DRN-4215875

The complaint

Mr D is complaining about Startline Motor Finance Limited's decision to lend to him – he says the loan was unaffordable.

What happened

In July 2020, Mr D took out a hire purchase agreement with Startline to finance the purchase of a car. He paid a deposit of £2,500 and borrowed £12,990 over a 60-month term, with monthly repayments of £349.85.

In March 2022 Mr D complained to Startline, saying they shouldn't have lent to him - but they didn't uphold his complaint. They said they support applicants who have a lower credit rating and said they'd done a proper assessment of affordability before deciding to lend to Mr D.

Startline said their systems confirmed Mr D's net monthly income of £4,544. They said he was a married tenant and the credit reference agency (CRA) data they'd looked at showed he had an acceptable payment history with all accounts being well paid. That included an existing hire purchase agreement with monthly instalments of around £350 which was required to be settled as a condition of this new agreement. Startline said Mr D had previously had some late payments but everything was up to date by the time of the application. Finally, they'd used one of the CRAs' affordability tools which uses current account turnover data to validate declared income.

So, they said, they'd completed a reasonable assessment of creditworthiness, identifying no material risk of affordability issues. They also said Mr D had been given a warning which said he shouldn't sign the agreement unless he was satisfied it would be affordable.

Finally they commented on the circumstances leading to the settlement of the account, saying they'd analysed Mr D's income to determine whether they could support him in light of his change in employment in early 2021 but decided they couldn't due to his large expenditure on non-priority debts. So they felt they'd carried out the correct level of monitoring of the loan. Startline said Mr D had then brought the agreement up to date and settled it early, in July 2021.

Mr D wasn't happy with Startline's response so he brought his complaint to our service. He said Startline had been irresponsible in providing him with finance and had failed to conduct thorough, appropriate and reasonable checks.

Our investigator looked into things and upheld the complaint – saying she didn't think Startline had carried out proportionate checks. She said if Startline had carried out proportionate checks they should have concluded it wasn't responsible to lend to Mr D. So she said Startline should refund to Mr D all interest and charges he'd paid on the finance agreement together with interest at 8%.

Mr D accepted our investigator's view. But Startline weren't happy. They reiterated that they had carried out proportionate checks and provided more information about the checks they'd done. Because Startline didn't agree with our investigator the matter's been passed to me for 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.

Having done so, I'm upholding Mr D's complaint for broadly the same reasons as our investigator. I'll explain more below.

The Financial Conduct Authority (FCA) sets out in a part of its handbook known as CONC what lenders must do when deciding whether or not to lend to a consumer. In summary, a firm must consider a customer's ability to make repayments under the agreement without having to borrow further to meet repayments or default on other obligations, and without the repayments having a significant adverse impact on the customer's financial situation.

CONC says a firm must carry out checks which are proportionate to the individual circumstances of each case.

Did Startline carry out proportionate checks?

Startline verified Mr D's income using one of the CRA's account turnover tools. They said this gave a high confidence that Mr D's income was in line with what he'd told them. And it said his income had increased by 3% over the past three months and 10% over the previous 12 months.

Startline also looked at Mr D's credit file and were satisfied that Mr D was managing his credit commitments well. The credit file showed 15 active lines of credit, including three overdrafts, ten credit cards, one mail order account, and an existing hire purchase which was due to be settled. The credit file also showed a high number of lines of credit that had been settled – the majority of these were home credit or payday loans. 18 of them had been settled in the 12 months leading up to the credit agreement. The majority of Mr D's credit balances were close to their limit, but none were over. And although Mr D had missed some payments historically, this wasn't a high number and none were recent.

Startline also said Mr D had confirmed in signing the agreement that the payments were affordable and sustainable – but this confirmation doesn't carry any weight when looking at the requirements of CONC.

I appreciate Startline were happy with Mr D's credit file and decided to lend based on the information they had. But I'm not satisfied they did enough. Mr B was borrowing a large sum of money, at a high interest rate, and over a 5-year period. These are all factors set out in CONC 5.2A.20R as suggestions that an assessment should be more rigorous. In addition, the large number of credit cards, the use of three separate overdrafts, and the number and frequency of short-term loans on Mr D's credit file was an indicator that his borrowing might be becoming unsustainable – for example taking on new debt to pay off existing debts.

