

The complaint

Miss M complains about how Startline Motor Finance Limited (“Startline”) behaved towards her in relation to a motor finance agreement she had with it.

What happened

Miss M had a hire purchase agreement with Startline for a used car. In May 2020 Miss M contacted Startline as she was experiencing temporary financial difficulty due to the impact of the Covid-19 pandemic.

Both Miss M and Startline agree about the following, Miss M initially wanted a payment deferral of three months. Startline agreed to one month only. This was because it wanted to look into Miss M’s financial situation to assess if it might properly offer her a longer payment deferral. Therefore, it asked her for information about her financial situation. Miss M contacted Startline again in August 2020 wanting a further payment deferral because her financial situation was still being impacted by the pandemic. Startline again requested information about her current financial situation.

According to Miss M, she provided the information about her finances that Startline wanted but heard nothing further until she found out that her agreement had been defaulted. Miss M also complains that Startline started repossession proceeding when it should not have done. Miss M explains that her car is her only means of transporting her young children and it is therefore essential, from her perspective, that she has a car.

Moreover, Miss M indicates she is a vulnerable consumer by reason of her mental health and due to other medical conditions as well. Miss M suggests that prior to May 2020 she’d made Startline aware of her vulnerability and the reasons for it. However, despite having this knowledge, in Miss M’s opinion, Startline did not treat her appropriately in the light of her status. Miss M complained to Startline.

Startline does not agree it treated Miss M inappropriately in any way. It suggests that the defaulting of the account did not come out of the blue. Rather, it told Miss M in October 2020 she was in arrears and if she did not make the payment for that month the account might be defaulted. It suggests Miss M agreed it could take the payment for October by direct debit, but the direct debit was returned unpaid. It adds that it tried to contact Miss M several times in November and December 2020. None of this contact led to a resolution. Therefore, as a last resort, it terminated the agreement in December 2020 and registered a default. It did not comment on the part of Miss M’s complaint about its treatment of her, in light of her being a vulnerable consumer.

Dissatisfied, Miss M came to our service.

One of our investigators considered Miss M’s complaint. He recommended that Miss M’s complaint be upheld. To put things right he said Startline must.

- refund any charges applied to the agreement for dishonoured payments, arrears letters or telephone calls because of the default.
- pay 8% simple yearly interest on all refunded amounts from the date of payment until the date of settlement.
- pay £300 for distress and inconvenience.
- remove any adverse information from the Miss M’s credit file in relation to this matter.

Miss M received our investigator's recommendation but did not tell us whether she accepted it or not, whereas Startline rejected it. In brief, Startline objected to the recommendation on the basis that it thought we were saying all motor finance consumers had an automatic right under the rules that applied at the time (I will talk about these rules more below) to a payment deferral of three months. Whereas the rules were more nuanced than that. Specifically, Startline pointed out under those rules it had to assess whether a three-month payment deferral was in the customer's best interest. To do this it said it had to look into her financial circumstances. It pointed out that Miss M's payment history had not been perfect before May 2020 and it thought this was a factor it needed to take into account when assessing whether to grant payment deferrals.

Startline asked that an ombudsman review Miss M's complaint.

I issued a provisional decision, this is what I said about what I'd provisionally decided and why.

"First, I'm very aware that I've summarised this complaint in far less detail than the parties and I've done so using my own words. I'm not going to respond to every single point made by all the parties involved. No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here."

"Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome."

"A vulnerable consumer is someone who, due to their personal circumstances, is especially susceptible to harm, particularly when a firm is not acting with appropriate levels of care. I think both parties agree that Miss M was a vulnerable consumer."

"The Financial Conduct Authority (the FCA) which is the body which regulates Startline made it clear that protecting vulnerable consumers ought to be a key focus for firms and that it was more important than ever due to the impact of Covid-19. With this in mind I think Startline ought reasonably have had due regard for Miss M's vulnerability when to applying the rules that related to consumers who had motor finance agreements and were experiencing temporary financial difficulty due to Covid-19."

"In particular, Miss M tells us she had mental health issues and neurological conditions. She added that stress could make her mental health issues worse. Moreover, her neurological conditions significantly impact her ability to communicate, and to understand unless information is explained in a specific way. For the reasons I will set out below, I think the way Startline applied the rules and its communications with Miss M fell short of the standard Miss M was entitled to expect given her individual circumstances."

"The FCA introduced guidance, which set out what firms such as Startline had to do where consumers faced temporary financial difficulty in relation to motor finance agreement due to the pandemic. In fact, the FCA issued several sets of guidance. But I will give the several sets of guidance the collective name of "the guidance"."

"In particular the 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."

