Financial Ombudsman Service

The complaint

Mr D is complaining about Startline Motor Finance Limited's decision to lend to him – he says the loan was unaffordable.

What happened

In March 2022, Mr D took out a hire purchase agreement with Startline, via a broker, to finance the purchase of a car. He paid no deposit and borrowed £12,500 over a 41-month term, with monthly repayments of £400.66.

In June 2023 Mr D complained to Startline, saying they shouldn't have lent to him. He said they hadn't done enough checks before lending to him and he wasn't in a financially stable position at the time. Mr D said he had multiple debts, loans and credit cards and didn't think it was responsible for Startline to lend to him.

Startline didn't uphold his complaint. They said they support applicants who have a lower credit rating and said they'd done a proper assessment of affordability before deciding to lend to Mr D. They said their assessment considered the following:

- Mr D's application said he was a married tenant with no dependents and had been employed full time as a project manager and since February 2020.
- His net monthly income of £4,400 was validated using an affordability tool provided by one of the credit reference agencies (CRA).
- The CRA data showed Mr D had an existing hire purchase agreement with monthly payments of £268, and that he was maintaining his other, numerous, lines of credit well. The existing hire purchase agreement was to be settled as a condition of this new agreement.
- On further review of the CRA data they identified several unsecured loans with minor arrears but all other active credit was being paid well. And Mr D had previously had an agreement with Startline and made his £349 per month repayments on time.
- They used Office for National Statistics (ONS) data to estimate Mr D's cost of living and compared this to his income to ensure affordability.

So, they said, they'd completed a reasonable assessment of creditworthiness, identifying no material risk of affordability issues.

Mr D wasn't happy with Startline's response so he brought his complaint to our service and one of our investigators looked into it. Our investigator said the complaint should be upheld – she didn't think Startline had carried out proportionate checks at the time, and if they had, she said, Startline should have discovered the agreement was unaffordable for Mr D.

Mr D was happy with our investigator's findings but not with her proposed settlement. He said he hadn't used the car much at all and so felt a fair usage charge would be £150 per month rather than the £200 per month she'd suggested. Startline also weren't happy. They said their checks had been proportionate and explained they'd calculated Mr D's disposable income as being over £500 per month – taking his income of £4,400 and deducting living expenses of nearly £2,000, creditor repayments of around £1,500 and the payments under this agreement of £400. Startline asked for a decision – and the matter came to me. I didn't think the complaint should be upheld and issued a provisional decision on 22 February 2024 as follows:

"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.

<u>Did Startline carry out proportionate checks?</u>

Startline checked Mr D's credit file and were happy with what they found. I've looked at Startline's copy of Mr D's credit file. It shows 19 active accounts – 10 credit cards, three overdrawn current accounts, one mail order account, three unsecured loans, one hire purchase agreement and a telecommunications account. Of these, seven of the accounts showed Mr D had missed some payments within the six months preceding his application, with around 15 missed payments in total. So I'd say there were indicators Mr D was struggling to manage his active credit.

It's also clear from Mr D's credit file that he used short term loans and advances against income frequently and repeatedly – he'd had around 80 of these types of credit since 2017. This is another indicator that Mr D was struggling to manage financially.

Mr D's existing hire purchase agreement required him to pay £268 per month. But Startline's agreement required him to pay £400 per month. So this was a significant step up and given Mr D's situation it was important Startline fully understood his circumstances.

Startline verified Mr D's income using a CRA affordability tool and estimated his expenditure using ONS data. CONC allows a business to use statistical data to estimate a customer's expenditure "unless it knows or has reasonable cause to suspect that the customer's non-discretionary expenditure is significantly higher than that described in the data".

As I've mentioned above, Mr D's credit report suggested he was not in a financially stable position. The numerous missed payments to existing creditors and high usage of short-term finance suggest that Mr D's non-discretionary expenditure may well have been higher than statistical averages. So I'm not satisfied it was proportionate for Startline to rely on this ONS data.

Concluding that Startline didn't carry out proportionate checks isn't enough to uphold Mr D's complaint – I also have to consider whether Moneybarn could have fairly lent to Mr D if they had done proportionate checks.

<u>What would Startline have found if they had done proportionate checks?</u>

A proportionate check would have involved Startline finding out more about Mr D's expenditure to determine whether he'd be able to make repayments in a sustainable way. I'm satisfied their figures for income (of £4,400) and credit commitments (of £1,500) were reasonable, so I've just looked at Mr D's other living expenses.

I wouldn't necessarily expect Startline to have looked at Mr D's bank statements before lending to him – I think it would have been proportionate to ask him about his expenditure and to try to understand why he'd missed so many payments to creditors.

