

The complaint

Miss S complains that STARTLINE MOTOR FINANCE LIMITED (Startline) irresponsibly granted her a hire purchase agreement that she couldn't afford to repay.

What happened

In November 2021 Miss S acquired a vehicle financed by a hire purchase agreement from Startline. Miss S was required to make 57 monthly repayments of £309.02 and one final repayment of £319.02. The total amount repayable under the agreement was £17,933.16. Miss S and her representative for the complaint believe Startline failed to complete adequate affordability checks. Miss S says that if it had it would've been clear that the agreement wasn't affordable.

Startline disagreed. It said it carried out an adequate creditworthiness assessment which included a full credit search, affordability tool checks, and proof Miss S had settled her existing hire purchase arrangements. It said these checks showed Miss S had eight historic defaults but that these were being well serviced. The tools it used validated an income of £2,000 monthly.

Our Investigator recommended that the complaint should be upheld. They thought Startline's checks weren't proportionate and that it acted unreasonably when approving the finance.

Miss S agreed, but Startline disagreed. It stated that the Investigator's opinion didn't give enough weight to the checks it did complete, and that the data available to it at the time didn't show any affordability concerns. It felt that Miss S's affordability issues arose because of the cost of living crisis which Startline couldn't have reasonably factored into its lending decision. It asked for an Ombudsman to issue a final decision on the matter.

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.

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

We explain how we handle complaints about irresponsible and unaffordable lending on our website. I've used this approach to help me decide Miss S's complaint. Startline needed to ensure that it didn't lend irresponsibly as set out in the FCA's Consumer Credit Sourcebook (CONC). In practice, what this means is that Startline needed to carry out proportionate checks to be able to understand whether any lending was affordable for Miss S before providing it.

In this case, there are two overarching questions that I need to answer to fairly and reasonably decide Miss S's complaint. These two questions are:

1. *Did Startline complete reasonable and proportionate checks to satisfy itself that Miss S would be able to repay her loan without experiencing significant adverse consequences?*
 - *If so, did it make a fair lending decision?*
 - *If not, would those checks have shown that Miss S would've been able to do so?*
2. *Did Startline act unfairly or unreasonably in some other way?*

Did Startline complete a reasonable and proportionate affordability check?

Startline was required to ensure it carried out adequate checks on Miss S's ability to sustainably afford the agreement. These checks had to be borrower-focussed and proportionate (see CONC 5.2A). What is considered proportionate will vary depending on the circumstances, such as (but not limited to): the total amount repayable, the size of the monthly repayments, the term of the agreement (CONC 5.2A.20 R), and the consumer's specific circumstances.

I'm not satisfied that Startline gathered a reasonable amount of information from Miss S about her income and expenditure prior to approving the finance. At the time of the application Miss S had eight defaulted accounts which she was still making repayments toward. Startline has also confirmed its searches had found that Miss S had at times fallen into arrears on two different utility accounts. Miss S had numerous loans with relatively high repayment amounts due each month. I understand Startline made the decision to lend on the basis that these accounts were being "well serviced" and found the risk this posed to itself as acceptable. But I'm not satisfied enough consideration was given to the personal risk posed to Miss S.

Startline have stated that its checks were proportionate as it effectively replaced a similar hire purchase account which had been well maintained. I've considered this point carefully, and I'm still persuaded that the number of outstanding debts as well as the historic defaults on file should've demonstrated that Miss S was potentially struggling to maintain her current commitments and that further checks needed to be completed. Startline's monthly repayments were also over 25% higher than the previously mentioned account, which is not an insignificant difference.

I think this all ought to have indicated to Startline that Miss S may have been struggling financially and so I would've expected it to take further consideration of her financial situation before approving any lending. Whilst Startline have said it completed a satisfactory income check the amount it verified wouldn't have held up against an enquiry of Miss S's regular expenditure (which regularly exceeded her declared income of £2,000).

