

The complaint

Mr B complains Startline Motor Finance Limited (Startline) irresponsibly entered into a hire purchase agreement with him because it didn't complete reasonable and proportionate checks to ensure the agreement was affordable.

What happened

Mr B entered into a hire purchase agreement with Startline in February 2019 for a used car. The cash price of the car was £5,993 and Mr B paid a deposit of £1,200. The total amount payable under the agreement was £9,087.40. Mr B was to make 60 monthly repayments of £131.29 and a final repayment of £141.29.

Mr B is represented in his complaint but for ease of reading I'll simply refer to Mr B throughout this decision. Mr B complained to Startline in January 2023 because he felt it had made an irresponsible lending decision when entering the hire purchase agreement. He felt the agreement wasn't affordable.

Startline responded to the complaint in March 2023. It said it undertook a creditworthiness assessment and felt the checks were reasonable. This included verifying income through a credit reference agency and obtaining credit bureau information. It said there was nothing to suggest the agreement wasn't affordable for Mr B.

Mr B remained unhappy and asked our service to investigate. Our Investigator concluded the checks hadn't been reasonable and proportionate. Also, had Startline carried out such checks, our Investigator felt it was likely they would have shown it wasn't fair to lend to Mr B due to his significant spend on gambling. Mr B accepted the decision. However, Startline didn't.

In summary, Startline said:

- If the income wasn't validated by the credit reference agency tool, then it would have requested proof. It explained the tool and felt it was right to rely on this as per its policy.
- It allowed for living expenses by limiting the monthly repayment to no more than 20% of disposable income after credit commitments. The monthly repayments were only 9.3% of the validated income. So, it wasn't necessary to ask for further information.
- It obtained information from a credit reference agency which it noted was independent evidence as outlined in CONC 5.2A.16G (3) and this applied equally to the requirement to assess expenditure in CONC 5.2A.17R. So, it felt it carried out reasonable and proportionate checks and made a fair assessment of affordability.
- Bank statements were not required for a proportionate assessment, but it has reviewed them as they've been relied on. It feels the absence of explanations from Mr B about some missing expenses shows a lack of seriousness about the complaint. And it's not right to assess income and expenditure without all the requested information.

- In relation to the gambling, it said this was discretionary spend and didn't constitute a priority bill. It says it's necessary to take into account the income from the gambling as well as the expense and the net amount is a more reasonable figure to rely on.
- It also felt the living costs identified by our Investigator were excessive and feels £590 is more reflective of Mr B's monthly non-discretionary spend.
- Also, payments were made on time until January 2021 which was almost 12 months into the agreement. It said it understood there had been a change in Mr B's family circumstances which had led to a large unplanned expense.

Therefore, the complaint 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.

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 complete reasonable and proportionate checks to satisfy itself that Mr B would be able to repay the agreement in a sustainable way?

Startline explained the application stated Mr B was a tenant and had lived at his current address since August 2017. Also, that he was in full time employment which could be expected to provide a stable income of £1,400. It said it validated this using a credit reference tool. It also said Mr B had signed the agreement to confirm he didn't expect any changes in circumstances and accepted the terms of the agreement. However, this in itself doesn't discharge Startline's obligations under CONC.

Startline also obtained credit bureau data and it has provided a copy of the search. This included three active credit accounts for a mail order, utility bill and credit card (with a balance of £1,086) which were all up to date. In respect of previous credit, there were agreements which had been settled at the time of the application including unsecured loans and a small hire purchase agreement.

The search also showed eight defaulted accounts from May 2013 to September 2018. Three of the accounts had been satisfied but there remained an outstanding balance of £1,347. The credit search also shows late or missed payments within the 12 months leading up to the lending decision. Therefore, there was evidence to show Mr B had previous difficulties meeting his financial commitments and some of this was fairly recent.

Startline said it was sufficient to ensure the repayments didn't exceed 20% of the disposable income (after credit commitments were accounted for). In this case, the payments were only 9.3% of the validated income so it felt it wasn't necessary to obtain anything further. However, I don't agree this was sufficient in these circumstances. The adverse credit history should have prompted more thorough checks about Mr B's specific circumstances and to ensure there wasn't any further undisclosed non-discretionary commitments.