It is clear that the granting of a 3-month payment deferral was the baseline position. With the caveat that a firm could decline to give a payment deferral where it was not in the customer's best interests to do so. So, I agree that there was no automatic right to the three-month payment deferral, and I am not saying there was, but there was a presumption it would be granted subject to the caveat. Whereas Startline's approach did not seem to come from this starting point.

Startline mentions Miss M's payment history prior to May 2020. However, as far as I am aware the financial difficulties, she had in May 2020 arose solely due to the pandemic. Therefore, those previous financial difficulties were irrelevant to this complaint. It follows there was no need for to consider them as they had not led to this situation for Miss M.

In any event I am not persuaded that a type of affordability assessment was necessary at all even if it had just focused on Miss M's situation in May 2020. I say this because the reason why Miss M was asking for assistance in the first place was because her finances had been thrown out unexpectedly by an event outside of her control. So of course, a check at that point was likely to show Miss M would have difficulties making her repayments during the payment deferral period, that seems obvious.

Moreover, as previously mentioned, the guidance talked about the temporary and immediate support that firms were expected to give to consumers who experienced financial difficulties with their finance repayments due to the pandemic. Albeit Startline had to take account of Miss M's best interests in offering this support. Startline suggests that in order to carry out its duty to Miss M it had to look into her financial situation in depth. However, my reading of the guidance does not suggest there was an overarching duty on Startline to carry out a detailed check as a necessary precursor to offering the immediate support the guidance anticipated. Rather, in this particular situation, I think Startline ought fairly to have offered Miss M the option to accept three-month deferrals in both May and August 2020. Had it done this the current situation may well have been avoided. This was all the more regrettable due to Miss M's vulnerabilities, where I think Startline was under an additional duty to make sure it took account of her vulnerabilities in discharging its duties correctly.

In all of the circumstances, I think it is fair and reasonable to put Miss M into the situation she most likely would have been in if the payment deferrals had been granted in May 2020 and August 2020. Therefore, in addition to the redress outlined by our investigator I think Startline must reinstate the agreement. That is so that Miss M continues to benefit from all of the protections she is afforded under the type of consumer credit agreement she entered into with Startline. If for any reason Startline is unable to reinstate the agreement, then please can it explain this and why in its response to this provisional decision.

Moreover, Miss M and Startline will have to come to some agreement between themselves about how Miss M pays back any remaining arrears accrued between May 2020 and December 2020. However, any arrangement they come to must be in line with the guidance.

Miss M suggests that Startline did not communicate with her especially about the default. But Startline's records which I have no reason to doubt suggest otherwise. That said Miss M tells us she told Startline about her communication needs and her need to receive information in a specific way. As far as I can see, Startline did not ask her what those communication needs were so it is not clear how it could have met them. I think this may very likely have caused Miss M distress and inconvenience for which Startline ought fairly to compensate her. I'll talk more about this below.

In addition, I think bearing in mind the guidance, Startline acted unfairly by taking action to repossess the car in the timeline that it did given that all of Miss M's financial difficulties appeared to spring from reasons linked to the pandemic. I don't agree that Startline can rely

on Miss M's failure to start repayments in October as agreed to establish that starting the repossession process was appropriate – that process should never have begun at that stage in any event. Therefore, whether Miss M responded to Startline after agreeing to start repayments again is not relevant. For these reasons as well as writing off any charges relating to the repossession, I think Startline ought fairly to ask the credit reference agencies to remove any adverse information it asked them to register on Miss M's credit file about the repossession activities. I also find that Startline's errors would most likely have caused Miss M to experience distress and inconvenience for which it ought reasonably compensate Miss M.

Taking account of all the circumstances, I think an award of £400 for distress and inconvenience is fair and reasonable.

Miss M has raised a new complaint about a new issue. She complains that due to being off sick from work since February 2021 she is now experiencing financial difficulties. She suggests Startline has not treated her correctly in relation to this new issue. This issue has not been considered by Startline in its final response to Miss M or investigated within this complaint. It follows that I am unable to look at this matter in this final decision."

The provisional decision I came to was as follows:

"My provisional decision is that I currently intend to order the following redress Startline Motor Finance Limited must:

- Reinstate the hire purchase agreement with Miss M.*
- Refund any charges applied to the agreement for dishonored payments, arrears letters or telephone calls because of the default or any late payments that happened before the default.*
- Refund any charges applied in relation to the repossession process.*
- Pay interest at the rate of 8% simple per year on all refunded amounts set out above. The interest to run from the date of payment until the date of settlement.*
- Pay £400 for distress and inconvenience.*
- Remove any adverse information that it has asked the credit reference agencies to register on Miss M's credit file in relation to this matter.*

If I issue a final decision following this provisional decision, it must pay the total compensation within 28 days of the date on which Miss M accepts my final decision. If it pays later than this it must also pay interest on the £400 from the date of the final decision until the date of payment at the rate of 8% simple per year.

