

Complaint

Miss D complains that Startline Motor Finance Limited (“SMF”) unfairly entered into a hire purchase agreement with her. She’s said the monthly payments were unaffordable and she struggled to meet the repayments, having to borrow from friends and family in order to do so.

Background

In March 2020, SMF provided Miss D with finance for a used car. The cash price of the vehicle was £5,495.00 and Miss D applied for finance to cover the entire purchase price. SMF accepted her application and entered into a hire purchase agreement with her. The hire purchase agreement had a term of 48 months, interest, fees and total charges of £2,225.72 and the total amount to be repaid of £7,772.72 was due to be repaid in 47 monthly instalments of £160.64 followed by a final monthly payment of £170.64.

In March 2023, Miss D complained that the payments to this hire purchase agreement were unaffordable and so the finance should never have been provided to her. SMF looked at the complaint and didn’t uphold it. SMF said that the checks completed before the agreement was entered into confirmed that the finance was affordable and so it was reasonable to lend.

Miss D’s complaint was considered by one of our investigators. She thought that reasonable and proportionate checks ought to have led SMF to realise that it shouldn’t have lent to Miss D. So she recommended that Miss D’s complaint should be upheld. SMF disagreed with our investigator and the complaint was passed to an ombudsman for review.

My findings

I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint.

We’ve explained how we handle complaints about irresponsible and unaffordable lending on our website. And I’ve used this approach to help me decide Miss D’s complaint.

Having carefully thought about everything I’ve been provided with, I’m upholding Miss D’s complaint and directing SMF to pay her compensation. I’ll explain why in a little more detail.

SMF needed to make sure that it didn’t lend irresponsibly. In practice, what this means is that SMF needed to carry out proportionate checks to be able to understand whether Miss D could make her payments in a sustainable manner before agreeing to lend to her. And if the checks SMF carried out weren’t sufficient, I then need to consider what reasonable and proportionate checks are likely to have shown.

Our website sets out what we typically think about when deciding whether a lender’s checks were proportionate. Generally, we think it’s reasonable for a lender’s checks to be less thorough – in terms of how much information it gathers and what it does to verify that information – in the early stages of a lending relationship.

But we might think it needed to do more if, for example, a borrower's income was low, the amount lent was high, or the information the lender had – such as a significantly impaired credit history – suggested the lender needed to know more about a prospective borrower's ability to repay.

Were the checks that SMF carried out before lending to Miss D reasonable and proportionate?

SMF says it agreed to Miss D's application after it completed an income and expenditure assessment on her. During this assessment, Miss D provided details of her monthly income which it said it cross checked against the information from credit reference agencies on the amount of funds going into her main bank account each month.

SMF says it also carried out credit searches on Miss D which showed some outstanding balances as well as a settled defaulted account. But when reasonable repayments to the amount Miss D already owed and the monthly payment for this agreement, were deducted from her monthly income, she had sufficient funds to meet her living costs and other reasonable expenses. On the other hand, Miss D says she was already struggling at the time and that these payments were unaffordable.

I've carefully thought about what the parties have said. I think it's worth me explaining that simply obtaining information about a borrower will not, on its own, mean that a lender carried out a borrower focused assessment of the borrower's ability to sustainably repay a loan.

Indeed I'm concerned that SMF appears to have placed a great deal of weight on the fact that its income checking returned a positive result. However, I don't think that the check used returning a result suggesting that Miss D's declaration wasn't inaccurate in itself demonstrates the agreement was affordable as SMF suggests. In my view, all this does is provide an indication that Miss D might have been earning what she declared. It provides no indication of her, what is clearly modest, income was accounted for.

Furthermore, while I accept that the default on Miss D's credit file had been settled, the information SMF has provided shows that the default occurred in June 2019 and so was within nine months of this application. In my view, this ought to have prompted SMF to have realised that Miss D had recently proved unable to repay credit. Therefore, irrespective of whether this default was settled, I think that SMF needed to verify Miss D's expenditure.

It could have done this by asking for information such as bank statements or copies of bills. And when it obtained this information it needed to properly scrutinise it and ensure Miss D did have enough funds to be able to make the payments. As I can't see that SMF did do anything further to verify Miss D's expenditure, I find that it didn't complete reasonable and proportionate affordability checks before entering into this hire purchase agreement with her.

Would reasonable and proportionate checks have indicated to SMF that Miss D was unable to sustainably make the monthly repayments to her hire purchase agreement?