Mr D initially told us he was spending around £1,050 per month on rent, £350-£400 per month on council tax and utilities, £185 per month on communications and TV, £400 on food and fuel, £130 on insurances, and £150 on memberships. This totals £2,265, and suggests Mr D would have had around £235 left over for discretionary spending.

When our investigator looked more closely into Mr D's spending, he said he was also having to pay some costs from liquidating his business, was contributing towards childcare, and was repaying loans from his parents.

I've looked at Mr D's bank statements from the time as they give a more accurate picture of Mr D's spending than his own recollection. On the whole, the estimates detailed above don't seem unreasonable based on the bank statements. But I haven't seen any evidence that Mr D was paying for childcare – he made limited transfers to his wife and limited cash withdrawals, and I can see his wife was also transferring money to him. Mr D was making significant payments to family members, but these were sporadic rather than regular, and generally offset by amounts coming in from other family members, so it's difficult to say he was committed to these payments. The bank statements also show limited payments in relation to his liquidated business – though Mr D was paying £100 per month in tax. Taking this into account, I'm inclined to say Startline could have reasonably assessed Mr D's disposable income as at least £135 per month.

I've also thought more holistically about Mr D's financial circumstances because I can see he was using a lot of credit around the time Startline agreed to lend to him. Going through his statements, I can see Mr D had a high level of discretionary expenditure – particularly in relation to a hobby. I haven't seen enough to say this was compulsive and so I'm inclined to say if Startline had discussed Mr D's spending at length with him it's unlikely they'd have concluded it would be irresponsible to lend to him.

On balance, I'm inclined to say that if Startline had done more to assess the affordability of this hire purchase agreement, they could reasonably have decided to lend to Mr D."

Startline didn't respond to my provisional decision but Mr D did. He wasn't happy, and in summary made the following points:

- A previous complaint he'd made about the same business and for a lesser monthly repayment had been upheld by our service so it didn't make sense that this one wouldn't be upheld.
- He was a contractor rather than employed, so his income wasn't guaranteed – the amount of £4,400 was based on working every day of a month with no holiday or sick leave. He had to take three weeks off every Christmas and had short notice periods.
- He had huge debts and significant gambling issues at the time of his application and was continually borrowing money from and repaying money to family and friends.
- His spending in relation to his hobby involved buying and selling items to help pay debts – he added that this was more of an addiction than a hobby.
- He didn't think £135 per month was enough to cover ad-hoc family costs with children and said he had one child at the time of his application.

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've not been persuaded to change my mind. I'll explain why.

Firstly, as Mr D acknowledged himself, we consider the merits of each case separately and it's not appropriate for me to comment on his previous complaint. But I would like to reassure Mr D that I've familiarised myself with that complaint and the outcome of it.

Turning to Mr D's income – he's told us that he was a contractor and that his income was inconsistent and not guaranteed. However, I've seen the broker's application to Startline which states Mr D was a permanent employee rather than a contractor – and that he'd been with his employer for at least two years. So I can't say Startline should have been aware Mr D's income would be inconsistent or that it wouldn't be appropriate for them to use automated checks to verify his income.

I did look at the payslip Mr D sent us. This demonstrates that Mr D's income was variable. But it also shows that his net year-to-date income in January 2022 was equivalent to around £4,700 per month after tax and National Insurance. So even if Startline had looked at payslips for Mr D, I wouldn't have expected this to change the outcome.

Startline took into account Mr D's significant debts when estimating how much he would need to pay his creditors each month. And, as I set out in my provisional decision, I'm satisfied the amount they calculated in this respect was fair. Mr D said Startline should have been aware of his problems because they'd lent to him before. But, looking at Mr D's credit report, he didn't miss a payment to Startline on his previous agreement. So I can't say Startline's previous experience of lending to Mr D should have impacted their affordability checks for this agreement.

In relation to Mr D's comments about gambling issues and compulsive spending, I can't say that Startline should have discovered these issues. There's no requirement for a business to review a potential customer's bank statements and it seems unlikely Mr D would have disclosed these issues if Startline had asked about Mr D's spending. Furthermore, when I reviewed Mr D's bank statements I didn't think it was self-evident that Mr D was spending compulsively. Mr D's comments in this respect haven't changed my mind.

Mr D's final comment is about whether £135 is enough disposable income for a family. But Mr D's application to Startline said he had no dependents, so Startline would only have needed to consider whether it was enough for Mr D. I remain satisfied they could have fairly decided £135 per month was enough to cover essential unforeseen expenditure.

My final decision

As I've explained above, I'm not upholding Mr D's complaint about Startline Motor Finance Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 24 April 2024.

Clare King
Ombudsman