

## The complaint

Mr W complains Startline Motor Finance Limited (SMFL) irresponsibly approved a hire purchase agreement which he couldn't afford.

## What happened

In June 2021 Mr W entered into the hire purchase agreement which was a refinancing of a previous hire purchase. The cash price of the vehicle was £18,740.72. He paid no deposit. The APR was 19.8% and the total interest was £6,736.48. He also had a £10 option to purchase. The total amount payable was £25,487.20. He was to make 41 equal monthly repayments of £606.60 followed by a final payment of £616.60.

Mr W complained to SMFL on 8 December 2022 and said it didn't carry out appropriate affordability checks. He went on to say it shouldn't have entered into the agreement because of his circumstances and because he had outstanding debts at the time of the application. He said more care should have been taken to establish his income and expenditure. Failing to do so meant he struggled to make the repayments. SMFL responded to the complaint on 13 February 2023. It said on receipt of the application several checks were carried out to ensure the agreement was affordable. It said it took account of Mr W's circumstances and verified income via credit reference agencies. It also said it considered Mr W's credit including a hire purchase agreement which he had been managing well and historic arrears had been paid in full.

Mr W remained unhappy with SMFL's final response and asked our service to investigate. On 10 November 2023 I issued a provisional decision explaining why I felt the complaint shouldn't be upheld. In summary I said:

### *Did SMFL complete reasonable and proportionate affordability checks?*

*SMFL were required to ensure it carried out adequate checks on Mr W'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 the agreement and the consumer's specific circumstances.*

*SMFL said the information it gathered showed Mr W was single and living with parents. SMFL confirmed his employment type and felt this was a stable one. It said it carried out an income check through a credit reference agency which verified his net income as around £3,030 per month.*

*SMFL also said it reviewed Mr W's credit file which show he was paying a hire purchase agreement for around £592 per month without issue. It did note arrears on historic credit, but which had been paid in full. It said it noted one default from February 2017 and the balance was being paid and reducing. It noted other active credit and I've reviewed the credit search.*

*I can see four credit cards with a total balance of around £6,950 and a mail order with a total balance of around £3,375. These accounts were managed well and within the account limits.*

*SMFL said the monthly repayment of £606.60 was also considered affordable based on previous motor finance repayments with a similar monthly repayment amount. I'd note Mr W says he was not living with parents at the time of the agreement and his rental payments were £850 per month. SMFL said Mr W disclosed to the credit broker that he was living at home. Mr W said the electronic verification approach didn't assess his ability to sustainably pay the loan back over such a long period of time.*

*Having thought carefully about the information SMFL gathered, I don't agree it completed reasonable and proportionate affordability checks. SMFL had information which showed Mr W previously had difficulty meeting his financial commitments including a previous default which Mr W was still repaying. It also wasn't reasonable to rely on the repayment status of the previous hire purchase agreement. I don't agree this demonstrated an obvious ability to make the repayments because it doesn't show Mr W could sustainably repay over the term of the new agreement. In saying this, I'm mindful of the size of the monthly repayments and the term of the loan and I would also note the fact Mr W signed the declaration does not sufficiently demonstrate proportionate checks were carried out.*

*Therefore, I think SMFL should have done more to understand Mr W's specific financial circumstances by obtaining further information about his non-discretionary expenditure. This would have enabled SMFL to more accurately check whether it was likely Mr W could meet the repayments over the course of the agreement.*

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

*I've considered what reasonable and proportionate checks would have looked like in the circumstances and whether it's likely to have been clear to SMFL that the agreement was affordable and sustainable.*

*To do this, I've considered the bank statements for two of Mr W's accounts. I'm not saying SMFL needed to obtain bank statements as part of its lending checks. However, in absence of any further information, I think the bank statements will likely reflect Mr W's financial circumstances at the time.*

*Over the three-month period Mr W received an average income of £3,074.21. I note he received money from a friend (and can also see he sent money back). He's confirmed he relied on borrowing this money. So, I haven't included it in my consideration of Mr W's income and expenditure because it wasn't gifted to him, and he was expected to pay it back.*

*I've also reviewed Mr W's committed expenditure, and this is where I've reached a different figure to the one explained by our Investigator. I note Mr W submitted his own calculations of his expenditure to us. I think this difference seems to be largely down to what the statements show for food and petrol, as well as the non-discretionary spend from his second account.*

*I've relied on the information contained within the statements. I've not included the repayments towards the previous hire purchase agreement, this is because it would be settled once Mr W entered the new agreement. Having thought about this, I'm*

satisfied the statements show Mr W's average monthly non-discretionary expenditure (including cost of living and credit commitments) over the three-month period was around £2,295.

