

Complaint

Mrs M 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 unaffordable and so she shouldn't have been accepted for it.

Background

In October 2018, Startline provided Mrs M with finance for a used car. The cash price of the vehicle was £13,237.00. Mrs M received a part exchange value of £1,000.00 for her previous vehicle and entered into a 60-month hire-purchase agreement with Startline for the remaining £12,237.00 she needed to complete her purchase.

The loan had interest, fees and total charges of £6,493.00 (made up of interest of £6,483.00 and an option to purchase fee of £10) at the end of the term. So the total amount to be repaid of £18,730.00 (not including Mrs M's deposit) was due to be repaid 59 monthly instalments of £312.00 followed by a final repayment of £322.

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

Mrs M 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 Mrs M's complaint.

Having carefully thought about everything I've been provided with, I'm not upholding Mrs M'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 Mrs M 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 Mrs M. During this assessment, Mrs M provided details of her income and employment details. Startline says it verified Mrs M's income with copies of payslips that it asked her to provide. It says it also carried out credit searches on Mrs M which showed that she did have active commitments, which it says were being well maintained. But she had also defaulted on three credit accounts the most recent of which took place over two years prior to this application.

As I understand it, Startline argues that when reasonable repayments to the amount Mrs M already owed plus a reasonable amount for Mrs M's living expenses were deducted from her monthly income the monthly payments for this agreement were affordable. On the other hand, Mrs M says that these payments were unaffordable.

I've thought about what Mrs M and Startline have said.

The first thing for me to say is that I don't think that the checks Startline carried out did go far enough. In my view, the presence of defaulted accounts on the credit search coupled with the amount advanced means that Startline ought to have taken further steps to get an appreciation of Mrs M's actual living costs, rather than relying on estimates of this. Startline did not do this, So I don't think that its checks before lending to Mrs M were sufficient.

As I don't think that Startline carried 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 Mrs M. Given the circumstances here, I would have expected Startline to have had a reasonable understanding about Mrs M's regular living expenses as well as her income and existing credit commitments (which it already had).

Having considered everything, the information provided appears to show that when Mrs M's committed regular living expenses are combined with her credit commitments and then deducted from her income, she did have the funds, at the time at least, to sustainably make the repayments due under this agreement.

I accept it's possible that Mrs M's circumstances may have been worse than what the information she has provided showed. But I need to consider what Startline is likely to have learnt if it had done what it would have been proportionate to do. And if Startline had done this, I think it's more likely than not that it would have concluded that the monthly payments were affordable for Mrs M.

So having carefully considered everything, I'm satisfied that the available information makes it appear, at least, as though proportionate checks would have shown that Mrs M could make the monthly payments to this agreement 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 found out the further information that I think it needed to here.

Overall and having carefully considered everything, while I don't think that Startline's checks before entering into this hire-purchase agreement with Mrs M 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.

I've also thought about what Mrs M has said about not being treated fairly when she had difficulty making her payments to the agreement. The first thing to say is that while I appreciate that Mrs M may not have wanted to sell the vehicle, I do think that this was a reasonable option to present, as this was the easiest and most obvious way to reduce what she would have to pay each month.

Furthermore, I also think that it has to be kept in mind that the car was a depreciating asset. So the longer it took to for this option to be offered as a potential solution, the increased chance there would be of Mrs M being left with more to pay even after having sold the vehicle.

I've also thought about what Mrs M has said about Startline's failure to simply restructure her agreement. Having done so, I can understand why it might be frustrating for Mrs M that Startline didn't do this. However, Mrs M had a hire-purchase agreement not a fixed sum loan.

Hire-purchase loans are a type of loan with certain characteristics in terms of the obligations on the parties and the protections afforded to customers. This meant that the agreement couldn't just automatically be extended without those obligations and protections being affected.

For example, the amount Mrs M would have to pay to voluntarily terminate the agreement and the point she could exit it was determined by the total amount she had to pay at the start. Furthermore, the car wasn't worth the same amount at the time Mrs M ran into difficulty. So attempting to rewrite the agreement on new terms may well have created a mismatch between the amount borrowed and the asset being financed.

In these circumstances, while I appreciate that Mrs M may not agree with this, I don't think that Startline offering Mrs M the option of selling the vehicle (which she didn't legally own at that stage) and instead taking out one on a cheaper vehicle with lower monthly payments was unreasonable. Indeed the way that Mrs M has described her circumstances at the time suggests that this may well have been the most reasonable option for her.

I've also thought about what Mrs M has said about the letters she was sent during a pandemic payment holiday. I accept the formality of the letters Mrs M received might have been alarming. However, these were standard letters that a lender would send as a result of its obligations under the Consumer Credit Act 1974 ("CCA"). As this is the case, I don't think that these letters were sent as an attempt into bullying Mrs M into making payment during her pandemic payment break.

Finally, I've seen what Mrs M has said about believing that she had a warranty on her vehicle at the time of the purchase. I don't know what happened at the time Mrs M purchased the vehicle. However, Mrs M won't have been sold a warranty by Startline, this would have been done by the broker which arranged the finance.

Indeed, the text messages which Mrs M has provided are all addressed to the broker. So if Mrs M is of the view that she lost out because she was misled into believing that she had a warranty by her finance broker, this is a matter that she needs to take up with the broker rather than Startline.

In reaching these conclusions I've also considered whether the lending relationship between Startline and Mrs M might have been unfair to Mrs M under section 140A CCA.

However, for the reasons I've explained, I don't think Startline irresponsibly lent to Mrs M or otherwise treated her unfairly in relation to this matter. And I haven't seen anything to

suggest that section 140A CCA or anything else would, given the facts of this complaint, lead to a different outcome here. So I'm not upholding this complaint.

I appreciate that this will be very disappointing for Mrs M. 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 Mrs M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 26 August 2024.

Jeshen Narayanan
Ombudsman