Taking everything into account, I'm not satisfied Startline completed reasonable and proportionate checks. Mr B was to repay around £9,087 under the agreement with 60 monthly repayments. This is a significant commitment in light of the duration and amount payable which should have prompted more thorough checks in itself. Additionally, Startline had information about Mr B's adverse credit history which showed he previously had difficulty meeting his financial commitments. Whilst his active credit was being maintained at the time of entering the agreement, he had a fairly recent default and there was still a defaulted balance outstanding. For these reasons, I think Startline should have been prompted to carry out further checks and this should have included gathering more information about Mr B's expenditure.

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

As reasonable and proportionate checks weren't carried out for this agreement, I need to decide what a reasonable and proportionate check would likely have shown. So, I have reviewed bank statements from the three months leading up to the agreement. For clarity, I'm not saying Startline needed to obtain bank statements in order to complete reasonable and proportionate checks. But I do think the statements show what information it was likely to have gathered had it done so.

Startline have noted the lack of response from Mr B on certain points regarding his expenditure. But Mr B has provided his bank statements for the relevant period and so it's reasonable for me to base my decision on the information I do have. I've also considered what Startline has said about Mr B's living costs and about it being less than that identified by our Investigator. I've considered what I think can reasonably be considered Mr B's committed expenditure.

Having thought about everything, I'm satisfied with our Investigator's assessment that Mr B's cost of living expenses were around £708. This takes into account transactions such as food, petrol, broadband, mobile and council tax. I can also see further regular payments over the three months to two other people. Again, this might be towards cost of living as it's the same amount each month. But it's not clearly referenced on the statement and, whilst we have asked, our service hasn't received a response on these transactions. So, I've not included it as I can't be sure the transactions amount to non-discretionary expenditure. I also note there aren't other car costs such as insurance or tax.

Over the three-month period, Mr B had an average monthly income of around £1,648. Therefore, it would seem he would be left with around £940 after meeting his living costs. I'm satisfied this was sufficient to meet repayments towards his credit commitments and he would have enough remaining to meet the repayments of £131.29 under the agreement. He'd also have a reasonable amount left over to meet other costs.

However, Mr B had a significant amount of gambling expenditure each month. Startline has said I should consider the net loss/win on the gambling. This shows over the three months leading up to the lending decision Mr B lost around £313, which is an average of around £104 a month. Startline have also explained it's Mr B's choice to decide how to spend his money, and it couldn't be expected to penalise Mr B because he did gamble.

I can see over the three months Mr B spent around £11,754 on gambling. This was an average of around £3,918. Mr B did receive winnings, but these are never guaranteed. Overall, the statements show a clear and consistent significant spend on gambling which exceeded the reliable income he received from his employment each month. I'm also mindful of the two defaulted accounts and late or missed payments Mr B had within the 12 months

leading up to the lending decision. For these reasons and because of the significant spend on gambling, I don't think it was fair for Startline to agree the lending.

I've also thought about what Startline has said about Mr B's discretionary spending. I agree there is a fair amount of discretionary expenditure shown on the statements. But I don't think this means the lending decision was reasonable. I note the overall balance on the account reduced over the three months. Additionally, Mr B meeting the repayments after entering the agreement isn't sufficient for me to conclude the lending decision was a fair one.

For the reasons above, I'm not satisfied Startline made a fair lending decision and I've explained how it should put things right below.

Did Startline act unfairly in some other way?

Having carefully considered the information provided, I see no reason to conclude Startline acted unfairly in some other way. This includes the service provided when responding to Mr B's complaint.

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. But Mr B did have use of the car for around 34 months and it's fair he pays for that use. I'm not persuaded monthly repayments of £131.29 are a fair reflection of what fair usage would be. This is because a significant proportion of those repayments went towards repaying interest.

There isn't an exact formula for working out what a fair monthly repayment would be to reflect Mr B's usage. In deciding what's fair and reasonable I've thought about the amount of interest charged on the agreement, Mr B's likely overall usage of the car and what his costs to stay mobile would likely have been if he didn't have this car. In doing so I think a fair amount Mr B should pay is £75 for each month he had use of the car. This means Startline can only ask him to repay a total of £2,550.

To settle Mr B's complaint Startline Motor Finance Limited should do the following:

- End the agreement.
- Refund the deposit, adding 8% simple interest per year* from the date of payment to the date of settlement.
- Calculate how much Mr B has paid in total above the refunded deposit and deduct £2,550 for fair usage. As Mr B has paid more than the fair usage figure, Startline should refund any overpayments, adding 8% simple interest per year* from the date of payment to the date of settlement.
- Remove any adverse information recorded on Mr B's credit file regarding the agreement.

*If Startline considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr B how much it's taken off. It should also give Mr B a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 30 January 2024.

Laura Dean
Ombudsman