The repayments under the agreement were £606.60. Taking into consideration Mr W's income and expenditure, this would leave him with around £172 disposable income each month. I appreciate a significant amount of his income would be going towards paying credit, and I've also thought about what Mr W has said about relying on lending from a friend.

However, I'm content the information I've seen shows he had sufficient income to meet these commitments with some disposable income remaining. I've also thought about Mr W's credit history. Mr W had a previous defaulted credit card account in 2017 and was making repayments of around £30 per month to reduce the balance. He also had an arrangement to pay for a fixed term loan which had been settled in January 2014. At the time of the agreement, it seems he had five active credit cards with no missed payments and a total outstanding balance of £3,407.69. He also had two active telecommunications accounts and a mail order account. In respect of his settled account, he had one credit card which had been satisfied with no missed payments, two settled telecommunications account and a finance account.

The credit information also showed he was meeting the repayments on his previous hire purchase agreement. Mr W has told us he was struggling to do so, and he had contacted the lender to see if he could defer a payment. However, the lender was a separate firm to SMFL and the evidence doesn't show this difficulty would have been identified by SMFL through reasonable and proportionate checks. Overall, the credit history showed Mr W had been managing his credit commitments fairly at the time of the agreement. Ultimately, it seems he would have had sufficient income to meet his financial commitments once he had entered into the new agreement.

I've thought carefully about Mr W's financial circumstances at the time. Having done so, I'm satisfied that had SMFL carried out reasonable and proportionate checks, they were likely to have shown the agreement was affordable. Therefore, I won't be asking SMFL to do anything to resolve this complaint.

#### Did SMFL act unfairly in some other way?

Mr W called SMFL in September 2022 to explain he was struggling to maintain his monthly payments. I understand this was due to his monthly living costs and other debts. It doesn't seem he had missed a payment but wanted support with the account from SMFL. However, SMFL declined his request for payment deferral.

Our Investigator contacted SMFL to understand why they had declined the request. It hasn't provided a copy of the affordability assessment it undertook at this time. But it does seem one was carried out. SMFL explained there wasn't any evidence of an income change which would improve his circumstances and he had maintained payments to non-priority debtors.

For these reasons, they didn't offer a payment deferral. I'm also mindful SMFL must treat customers in default or in arrears difficulties with forbearance and due consideration. Whilst I have limited information about the assessment carried out, I can see from SMFL's telephone note that Mr W confirmed he could afford to pay the next monthly payment, but it would have helped to miss it. With all this in mind, it seems likely SMFL considered the circumstances, and it seems it was reasonable to conclude that a payment deferral wasn't appropriate in the circumstances.

I gave both parties the opportunity to respond providing they did so by 8 December 2023. Mr W didn't agree with the provisional decision. He provided a further review and analysis of his statements, and further information. In summary, Mr W said:

- SMFL said he told the broker he was living at home with parents which is easily disproved because it could see utility agreements at a different property on his credit file.
- Mr W says he was in a deficit over the three months leading up to the agreement and he was forced to use his credit cards for shopping, petrol and everyday expenses. He says it was necessary for him to increase his credit limit from £900 to £1,900 for one of his credit cards in March 2021. He prioritized making payments for his previous vehicle and was taking out further lending and getting deeper into debt to cover the monthly shortfalls. SMFL would have seen this credit card debt and increase if it had conducted proportionate checks.
- Three months after taking on this agreement with SMFL he continued to get deeper into debt and had to take out further high-cost credit cards. He said he had exhausted all available funds on his credit card. Whilst he appreciates SMFL would not have been aware of this, he said it was a result of not being able to keep his head above water. He says he was in debt and struggling with monthly income. The refinance agreement was for more money than the previous lender.
- He says his spend on fast food was covered by the expense payments for his salary on a monthly basis.
- He said SMFL never questioned why he was in an extremely high finance agreement with another provider. He said this was due to him having difficulties with gambling. He said this should have triggered a detailed check into his finances. He has provided some therapy logs to show how he felt at the time he took out his previous finance agreement.
- When he contacted SMFL for support, they scrutinized his bank statements and could see his financial situation didn't match what they must have apparently held on file. The call recording is available. He was already paying a significant amount of his salary towards existing debts, so he continued to get deeper and deeper into debt.
- Mr W isn't satisfied his circumstances have been taken into consideration. He has two young children who stay with him at weekends. He also explained that there were other expenses which he needed to cover including haircuts, dentist, new tires, and clothes for work. He also would need an annual MOT and wheel tracking alignment every six months as recommended.

