

The complaint

Mr L complains about credit granted to him by Startline Motor Finance Limited.

What happened

Startline agreed credit for Mr L in October 2021 to finance a car. The cash price of the car was £7,410. Mr L paid a deposit of £750 and borrowed £6,660. The total amount owed under the agreement came to £10,963 including the deposit, interest and fees. This was to be repaid in 59 instalments of £170.05 and a final payment of £180.05.

The credit was granted under a hire purchase agreement. This meant Startline remained the owner of the car until the credit was repaid. Mr L made his first two repayments but his third, in January 2022, was returned unpaid. He paid a lump sum by card in February to clear his arrears but missed his next three payments. Mr L then paid a lump sum in May but continued to have his direct debits returned unpaid. This pattern continued until March 2023 when Startline repossessed the car and sold it.

Mr L said that Startline shouldn't have entered into the credit agreement with him in the first instance because it wasn't affordable for him - he struggled to meet his monthly payments and got into debt in order to do so. Mr L said that Startline didn't offer him any support when he said he was having financial difficulties. Mr L also said that Startline didn't treat him fairly by terminating the agreement and repossessing the car because he was only a month in arrears when this happened. In addition, Startline recovered the car late at night and didn't give him a chance to retrieve his belongings which he later had to collect at his expense.

Startline didn't uphold Mr L's complaint. It said it assessed Mr L's creditworthiness before lending to him and gave proper regard to the outcome of that assessment in respect of affordability. Its assessment didn't raise any concerns and Startline disagreed that it made an irresponsible lending decision. Startline also said that it had terminated the agreement and repossessed the car in line with the agreement terms and conditions and had correctly reported the status of the account to the credit reference agencies.

Mr L wasn't happy with this response and referred his complaint to us. Our investigator looked into things and found that the credit had been irresponsibly agreed. They recommended that Mr L's complaint be upheld and that Startline refunds everything he paid under the agreement, minus a portion of these payments to cover his usage of the car. They also recommended that Startline removes any adverse information relating to the agreement from Mr L's credit file.

Startline didn't agree with this recommendation. It asked for the complaint to come to an ombudsman for a review and it came to me. I issued a provisional decision on 28 July 2023 explaining why I planned to uphold Mr L's complaint. I shared the information I'd relied on with both parties and set out my proposals for putting things right for him. Mr L accepted my provisional decision and I've had no response from Startline.

Mr L had also complained to Startline that it paid sales commission to the dealership that sold him the car, which disadvantaged him. This particular issue is the subject of another

complaint with us under a difference case reference and did not form part of my investigation or determination.

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 reconsidered everything, and having no new information to consider, I remain of the view that Mr L's complaint should be upheld. I'll set out my reasons why again in this final decision.

As I'd said in my provisional decision, the Financial Conduct Authority was the regulator when Startline lent to Mr L. Its rules and guidance said that before agreeing credit for him, it needed to check that he could afford to meet his repayments out of his usual means, without having to borrow further and without experiencing financial difficulty or other adverse consequences. The assessment needed to be proportionate both to the nature of the credit (the type of credit, amount or term, for example) and to Mr L's particular circumstances.

Ultimately, Startline needed to treat Mr L fairly and take full account of his interests when making its lending decision. It would not be lending fairly if "it targeted customers with regulated credit agreements which are unsuitable for them, by virtue of their indebtedness, poor credit history, age, health, disability or any other reason."

With this in mind, my main considerations are did Startline complete reasonable and proportionate checks when assessing Mr L's application to satisfy itself that he would be able to make his repayments without undue difficulty? If not, what would reasonable and proportionate checks have shown? Would this information have led to the credit being declined? Ultimately, did Startline make a fair lending decision? Did it treat Mr L unfairly in any other way, for example when he explained his financial difficulties or when it terminated the agreement?

What happened prior to the agreement?

Startline said that Mr L had been in receipt of a stable income with no evidence of financial difficulty when it agreed to lend to him. It recorded his net monthly income initially as £2,372 and checked a recent payslip. Mr L's payslip from September 2021 confirmed his gross salary as £37,931 however Startline said it took into account employer deductions and used a net monthly income figure of £1,973 in its assessment. I've looked at the payslip Startline used in its assessment. It shows that Mr L was repaying two loans – a student loan and a loan from his employer. It seems the latter was a loan to help with housing and had repayments of £208 a month.

