

The complaint

Ms S complains Startline Motor Finance Limited (SMFL) irresponsibly entered into a hire purchase agreement for a used car because she doesn't think it carried out reasonable or proportionate checks to ensure the agreement was affordable.

What happened

Ms S entered into the hire purchase agreement on 10 September 2018 for a used car. The cash price of the car was £10,067. She paid a deposit of £1,300 and the total amount of credit was £8,767. Under the agreement Ms S was to pay 58 monthly repayments of £186.30 and a final monthly repayment of £187.30.

Ms S complained to SMFL on 19 May 2023. She complains she told SMFL she could only afford a maximum of £90 per month and was pressured into agreeing a higher amount. She doesn't believe her finances or personal circumstances were sufficiently checked to make sure the payments were affordable. She didn't know how continuous payment authority works or her right to cancel. Moreover, it wasn't clear how much it would cost to repay the loan and she was not advised by the lender what to do about complaining.

SMFL responded to the complaint and said it had completed several checks to ensure the agreement was affordable to Ms S. This included verifying her income using credit reference agency data and completing a credit history search. It concluded Ms S met its lending criteria based on the checks and information she had provided in her application. It said there was no indication Ms S was under any financial pressure or that the lending was unaffordable. So, it doesn't agree their decision was irresponsible.

Ms S remained unhappy and asked our service to investigate. Our Investigator issued a view explaining why they felt proportionate checks hadn't been carried out because SMFL didn't do enough to understand Ms S's committed expenditure at the time. Our Investigator also felt that if proportionate checks had been carried out, they would have shown that the agreement wasn't affordable to Ms S. So, she felt Ms S should only have to pay for the cash price of the car and any over payments should be refunded (including 8% simple interest from the date of the overpayment to the date of settlement).

SMFL didn't agree with our Investigator's view as it said the checks were proportionate and the agreement affordable. In summary, SMFL said:

- It completed a full and complete credit and affordability check by utilizing credit bureau services and this, together with the application data, provided a strong basis on which to make a reasonable credit and affordability assessment. It was satisfied it had obtained sufficient information and doesn't feel enough weight was given to the evidence provided in the credit search and affordability assessment. It didn't feel there were indicators for a more rigorous assessment (demonstrating compliance with CONC 5.2A.21G).

- It applied a 5% calculation to Ms S's credit card balance and included it within the customer's monthly expenditure. The debt agency balance was historic and there were no monthly payments due.
- It obtained information supplied by the credit reference agency and this is independent evidence when considering affordability. Relying on such information is referenced in CONC 5.2A16G(3) and this point equally applies to the requirement to assess expenditure as outlined in CONC 5.2A.17R.
- The data showed the monthly instalment was within tolerance representing 13% of Ms S's validated income. Taking the validated income and deducting the current proposed credit commitments, rent and the proposed monthly repayment showed there was significant head room of £556 per month for other living expenses.
- It limited finance repayments to 20% of disposable income to allow for other cost-of-living expenses.
- Ms S paid a deposit of £1,300 which demonstrated commitment and affordability.
- The finance agreement and pre-contract information gave Ms S the opportunity to disclose any additional information, including adverse information. The customer acknowledgement and e-sign process asked Ms S to ensure she'd be able to meet repayments without difficulty.
- Our Investigator referenced car tax at £107.25. Whilst it's not clear what vehicle this relates to, the monthly tax on the vehicle being financed was only £21 per month, so perhaps this is an annual rather than monthly figure.
- The account management shows the agreement was affordable. All payments were paid on time and Ms S confirmed she could afford to pay the full settlement of £4,724 in May 2021.
- The view states it's not necessary to obtain bank statements, however the conclusion was based on the bank statements and ignores the comprehensive checks.

Therefore, the case has been passed to me to decide.

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.

In doing so, I've considered – amongst other things – the rules and guidance for lenders set out in the Consumer Credit Sourcebook ("CONC") within the Financial Conduct Authority's handbook. I think there are two overarching questions I need to consider in order to decide what's fair and reasonable in all the circumstances of this complaint. These questions are:

1. Did SMFL complete reasonable and proportionate checks to satisfy itself that Ms S would be able to repay the borrowing?
 - a. If so, did it make a fair lending decision?
 - b. If not, would reasonable and proportionate checks have shown that Ms S could sustainably repay the borrowing?