As both parties have now had the opportunity to respond and provide further evidence, I will proceed to make my 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.

Having done so, I see no reason to depart from the conclusion I reached in my provisional decision. Mr W has made several comments about his complaint in his submissions to our

service. I want to acknowledge the time he has spent making his submissions and to provide assurance I've thought about what he's said carefully. Where a specific point is not mentioned, it isn't because I haven't considered it but because I don't think I need to refer to it to reach the right outcome here.

Mr W has highlighted that he wasn't living with his parents. SMFL said this is what its checks showed. In any event, I have found SMFL ought to have done more checks and had it done so I'm satisfied it would have noted the non-discretionary expenditure towards rent, bills and council tax (amongst other things). So, even though it seems SMFL's checks showed Mr W was living at home, SMFL would have found out this wasn't the case had it done proper checks and this particular point doesn't change the outcome of my decision.

Additionally, Mr W has provided a detailed analysis of his financial circumstances at the time. He has explained himself he has been through his statements meticulously. But this is not what I would have expected SMFL to do. They only needed to have carried out reasonable and proportionate checks.

Mr W has explained he received expenses for his fast-food transactions from his employer. I've not included the fast-food on his statements as part of his expenditure. In any event, I wouldn't normally consider such expenditure as non-discretionary spend because it could reasonably be expected to be reduced if necessary. Therefore, I also haven't included the paid expenses as part of his income. This doesn't change the outcome.

Nevertheless, looking at the statements it appears Mr W spent less on food than he details in his own expenditure calculations. I've considered those transactions which I think would have been identifiable to SMFL as non-discretionary expenditure on food. For example, those transactions at supermarkets and so on. I've also taken into account what Mr W said about his expenditure. Having done so, I've calculated his non-discretionary spend for living costs (including things like food, petrol, car tax, rent and so on) as an average of £1,733 over the three months leading up to the lending decision. I should note it also includes other regular committed payments Mr W was making, for example, towards entertainment.

In respect of his debts and those accounts in default, he paid an average of around £270 a month towards those balances. This includes payments made towards telecommunication accounts (historic and current). He then also had outstanding credit card and mail order balances to which he contributed. However, I note the contributions towards his credit cards were more than the minimum and more than necessary to sustainably repay the account. Mr W has provided some explanation about the payments he made towards the credit cards. He also said he used a lot of cash withdrawals. However, I think based on the information I have about the balances, proportionate checks would have found repayments of around £235 sufficient to sustainably repay the credit. This is an amount over and above the minimum and which would have allowed Mr W to reduce his credit balance within a reasonable time.

His average income over the three-month period was around £3,028. As mentioned, this excludes Mr W's expenses which were also paid into his account. Considering the cost of the monthly repayments, Mr W's identifiable living costs and credit commitments, I think he would have had sufficient income to cover this with some remaining. I do recognise a large proportion of his salary was used to meet his existing commitments. Nevertheless, it seems it was affordable as Mr W had in the region of £170 and £180 remaining after his non-discretionary spend. I appreciate the figures discussed here are slightly changed from those I set out in my provisional decision, but this is because of the further information submitted by Mr W, and it doesn't change the overall outcome.

I've also considered what Mr W has said about his gambling addiction and other circumstances he explained about his health. He said this was particularly prevalent when

he entered into his previous agreement. However, there isn't anything on the statements which would lead me to conclude SMFL would have uncovered these problems had it completed reasonable and proportionate checks. The statements don't show significant gambling spend and, in these circumstances, I think it's unlikely it would have been disclosed to SMFL had it completed proportionate checks.

Therefore, I appreciate my decision will be disappointing for Mr W. However, I must think about what SMFL would likely have found out had they carried out reasonable and proportionate checks. This doesn't mean they would have needed to obtain information about every detail of Mr W's financial circumstances. I also must think about how the financial situation would have been presented to SMFL at the time given Mr W wanted the car and to be approved for the lending. With this in mind, and for the reasons outlined within this decision, I'm satisfied had SMFL completed reasonable and proportionate checks it's likely it would have found the lending was affordable. Therefore, I won't be asking SMFL to do anything to resolve this complaint.

### **My final decision**

For the reasons outlined above, I'm not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 29 March 2024.

Laura Dean  
**Ombudsman**