As proportionate checks weren't carried out before SMF entered into this agreement with Miss D, I can't say for sure what they would've shown. So I need to decide whether it is more likely than not that a proportionate check would have told SMF that it was unfair to enter into this agreement with Miss D.

Miss D has provided us with evidence of her financial circumstances at the time she applied for the finance. Of course, I accept different checks might show different things. And just because something shows up in the information Miss D has provided, it doesn't mean it would've shown up in any checks SMF might've carried out.

But in the absence of anything else from SMF showing what this information would have shown, I think it's perfectly fair and reasonable to place considerable weight on it as an indication of what Miss D's financial circumstances were more likely than not to have been at the time. To be clear, I've not looked at Miss D's bank statements and the other information she's provided because I think that SMF ought to have obtained this before lending to her. I've consulted this information because it is readily available at this stage and it contains the information I now need to reconstruct the proportionate check SMF should have but failed to carry out.

Miss D's bank statements show that she was receiving an amount roughly equivalent to what she declared each month. While her salary was lower than £1,400.00 she was regularly receiving credits from her mother to bring the amount she received to around that amount. However, it's clear that her rent and normal monthly living costs took up a significant proportion of her salary.

When these payments are combined with what Miss D already had to pay to her credit commitments and then deducted from her salary, it is clear that she didn't have much left over. And that is why she was consistently and persistently overdrawn on her main account. This also doesn't take into account the wider context of the overall situation at the time this agreement was coming into force and the effect that this may have on Miss D's finances.

Given what I've been provided with indicates Miss D was already struggling to meet her existing commitments, I'm satisfied that Miss D simply wasn't in a position to make the monthly payments to this agreement. This especially as she would also incur other reasonable associated running costs for the vehicle such as petrol, tax and insurance. SMF may question why Miss D sought to purchase the vehicle she did at the time she did given what she's said about her circumstances and what the information she's provided to support this shows. I'm not wholly unsympathetic to this argument.

However, the fact remains that irrespective of the wisdom of Miss D's decision to enter the hire purchase agreement she entered into on the terms that she did and at the time that she did, SMF nonetheless needed to take reasonable steps to ascertain her ability to make the monthly payments over the agreement. And I'm satisfied that Miss D simply didn't have the funds necessary to make the monthly payments to this agreement, without her borrowing further or it having a significant adverse impact on her financial position. The deterioration in her financial position after the agreement was provided, while not in itself determinative, lends some support to this.

So having carefully considered everything, I'm satisfied that reasonable and proportionate checks would have alerted SMF to the fact that Miss D wasn't in a position to sustainably make the payments to this agreement. And it therefore follows that I find that Miss D wasn't in a position to take on this commitment, SMF shouldn't have lent to her and that it now ought to put things right.

In reaching my conclusions, I've also considered whether the lending relationship between SMF and Miss D might have been unfair to Miss D under s140A of the Consumer Credit Act 1974.

However, I'm satisfied that what I direct SMF to do below results in fair compensation for Miss D given the overall circumstances of her complaint. I'm also satisfied that, based on what I've seen, no additional award is appropriate in this case.

Finally, and for the sake of completeness, I should explain that I've noted that Miss D has also complained about the commission SMF paid to her motor dealer. She says that this was not disclosed to her and in breach of the rules, regulations as well as SMF's obligations.

However, what I'm directing SMF to do to put things right for Miss D effectively places her in the position she would now be in had her hire-purchase agreement never existed. I'm therefore satisfied that this unwinds the impact of any commission that SMF might have paid to the motor dealer for introducing Miss D.

As this is the case, I don't think there is any need for me to look at the complaint about commission as upholding this part of the complaint wouldn't, in any event, make a difference to the overall outcome.

Fair compensation – what SMF needs to do to put things right for Miss D

The information I've been provided with indicates that Miss D's agreement has already been settled. As this is the case, I'm satisfied that it would be fair and reasonable in all the circumstances of the case for SMF to put things right for Miss D by:

- refunding any and all interest, fees and charges she paid as a result of this agreement;
- adding interest at 8% per year simple on any refunded payments from the date they were made by Miss D to the date of settlement†
- removing any and all adverse information it may have recorded on Miss D's credit file as a result of this agreement.

† HM Revenue & Customs requires SMF to take off tax from this interest. SMF must give Miss D a certificate showing how much tax it has taken off if she asks for one.

My final decision

For the reasons given above, I'm upholding Miss D's complaint. Startline Motor Finance Limited should put things right for Miss D in the way I've directed it to do so above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss D to accept or reject my decision before 25 November 2024.

Jeshen Narayanan
Ombudsman