

Complaint

Ms S complains that Startline Motor Finance Limited (“Startline”) unfairly entered into a hire-purchase agreement with her. She’s said the monthly payments to the agreement were not affordable and so she shouldn’t have been accepted for it.

Background

In January 2022, Startline provided Ms S with finance for a used car. The cash price of the vehicle was £8,995.00. Ms S didn’t pay a deposit and entered into a 60-month hire-purchase agreement with Startline for the entire purchase price of £8,995.00.

The loan had interest, fees and total charges of £6,031.80 (made up of interest of £6,021.80 and a credit facility fee of £10, which needed to be paid if Ms S exercised her option to purchase the vehicle) at the end of the term. So the total amount to be repaid of £8,485.90 was due to be repaid in 59 monthly instalments of £250.28 followed by 1 final monthly payment of £260.28.

Ms S’ complaint was considered by one of our investigators. He didn’t think that Startline had done anything wrong or treated Ms S unfairly. So he didn’t recommend that Ms S’ complaint should be upheld.

Ms S disagreed with our investigator and the complaint was passed to an ombudsman for a final decision.

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 Ms S’ complaint.

Having carefully thought about everything I’ve been provided with, I’m not upholding Ms S’ complaint. I’d like to explain why in a little more detail.

Startline needed to make sure that it didn’t lend irresponsibly. In practice, what this means is that Startline needed to carry out proportionate checks to be able to understand whether Ms S could make her payments in a sustainable manner before agreeing to lend to her. And if the checks Startline 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.

Startline says it agreed to this application after it completed an income and expenditure assessment on Ms S. During this assessment, Ms S provided details of her monthly income which was validated against information received from credit reference agencies on the amount going into her account each month. Startline says it also carried out credit searches on Ms S which showed that she did have some defaulted accounts. But five of the six defaulted accounts were historic. In terms of active commitments, Ms S did have existing debts but as she was living at home with parents it didn't consider these to be excessive.

Startline argues that when the amount Ms S already owed plus a reasonable amount for Ms S' living expenses, based on average data, were deducted from her monthly income the monthly payments required for this agreement were affordable. On the other hand, Ms S says that these payments weren't affordable for her.

I've thought about what Ms S and Startline have said.

The first thing for me to say is that unlike our investigator, I don't think that the checks Startline carried out did go far enough. In my view, given the number of defaults that Ms S had – albeit the vast majority were historic, I don't think that it was reasonable to conclude that these were no longer relevant. And I think that the presence of these defaults meant that Startline needed to take further steps to get an appreciation of Ms S' actual living costs. In my view, it was not reasonable to simply rely on average data when Ms S' defaults did not indicate that she fit the profile of an average customer.

As Startline didn't carry out sufficient checks, I have gone on to decide what I think Startline is more likely than not to have seen had it obtained further information from Ms S. Given the circumstances here, I would have expected Startline to have had a reasonable understanding about Ms S' regular living costs and used this information to supplement what it found out as a result of the credit checks.

To be clear, I'm not going to carry out a forensic analysis of Ms S' bank statements in order to assess whether the loan payments were affordable. I'm simply going to consider what Startline is likely to have done if it had obtained the missing information I think it should have done here.

I've therefore gone on to decide what I think Startline is more likely than not to have seen had it obtained further information from Ms S about her living expenses. The information Ms S has provided does appear to show that when her committed regular living expenses are combined with what Startline knew about her existing credit commitments from its credit checks and then deducted from her monthly income, Startline is more likely than not to have concluded that she would have had the funds, at the time at least, to sustainably make the repayments due under this agreement.

I accept that Ms S says she was unable to make the payments to this agreement because of her gambling. But what I need to think about here is what did Startline need to do in order to answer the questions its initial checks left unanswered – in other words, what were Ms S' actual regular living expenses given this was a first agreement and Ms S was being provided with a car rather than cash.

So I simply need to add Ms S' actual living costs to the information Startline already had and relied on and when this is done, I don't think that Startline would have had cause to question

Ms S' ability to afford the loan. I do accept that it is possible - but by no means certain - that Startline might have reached a different conclusion had it considered the content of Ms S' bank statements.

However, checking bank statements wasn't the only way for Startline to have found out more about Ms S' actual living costs – it could have obtained copies of bills or other evidence of payment etc. So I don't think that proportionate checks would have extended into obtaining the bank statements Ms S has now provided us with. And I don't think that Startline did know or that it could reasonably be expected to have known about the true extent of Ms S' spending or gambling.

I accept that Ms S' actual circumstances at the time were worse than what I've set out. For example, I've already referred to her gambling. But it remains the case that Startline didn't know that Ms S was gambling. And I don't think that it can reasonably be expected to have factored this into its decision on whether to lend to her.