If it considers it is legally required to deduct income tax from that interest, it must send a tax deduction certificate with the payment so that Miss M can reclaim the tax if she is able to. Miss M should refer back to Startline Motor Finance Limited if she is unsure of the approach it has taken and both parties should contact HM Revenue & Customs if they want to know more about the tax treatment of this portion of the compensation."

I invited Miss M and Startline to respond to my provisional decision. Miss M did respond, as far as I am aware we have received no response from Startline.

In summary, Miss M covered the following points in her response. Miss M provided further detailed information about her mental health from several doctors. She reiterated that before any of the matters she complains about happened she had told Startline about her mental health conditions and her other health conditions and how they impacted on her. She also suggested she had had to give Startline this same information on more than once occasion

which appears to have distressed her still further. She also suggested as she had done before, that she has given Startline relevant and sufficient information about her financial situation when asked. But in response, in her opinion, Startline took an inflexible approach and did not acknowledge or respond to her needs.

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 thank Miss M for her response to my provisional decision. I've reviewed the file again and revisited my provisional decision.

Miss M has given further details about her mental health and about how it impacts on her day-to-day life. Miss M has also described how Startline's behaviour impacted on her in an especially difficult way due both to her mental health conditions and other health conditions at the time and due to her changed financial circumstances solely due to the impact of the pandemic. I found in my provisional decision that in the circumstances given the guidance, Startline's failure to follow the guidance, Miss M's vulnerability and what Startline most likely knew about this, it had not treated her appropriately. I also found that this had likely caused her distress and inconvenience and the award I made of £400 was in recognition of this. I appreciate that Miss M has, in response to my provisional decision, more fully expanded on her health issues and the impact of Startline's behaviour on her. She has also repeated it did not meet her reasonable communication needs. However, I do not find that, in the circumstances, this new information and the repeated information means that I ought to increase that payment or order further additional redress.

Under the guidance Miss M was entitled to a payment deferral of up to six months. She has had a payment deferral of one month at least, it seems. But as I mentioned in my provisional decision Startline must now retrospectively treat Miss M as if she had applied for deferrals of three months in both May 2020 and August 2020 and as if she had been granted these payment deferrals. It must do this for the reasons I set out in my provisional decision and also I find it must do this because it has not shown it was not in Miss M's best interests to grant her these payment deferrals.

That said, it's not clear if Miss M has now made these repayments. If she has not Miss M and Startline will have to talk to each other about how these repayments can be made. But whatever solution they come up with must be in line with the guidance.

In light of the further information that Miss M has provided I underline that the onus is now on Startline to communicate with Miss M in line with her communication needs. Further, Miss M has talked about having to provide the same medical information on several different occasions to Startline. It might like to think about its obligations to her and how it can avoid her having to go through the same experience in future. For example, it might like to consider, if possible, giving Miss M one single point of contact.

I also want to make it as clear as possible that the default should never have been issued, therefore the agreement should never have been terminated. When I say below that I require Startline to reinstate the agreement that means it must behave as is if the agreement was never ended.

I have not been persuaded by the response to my provisional decision that I need to alter the conclusions I had provisionally reached. It follows I have reached the same conclusions as I did in my provisional decision for the reasons set out in that provisional decision and in this final decision.

My final decision

My final decision is that I require Startline Motor Finance Limited to:

- Reinstate the finance agreement with Miss M.
- Behave towards Miss M as if it had granted her payment deferrals in May 2020 and August 2020, which includes refunding any charges and any fees whatsoever applied to the agreement for late/missed payments that would not have been applied if Miss M had been granted three-month payment deferrals in May 2020 and August 2020.
- Refund any charges and any fees whatsoever applied to the agreement because of the default.
- Refund any charges and any fees whatsoever applied in relation to the repossession process.
- Pay interest at the rate of 8% simple per year on all refunded amounts set out above. The interest to run from the date of payment until the date of settlement.
- Pay £400 for distress and inconvenience.
- Remove any adverse information that it has asked the credit reference agencies to register on Miss M's credit file in relation to this matter.

It must pay the total compensation within 28 days of the date on which Miss M accepts my final decision. If it pays later than this it must also pay interest on the £400 from the date of the final decision until the date of payment at the rate of 8% simple per year.

If it considers it is legally required to deduct income tax from that interest, it must send a tax deduction certificate with the payment so that Miss M can reclaim the tax if she is able to. Miss M should refer back to Startline Motor Finance Limited if she is unsure of the approach it has taken and both parties should contact HM Revenue & Customs if they want to know more about the tax treatment of this portion of the compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 13 October 2022.

Joyce Gordon
Ombudsman