

The complaint

Miss L is complaining about Startline Motor Finance Limited. She says they shouldn't have lent to her as the loan was unaffordable. Miss L's complaint has been dealt with by a representative but for ease I've written as if she raised the complaint directly.

What happened

In December 2018, Miss L took out a hire purchase agreement with Startline to finance the purchase of a car. She paid no deposit and borrowed £5,080 - the cash price of the vehicle. The agreement required her to make 47 monthly repayments of £149.86, followed by a final payment of £159.86. Miss L made most of her payments on time and settled the balance on the agreement in September 2022.

In February 2023, Miss L complained to Startline, saying the lending had been irresponsible – she said she was struggling to pay for essentials at the time and had very little disposable income.

Startline replied to the complaint, saying that in the finance proposal Miss L had confirmed she was a single tenant. They said they'd confirmed her income from employment and benefits by reviewing two months of her bank statements. And they said Miss L had a credit card and a retail credit card, with arrears on the latter but no other indicators of affordability being a problem. In summary, they said they'd completed a reasonable assessment and identified no material risk to affordability.

Miss L remained unhappy so one of our investigators looked into her complaint. Our investigator's view was that Startline hadn't done proportionate checks and if they had, they wouldn't have lent to Miss L. Miss L accepted the view but Startline didn't. They said they had done proportionate checks – stating their view that it was reasonable to take into consideration all income available to a customer. Startline asked for a decision – and the complaint came to me. I issued a provisional decision on 20 March 2024 in which I said:

"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 carry out proportionate checks?

Startline said they checked Miss L's credit file and obtained her bank statements to check her income. I can see from the evidence they sent us that they also obtained from Miss L a letter confirming her working tax credit and child benefit payments at the time.

I can't see Startline made any attempt to estimate Miss L's expenditure at the time. CONC 5.2A.17 R requires that a firm take steps to determine or estimate the amount of a

customer's non-discretionary expenditure. CONC says this is unnecessary where the firm can demonstrate it's obvious the customer's non-discretionary expenditure is unlikely to have a material impact on affordability risk – but Startline haven't demonstrated this.

The bank statements Miss L provided were for a joint account. They showed the account was overdrawn almost constantly, and that some direct debits against the account were rejected. The total income on the account was only around £2,700 per month. Startline didn't have any information about the other account holder's credit commitments. Given the negative state of the account and this lack of information it would be difficult to argue that the agreement was obviously affordable.

On top of this, Startline's credit check showed Miss L was in arrears and over her limit on a retail credit account and very close to her limit on two other credit cards.

Finally, CONC 5.2A.22 G says a firm should have regard to information of which it is aware at the time the assessment is carried out that might indicate a customer is likely to experience financial difficulties or is particularly vulnerable. Looking at Miss L's bank statements I can see repeated instances of gambling transactions. In October 2018 around £900 was spent on gambling and in November 2018 this figure was around £1,300 – nearly half of the total monthly income in the account. This was across around 35 transactions in October and 50 transactions in November. I'm inclined to say this was clear evidence that Miss L was vulnerable and at significant risk of not being able to sustainably afford the repayments.

In summary, I'm not satisfied Startline did proportionate checks – I think they should have taken steps to estimate Miss L's expenditure. And I think they should have done more to understand the high levels of gambling transactions in the bank statements Miss L had provided to them.

If Startline had carried out proportionate checks, what would they have found?

Although I'm not satisfied Startline did proportionate checks, I'm inclined to say they had enough evidence to determine that it would be irresponsible to lend to Miss L.

That's because Miss L's bank statements demonstrate compulsive spending to an extent that was having an adverse effect on her finances, and her credit report suggested that this was starting to lead to problems repaying her creditors. In those circumstances, the repayments due under Startline's agreement were likely to have a significant adverse impact on Miss L's financial situation."

Both parties accepted my provisional decision.

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.

As both parties accepted my provisional decision, my findings are unchanged from those set out above and I'm upholding Miss L's complaint.

Putting things right

As Startline shouldn't have lent to Miss L, it's not fair for her to pay any interest or charges under the agreement. But Miss L has had use of the vehicle so it's fair she pays the cash price of the vehicle.

Startline should:

- refund to Miss L all the payments she's made against the agreement in excess of £5,080, adding 8% simple interest per year from the date of each overpayment to the date of settlement; and
- remove any adverse markers from her credit file regarding the agreement.

If Startline consider tax should be deducted from the interest element of my award they should provide Miss L a certificate showing how much they've taken off so that Miss L can reclaim that amount, assuming she is eligible to do so.

My final decision

I'm upholding Miss L's complaint. Startline Motor Finance Limited need to take the steps I've outlined above to settle the matter.

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

Clare King
Ombudsman