2. Did SMFL act unfairly or unreasonably in some other way?

Did SMFL complete reasonable and proportionate checks to satisfy itself that Ms S would be able to repay the borrowing?

SMFL were required to ensure it carried out adequate checks on Ms S's ability to sustainably afford the agreement. These checks had to be borrower-focused and proportionate. 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 agreement and the consumer's specific circumstances.

SMFL has said that when applying Ms S said she was a divorced tenant with one dependent. She had lived in her rented property for six years. Also, that she was unemployed and a full-time carer for her daughter. It also confirmed that due to Ms S's employment status the application was manually reviewed by an experienced underwriter.

SMFL explained Ms S said her income was £1,438 per month and it validated this through a credit reference agency's affordability assessment. Ms S said she received benefits into her account on behalf of her daughter. Having reviewed the information, it looks like SMFL excluded those particular benefits from its assessment of Ms S's income because the total figure is less than what I would expect to see if those payments had been included. SMFL have explained the monthly repayments only represented 13% of Ms S's monthly income.

Ms S also raised concerns that her benefits were cut following the agreement and said she explained this to the car dealer. But I have to consider what SMFL knew or ought to have known at the time of approving the lending. I can't see a reason it should have been aware that Ms S's benefits would be cut. So, I can't conclude this should have impacted the checks carried out.

SMFL said it reviewed her previous credit and it was noted Ms S had historical issues in 2013, 2015 and 2016. I've reviewed the results from SMFL's credit search. I can see Ms S had a defaulted account in 2014 for a balance of £463. There was one missed or late payment for gas in around June 2014. Therefore, there were indicators that Ms S had some previous financial difficulty.

However, at the time of the agreement Ms S appeared to be managing her finances. The search showed Ms S had two unsecured loans which had been managed and settled in June 2018. The search also showed monthly credit commitments of £90. This was made up of £10 monthly repayments for a mail order account, a mobile phone contract with monthly repayments of £48 and home credit with monthly repayments of £32. There doesn't appear to be any monthly repayments for the defaulted amount of £462 from 2014. Additionally, I can see Ms S had an active credit card balance of £161 (against a card limit of £200).

SMFL have also provided evidence which suggests it recorded Ms S's monthly rent repayments at £595. In response to the view, SMFL confirmed it deducted this and the proposed monthly repayment and felt it showed significant headroom of £556 demonstrating sufficient affordability. It limited the monthly repayments to 20% of the disposable income (after the other credit commitments) to allow for cost-of-living expenses. But I don't agree this meant the checks were proportionate.

Ms S was divorced, lived at home with one dependent and was unemployed. SMFL also had information about Ms S's previous financial difficulties. These factors should have prompted SMFL to verify Ms S's specific expenses. There were items such as petrol, utility bills, council tax and food for her and her dependent which it would be necessary to cover from the disposable income identified by SMFL. I don't agree capping the repayments under the

agreement at 20% of this figure was sufficient to ensure the agreement was affordable without getting a greater understanding of Ms S's expenditure.

Overall, I'm not satisfied the checks were proportionate. I think more should have been done to determine Ms S's specific non-discretionary expenditure. Whilst I understand SMFL's point about the credit reference agency information it obtained and the independence of such evidence, I don't agree this information gave them a sufficient understanding of Ms S's expenditure and in particular her non-discretionary commitments. I'm also mindful of the duration of the agreement and Ms S's employment status at the time, which leads me to conclude it was of greater importance to gain a more in depth understanding of her expenditure.

It was for SMFL to ensure it carried out reasonable and proportionate checks and the pre-contract information or e-sign process with the consumer declaration doesn't mean it fulfilled its obligation here. Overall, I'm of the view SMFL should have done more checks in respect of Ms S's expenditure to ensure she could sustainably afford the repayments throughout the duration of the loan.

Would reasonable and proportionate checks have shown that Ms S would be able to repay the agreement in a sustainable way?