Startline said it checked Mr L's credit file and provided us with a summary list of his accounts though not a full credit report. Startline said that Mr L had a good history of repayment on his hire purchase agreements and a well maintained credit card and current account. Startline also said that at the time of application Mr L had another finance agreement with it with monthly repayments of around £137. It said that this agreement was being well maintained which demonstrated that Mr L could afford to and was willing to meet his repayments for this new agreement. I've noted that the summary list also shows that Mr L had just taken out a loan of over £5,000 in August with monthly repayments of £292.

Startline acknowledged that there were arrears showing on Mr L's credit profile relating to other hire purchase agreements but said that at the point of application, these had reported no missed payments for ten months. The arrears were historic with payments having been

brought up to date and accounts settled. This demonstrated both the ability and willingness of Mr L to maintain finance at these levels. Startline also mentioned that Mr L put down a deposit of £750 which further demonstrated the affordability of the agreement for him.

Mr L provided a copy of his credit file which shows his payment history for his accounts. The previous agreement with Startline referred to above is shown as beginning and ending in August 2021. Startline confirmed that this previous agreement was unwound before entering into the new agreement in October. I have no further details of this previous agreement but, given how long it lasted, I don't think any conclusions can be drawn from it regarding the affordability of a new agreement for Mr L.

The credit file also shows that Mr L had two recently settled hire purchase agreements. One is shown as being in arrears for most of 2020 and then settled in September 2021. The other is shown as being six payments in arrears in early 2020 with an 'unclassified' code recorded from then until the account was settled in August 2021. Again, I don't think this information demonstrates that Mr L was managing these commitments without difficulty. I appreciate that the accounts were settled, but only very recently and after Mr L had taken out a relatively large new loan.

Startline said that nothing in the information it had raised concern that Mr L's finances were strained. It said that it supplemented the information it had about his income and current financial commitments with modelled data from the Office of National Statistics (ONS) to estimate his expenditure. I haven't been provided with this estimate but Startline said that there was sufficient affordability after the estimated expenditure was taken into account. Startline concluded that it undertook reasonable and proportionate checks to satisfy itself that Mr L would be able to repay the agreement in a sustainable fashion.

I think it's fair to say that such checks might constitute a proportionate assessment in other cases. However, I think Startline should have considered that a more rigorous assessment would be more appropriate in Mr L's case. I don't think Startline could reasonably assume that he managed to maintain his previous hire purchase agreements without difficulty based on the information it had. Agreeing this finance would commit Mr L to spending over a third of his wages (of £2,372) on repaying his debts and he would need to meet his repayments under this agreement for five years. The consequences of not being able to do this were potentially serious in that he could be left with no access to a car and a large balance to clear. So I'm afraid I don't agree that the checks Startline carried out were proportionate on this occasion.

What would a proportionate check have shown?

Mr L told us that he struggled to meet his repayments with a previous hire purchase agreement (the agreement showing as unclassified). I understand that a court-ordered agreement was put in place in 2020 and Mr L said that the vehicle was voluntarily surrendered in August 2021. Mr L also told us that he used some of the money from his August loan to pay the car deposit and provided his bank statements from around the time.

I'm not suggesting that this is the information Startline should have gathered but I think it's reasonable to rely on the statements to form an understanding of what proportionate checks would likely have revealed. I can see from the statements that some of Mr L's usual monthly expenditure came to over £1,800 including rent of over £1,400, bank fees, tv, telephone and internet bills and insurance. This minimum doesn't include other likely costs such as food and petrol, utilities, clothing etc or his existing debt repayments. It's clear that Mr L wasn't going to be able to meet his repayments for this credit without difficulty. I think it's likely Startline would have learnt this and declined to lend to him, had it looked into his

circumstances further. I've concluded that it was irresponsible to have entered into this agreement.

What happened after the agreement began?

As mentioned above, Mr L had problems meeting his repayments almost from the beginning. He changed jobs towards the end of 2022 and had a period of unemployment before starting a new job in January 2023. Mr L said that Startline didn't offer him any forbearance when he explained his situation, such as a payment holiday or reduced payments.

I've looked into what happened. As mentioned, Mr L's direct debits were being returned unpaid and he made several catch-up payments by card over the course of the agreement. Startline provided call recordings of conversations it had with Mr L in autumn 2022 and into 2023. In mid-October Mr L told Startline that he was between jobs. The options offered to Mr L when he explained his situation were to pay the arrears or settle the agreement either by termination, or selling or part-exchanging the car. Mr L made a card payment then which initially left him in credit but short around £23 when he didn't make his end of October payment. Startline issued a notice of default letter to him when he subsequently missed his November payment.

On 31 December 2022 Mr L spoke with Startline and it was agreed he could catch up with his October shortfall and his November and December payments when he received his first pay on 18 January 2023. Startline terminated the agreement in early January, despite this arrangement. It told Mr L on a call on 10 January that as the agreement had been terminated he needed to keep up with his payments or the car would be repossessed.

