that this situation has had a significant impact on Mr R. But I think there have been mistakes on both sides here and I'm satisfied that the action Startline has already taken to bring the matter to a close is sufficient to address its own error and the trouble and upset it caused, as well as any financial loss Mr R may have incurred during the dispute.

As neither party has given me any new information to consider, I see no reason to depart from the conclusions set out in my provisional decision.

My final decision

For the reasons I've explained, my final decision is that STARTLINE MOTOR FINANCE LIMITED has done enough to resolve this complaint, so it need not do anything further.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 27 April 2022.

Kyley Hanson
Ombudsman