It would have been proportionate for SMFL to have found out more about Ms S's committed expenditure, such as her living costs. I can't be sure exactly what SMFL would have found out if it had asked. In the absence of anything else, I think it would be reasonable to place significant weight on the information contained in Ms S's bank statements. I'm not saying SMFL ought to have obtained the statements themselves and I appreciate SMFL's comments about this. However, the statements reflect Ms S's financial circumstances and the information SMFL likely would have obtained had proportionate checks been carried out.

Since the view, Ms S has provided more detail about her income and expenditure. She had a number of incoming and outgoing payments, which were on occasion significant sums, and has explained what these payments were to enable me to establish if they should be included in the assessment of Ms S's disposable income.

I appreciate there were a number of payments in and out of Ms S's account to and from friends and family. As mentioned, Ms S has provided me with an explanation of these payments. For example, a friend helped her with the purchase of a sofa which was subsequently sold. Having reviewed the statements, I can't see regular payments from others which might be described as regular income she could reasonably rely on receiving.

I also note the figure identified by SMFL doesn't seem to include benefits received into Ms S's account. She received these benefits on behalf of her daughter who did not have her own bank account. Ms S has also identified some outgoing payments where the benefits were transferred to others to be spent by her daughter (I've not included these transfers when considering Ms S's committed expenditure). So, I think it's right to exclude this particular payment in these circumstances. Therefore, I'm satisfied Ms S regular income payments across the three months averaged around £1,689. I appreciate this amount is higher than that identified by SMFL and our Investigator. However, it doesn't change the overall outcome.

I've considered the expenditure as outlined by Ms S and I've reviewed her bank statements. Having done so, I can see she had non-discretionary spend of around £1,702. Again, I appreciate this is higher than the expenditure identified by our Investigator. However, this is based on the identifiable committed expenditure from the statements, and I'm satisfied it

doesn't change the overall outcome of my decision. I'd also note our Investigator confirmed some of the expected committed expenditure (for example, her food bills) hadn't been included in her calculations which I have considered.

Therefore, Ms S's average monthly non-discretionary spend exceeded her reliable income in the three months leading up to the agreement. And this means the agreement wasn't affordable for her and she had no disposable income remaining to meet the repayments under the agreement sustainably.

SMFL has said Ms S's deposit of £1,300 shows she had a high commitment. However, making an upfront payment does not necessarily speak to whether Ms S would be able to sustainably repay the agreement over its term.

SMFL have also said Ms S's account management shows the affordability of the agreement. I appreciate what's been said here and I understand she paid off the agreement, but this doesn't necessarily mean the agreement should have been entered into in the first place and the evidence shows Ms S didn't have sufficient income to cover her committed spend at the time the agreement was entered into.

Taking into consideration the evidence I've seen, I'm satisfied had reasonable and proportionate checks been carried out, they were likely to show the agreement was not affordable for Ms S. Therefore, the agreement should not have been entered into and I'll explain how SMFL should put things right below.

Did SMFL act unfairly or unreasonably in some other way?

Ms S explained she felt pressured into entering the agreement at a higher amount of monthly repayments. It's difficult for me to say with certainty what happened at the outset of the agreement. I've reviewed the documents available from the point the agreement was entered in to, and I haven't seen anything which leads me to conclude SMFL acted unfairly in this regard.

Putting things right

Where a business has made an error, our service would usually aim to put the consumer in the position they would've been in had the error not occurred. However, in cases where a business has lent irresponsibly this isn't entirely possible, as the lending provided can't be undone.

As SMFL should not have approved the lending, it's not fair for it to be able to charge any interest or charges under the agreement. Ms S should only have to pay the original cash price of the car, being £10,067. Anything Ms S has paid in excess of that amount should be refunded as an overpayment.

Therefore, Startline Motor Finance Limited should:

- Refund any payments Ms S has made in excess of £10,067, representing the original cash price of the car. It should add 8% simple interest per year* from the date of each overpayment to the date of settlement.
- Remove any adverse information recorded on Ms S's credit file regarding the agreement.

*If SMFL considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Ms S how much it's taken off. It should also give Ms S a tax

deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

I'm upholding this complaint and Startline Motor Finance Limited should put things right in the way outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms S to accept or reject my decision before 15 December 2023.

Laura Dean
Ombudsman