I want to be clear that I've considered Startline's position about the number and type of checks that it did complete. However, I'm not satisfied that these checks adequately gathered a proportionate amount of information as they failed to answer how much Miss S had left to spend after her existing commitments.

Given the size of the lending, the monthly repayments, the length of agreement, and the information in Miss S's credit file, I think it would have been proportionate for Startline to have verified her specific expenditure. Without knowing what Miss S's regular committed expenditure was Startline couldn't have got a reasonable understanding of whether the agreement was affordable for her circumstances.

As Startline don't appear to have sought a reasonable understanding of Miss S's committed expenditure, I don't think it carried out reasonable and proportionate affordability checks before lending. I note that the application says Miss S declared her income as £2,000 but

this did not account for what was left after her committed costs. Startline needed to do more in the circumstances before agreeing to lend.

Would reasonable and proportionate checks have shown that Miss S could sustainably repay the borrowing?

I can't say exactly what further questions or evidence Startline would have asked for had it sought to adequately verify Miss S's committed expenditure. So, in the absence of anything else, I've reviewed copies of Miss S's bank statements in the three months leading up to the application as well as the existing credit file information that was available at the time.

I want to be clear that I'm not suggesting Startline were required to check her bank statements specifically, but I'm satisfied that these give me a good indication of what information it would have likely found out about her financial circumstances had it completed reasonable and proportionate affordability checks.

I've reviewed the three months of statements which show broadly the same picture of Miss S's income and expenditure. And I'm satisfied that her committed expenditure left little over for disposable income – for example in September 2021 her regular commitments (including loans, credit cards, rent, food, petrol, utilities, tax, insurance and childcare but excluding her previous hire purchase agreement) amounted to around £2720 when her account was only credited with around £3100 in regular income. This left only around £70 for other costs for the month once the proposed instalment of £309.02 is factored in. I have not included other regular ad hoc spending shown on her statements.

Taking this into account, it's clear that if Startline had completed reasonable and proportionate affordability checks it would most likely have found that Miss S couldn't sustainably afford the hire purchase agreement. I'm satisfied that it now needs to put things right.

Did Startline act unfairly or unreasonably in some other way?

I'm not persuaded from the submissions made to date that Startline acted unfairly or unreasonably in some other way.

Putting things right

As I don't think Startline 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. Miss S has already voluntarily terminated the agreement, having made some monthly repayments for the time she had use of and access to the vehicle. Given Miss S did have use of the car during the time, I think it's fair that she pays for that use. I don't think that the monthly repayments under the agreement are a fair reflection of what fair usage for the vehicle ought to be. This is because a large proportion of the repayments went towards repaying interest.

There isn't an exact formula for working out what fair usage ought to be. However, in deciding what's fair and reasonable, I've thought about the amount of interest charged on the agreement, the likely use Miss S had of the car and the costs she would likely have incurred to stay mobile if she'd never entered into this agreement. In doing so, I think a fair amount Miss S should pay is £206 for each month she had use of the vehicle. This means Startline can only retain £3,090 for fair usage.

To put things right STARTLINE MOTOR FINANCE LIMITED should:

- End the agreement with nothing further to pay unless, as seems in this case, this has

already been done.

- Refund all the payments Miss S made, less £3,090 for fair usage of the vehicle.
 - If Miss S has paid more than the fair usage figure, Startline should refund any overpayments, adding 8% simple interest per year* from the date of each overpayment to the date of settlement. Or:
 - If Miss S has paid less than the fair usage figure, Startline should arrange an affordable and sustainable repayment plan for the outstanding balance.
- Once Startline has received the fair usage amount, it should remove any adverse information recorded on Miss S's credit file regarding this agreement.

*HM Revenue and Customs requires Startline to deduct tax from the interest payment referred to above. Startline must give Miss S a certificate showing how much tax it's deducted if she asks for one.

My final decision

My decision is that 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 Miss S to accept or reject my decision before 18 August 2023.

Paul Clarke
Ombudsman