So having carefully considered everything, I'm satisfied that the available information makes it appear, at least, as though Ms S had sufficient funds in order for the monthly payments to this agreement to be made in a sustainable manner. And in my view, it is unlikely – and less likely than not – that Startline would have declined to lend if it had carried out further checks along the line of what I think that it needed to find out here.

Overall and having carefully considered everything, while I don't think that Startline's checks before entering into this hire-purchase agreement with Ms S did go far enough, I've not been persuaded that reasonable and proportionate checks would have prevented Startline from providing these funds, or entering into this agreement with her. So I've not been persuaded that Startline acted unfairly towards Ms S when it lent to her.

The amount Ms S paid to settle her agreement early

I now turn to Ms S' concerns regarding the amount she had to pay when she settled her agreement. Ms S has said that she was overcharged when she settled her loan early. She not set out how much she believes she was overcharged by. But Ms S believes she paid too much given the total amount of the payments she made and the fact that the agreement was settled only 19 months or so after it started.

I've thought about what Ms S has said but even though Ms S might have paid more than she anticipated when settling her loan early, I've not been persuaded that she was overcharged.

To explain, section 94 of the Consumer Credit Act 1974 allows a borrower to settle a regulated credit agreement – such as Ms S' agreement with Startline - and discharge their indebtedness early. And where a consumer requests to settle a credit agreement early, like Ms S requested to do here, the Consumer Credit (Early Settlement) Regulations 2004 ("the regulations") set out how a lender should work out what the customer needs to pay in order to settle the amount outstanding.

Section 5 of the regulations allows a lender to calculate a settlement for (and valid until) a date 28 days after the request for a settlement figure was made. And interest would be charged for this 28-day period. Furthermore, if the agreement in question has a term for longer than a year, like Ms S' five-year agreement did, section 6 of the regulations allows the lender to defer the settlement date, for the purposes of calculating an interest rebate, by a further 30 days.

Therefore, as Ms S' request was a request to settle an agreement which had an original term of longer than one year early, the regulations permitted Startline to charge interest for a period of 58 days from the date she requested a settlement figure.

It's also important to note that all loans are based on an amortisation schedule where each instalment is made up of some of the interest and charges as well as some of the capital advanced. In the early stages, as the amount owed is larger, even though a monthly payment may appear relatively large - in proportion to the amount borrowed - a much smaller proportion of this payment goes to repaying the capital. The proportion going towards interest as the amount owing reduces.

But while Ms S had a fixed monthly payment the amount going towards interest was not fixed each month. And Ms S, like many consumers in her position may believe that they've paid off more of their loan than they have due to the cash amount of the total payments made, because they're unaware of the way that their loan would be amortised and that a larger proportion of the early payments were going towards the interest. This is even more likely to be the case in the early stages of a loan as most of the repayment will be going to interest.

In Ms S' case, this matters even more because Ms S faced around 58 days interest (because of the initial term of the loan) at an APR of 24.8% being added to an unexpectedly larger outstanding capital balance. And this is the reason why she has paid a significant proportion of the total interest due on the agreement even though the loan was settled early. So while Ms S may have had to pay more than she expected to when she requested her settlement figure, I've not been persuaded that she was overcharged in this instance.

Ms S' comments about attempting to cancel her agreement

Ms S has said that her attempts to cancel her agreement during the cooling off period were unfairly ignored. I've thought about what Ms S has said and I've considered the screenshot of the email she has provided which she received from the broker that arranged the finance for her.

Having considered the information, while I do not completely rule out the possibility Ms S attempted to cancel the agreement and that Startline unfairly failed to act upon this, I can't reasonably say this is more likely than not what happened here. The email Ms S was sent by the broker provided a telephone number for Startline. The email also states:

"As discussed, please see below contact information for your lender (Startline Motor Finance) for any queries relating to ongoing repayments or changes to the registration plate."

The content of the email suggests that Ms S was directed to Startline for any queries she might have had about repayments and/or changing the number plate on the vehicle. The content of the email does not obviously demonstrate that Ms S was directed to Startline because she was looking to cancel the agreement and the broker was not in a position to do this.

Furthermore, as Ms S has not been able to provide any details of the conversations or communications she had with Startline about this matter and she did not raise any issues regarding not being able to cancel the agreement until after the loan was settled, there simply isn't enough here for me to agree that Ms S asked to cancel the agreement or that Startline unfairly failed to action this. Ms S' actions in affirming the agreement by making payments and then settling it early implies a willingness to be bound by the terms. As this is the case, I'm not upholding this part of Ms S' complaint either.

Overall and having carefully considered everything, I don't think that Startline has acted unfairly or unreasonably in its dealing with Ms S and I'm therefore not upholding this complaint. I appreciate that this will be very disappointing for Ms S. But I hope she'll understand the reasons for my decision and that she'll at least feel her concerns have been listened to.

My final decision

My final decision is that I'm not upholding Ms S' complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms S to accept or reject my decision before 23 April 2024.

Jeshen Narayanan
Ombudsman