On 18 January Mr L cleared most of his arrears but was around £58 short. Startline agreed that Mr L could make up this shortfall with his next payment due on 31 January. Mr L didn't meet this payment and he also missed his February payment. Startline repossessed the car on 9 March.

I don't know why Mr L missed his payments in January and February 2023. He told us that his arrangement was to pay on the 17th of each month going forwards. Maybe this is why he felt he'd only missed one payment (for February) when the car was repossessed in early March.

In any case, Mr L didn't make any payment in February (either on the 17th or at the end of the month as in the agreement) and he also had an amount outstanding from his January payment. In conclusion, I don't think Startline acted outside its terms and conditions in defaulting and terminating Mr L's agreement and repossessing the car.

However, I can't say that Startline treated Mr L with forbearance and due consideration here. While it had agreed that Mr L could catch up with his payments in January, it continued its termination and recovery process. I don't know whether the eventual outcome would have been any different had Startline, for example, offered Mr L a payment holiday or reduced payments for a time, bearing in mind his pattern of missing payments. Mr L didn't meet his January or February payments and I think it's likely the agreement would have been terminated at this point if it was still ongoing.

In summary, I haven't found that Startline got something wrong when it terminated the agreement and repossessed the car, but I have found that it was irresponsible to have entered into the agreement with Mr L in the first place. I've explained below what Startline needs to do to redress the impact of this error.

Putting things right

The cash price of the car was £7,410 and Mr L borrowed £6,660. I understand that Mr L had repaid over £2,500 towards the agreement in addition to his deposit of £750 before the car was repossessed.

Putting Mr L back into the position he would have been in had Startline not agreed to the credit would begin with returning all his payments. However, Mr L has had the use of the car from October 2021 to early March 2023, some 17 months, and he's driven it 14,050 miles (based on the mileage in the order form and on the sales invoice). I think it's fair that Mr L pays something for that use. After all, Startline remained the owner of the car and Mr L would likely have had to pay to stay mobile if he hadn't had the use of the car over that time.

There isn't an exact formula for working out what a fair usage charge should be. In deciding what's fair and reasonable I've thought about the amount of interest charged on the agreement and Mr L's usage of the car, for example. I think it would be fair in this case for Startline to retain £100 a month for each month Mr L had the car as a usage charge.

Mr L told us that he has been unable to source another vehicle since the termination because his credit file shows outstanding car finance. Mr L explained that he's classed as an essential car user by his employer in his new job. He said that he's had no option but to hire a car as and when required in order to continue in his job. He told us that he's borrowed from friends and family and fallen behind on priority bills in order to be able to pay for the car hire. Mr L wishes to have these car hire payments refunded to him.

Let me say at this point that I fully appreciate what Mr L has told us about the distress and inconvenience this matter has caused him and I am sorry to hear things have been so difficult for him. I've found that Startline shouldn't have entered into the agreement with him because it was foreseeable that Mr L would have difficulty meeting his repayments. Startline needs to put that right. However, it wasn't foreseeable that this irresponsible lending decision would have an increased impact on Mr L due to his job change and so I can't fairly ask Startline to pay for Mr L's car hire after the agreement was terminated.

I have taken into account what Mr L said about the emotional impact of his experience when considering what needs to happen now to put things right for him. Mr L experienced the distress and inconvenience of losing access to the car. There isn't a specific calculation for awards to compensate for the emotional impact of errors. We have an approach which I've borne in mind alongside everything else when making this decision. As set out on our website, an award of over £300 and up to £750 might be fair where the impact of a mistake has caused considerable upset and worry and significant inconvenience that needed extra effort to sort out, typically over weeks or months. I think an award in this range would be appropriate here.

In summary, Startline should now:

- Refund Mr L's deposit of £750, adding 8% simple interest per year* from the date of payment to the date of settlement;
- Calculate how much Mr L repaid in total (in addition to his deposit) and deduct £1,700 for fair usage;
- Refund any payments Mr L has made above this amount, along with 8% simple interest per year* from the date of payment to the date of settlement;
- Remove any adverse information recorded on Mr L's credit file regarding the agreement and report it as settled;

- Pay Mr L an amount of £500 to reflect the distress and inconvenience this matter has caused him.

* HM Revenue & Customs requires Startline to take off tax from this interest. Startline must give Mr L a certificate showing how much tax it's taken off if he asks for one.

My final decision

For the reasons I've explained above, I am upholding Mr L's complaint about Startline Motor Finance Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 26 September 2023.

Michelle Boundy
Ombudsman