I appreciate Startline say they also relied on the fact that Mr D was paying off an existing hire purchase agreement with no evidence of adverse consequences in his credit file. But his repeated use of short term loans and his reliance on overdrafts and credit cards suggests he wasn't managing his financial commitments as they were.

In light of what the credit file showed, I've concluded Startline's checks weren't proportionate and they should have done more.

What would Startline have found?

A proportionate check would have involved Startline finding out more about Mr D's income, expenditure, and credit commitments. I note, for example, that the hire purchase agreement said Startline might need further documents as proof of income and gave the following examples for a self-employed customer:

- Personal bank statement showing income;
- HMRC correspondence i.e. self-assessment letter/contract letter; or
- Accountant letter/proof of income.

Startline didn't obtain any of these documents from Mr D before agreeing the loan, so in the absence of other information I've looked at Mr D's bank statements as they're a good reflection of Mr D's financial circumstances at the time.

I've looked at statements for Mr D's three bank accounts for the three months preceding his application to Startline – April, May and June 2020. I've not seen any evidence that he had any other personal bank accounts.

The bank statements show that Mr D's income was not as high as he'd told Startline. He was paid around £3,800 in April, £3,000 in May, and £2,200 in June by the umbrella company for his business – an average of around £3,000 per month. I've also looked at the transfers from Mr D's business bank account – but over the three months reviewed, the net amount transferred to Mr D from his business was only £375. On balance it looks like he was borrowing from the business and then repaying it, rather than drawing an income this way. The bank statements also show a very high number of transfers between Mr D's personal accounts, receipts from short term lenders, and a high number of receipts from and payments to a revolving credit facility. They also show occasional other receipts – these are mostly refunds or PayPal credits – which Mr D had told us are because he was selling some of his belongings to pay his debts.

It's not clear to me why the account turnover analysis supported a regular income of £4,544. Startline say it excludes irregular amounts to mitigate against the risk of things like loan drawdowns and transfers being included. The sheer volume of transfers and loan drawdowns may have meant that some of these were assessed as part of Mr D's regular income. But having reviewed Mr D's statements, I'm satisfied £3,000 would be a reasonable figure to use for his net monthly income.

We asked Mr D what his expenditure was at the time and he provided a summary which totalled £2,120 for basic essentials including rent, gas and electricity, food, transport, and insurances. He added £300 for credit card payments, £350 for other monthly commitments including gym membership and childcare, and £300 for loan repayments. So he estimated his total financial commitments and cost of living expenditure had been around £3,070 per month.

Reviewing Mr D's bank statements I was able to confirm his expenditure was broadly in line with what he'd told us. And his estimate of credit card payments was in line with what we'd expect given the credit balances on his credit file at the time. In summary, his non-discretionary expenditure was around the same as his income. This expenditure did include

Mr D's existing car finance (at a similar amount to the new finance agreement), but it left him with absolutely no headroom, and likely a small deficit each month.

Taking all of this together, I'm satisfied Startline didn't make a fair lending decision. If they'd done proportionate checks it should have been clear to them that Mr D wouldn't be able to sustainably make repayments under the agreement. And it follows that they shouldn't have lent to him.

Putting things right

As I don't think Startline should have approved the lending, I don't think it's fair for them to charge any interest or other charges under the agreement. Mr D should therefore only have to pay the original cash price of the car, being £15,490. Anything Mr D has paid in excess of that amount should be refunded as an overpayment.

To settle Mr D's complaint Startline should do the following:

- Refund any payments Mr D has made in excess of £15,490, representing the original cash price of the car. They should add 8% simple interest per year from the date of each overpayment to the date of settlement.
- Remove any adverse information recorded on Mr D's credit file regarding the agreement.

If Startline consider tax should be deducted from the interest element of my award they should provide Mr D a certificate showing how much they've taken off so that Mr D can reclaim that amount, assuming he is eligible to do so.

My final decision

As I've explained above, I'm upholding this complaint. Startline Motor Finance Limited need to take the steps I've outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 17 August 2023.

Clare King
Ombudsman