DRN-4829659

Complaint

Mr W complains that Startline Motor Finance Limited ("SMF") unfairly entered into a hire purchase agreement with him. He's said the monthly payments were unaffordable and he struggled to meet the repayments, having to borrow from friends and family in order to do so.

Background

In March 2021, SMF provided Mr W with finance for a used car. The cash price of the vehicle was £4,645.00. Mr W paid a deposit of £950 and applied for finance to cover the remaining £3,695.00 he needed to complete the purchase. SMF accepted his application and entered into a hire purchase agreement with him.

The hire purchase agreement had a term of 31 months, interest, fees and total charges of £941.75 (made up of interest of £931.75 and an option to purchase fee of £10) and the total amount to be repaid of £4,636.75 (not including Mr W's deposit) was due to be repaid in 30 monthly instalments of £149.25 followed by a final monthly payment of £159.25.

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

Mr W'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 Mr W. So she recommended that Mr W'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 Mr W's complaint.

Having carefully thought about everything I've been provided with, I'm upholding Mr W's complaint and directing SMF to pay him 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 Mr W could make his payments in a sustainable manner before agreeing to lend to him. 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 Mr W reasonable and proportionate?

SMF says it agreed to Mr W's application after it completed an income and expenditure assessment on him. During this assessment, Mr W provided details of his monthly income which it said it cross checked against the information from credit reference agencies on the amount of funds going into his main bank account each month. It also said that Mr W had been retired for around ten years at the time of this application.

SMF says it also carried out credit searches on Mr W which showed some outstanding balances as well as three defaulted accounts – one of which had a balance that was reducing. But when reasonable repayments to what Mr W already owed and the monthly payment for this agreement, were deducted from his monthly income, he had sufficient funds to meet his living costs and other reasonable expenses. On the other hand, Mr W says he 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 Mr W's declaration wasn't inaccurate in itself demonstrates the agreement was affordable as SMF suggests. Neither does the fact that the monthly payment for this agreement took up 10% of Mr W's income.

Furthermore, Mr W had three defaults recorded against him. In my view, this ought to have prompted SMF to have realised that Mr W had previously proved unable to repay credit and still had balances owing. I think that this ought to have been concerning bearing in mind SMF says it knew that Mr W had been retired for almost ten years and so the prospect of him being able to catch-up once he had difficulties was likely to prove more difficult on the fixed income that he had.

In these circumstances, I don't think it was reasonable to conclude that Mr W's living expenses would be covered simply because there were multiple occupants in the property he was living at. In my view, the nature of Mr W's fixed income coupled with his previous difficulty with credit and him using a high proportion of his revolving credit balances meant that SMF needed to do more to verify Mr W's actual expenditure.

To be clear, I'm not saying that the checks SMF will never be enough, or that I have disregarded what it did do, it's the fact that it ought to have been concerned by what it learnt about Mr W and this ought to have led it to find out more about him.

SMF 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 Mr W did have enough funds to be able to make the payments. As I can't see that SMF did do anything further to verify Mr W's expenditure, I find that it didn't complete reasonable and proportionate affordability checks before entering into this hire purchase agreement with him.

Would reasonable and proportionate checks have indicated to SMF that Mr W was unable to sustainably make the monthly repayments to his hire purchase agreement?

As proportionate checks weren't carried out before SMF entered into this agreement with Mr W, 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 Mr W.

Mr W has provided us with evidence of his financial circumstances at the time he applied for the finance. Of course, I accept different checks might show different things. And just because something shows up in the information Mr W 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 Mr W's financial circumstances were more likely than not to have been at the time.

To be clear, I've not looked at Mr W's bank statements and the other information he's provided because I think that SMF ought to have obtained this before lending to him. 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.

Mr W's bank statements show that he was receiving an amount roughly equivalent to what he declared each month. However, it's clear that his monthly living costs took up a significant proportion of his salary. When these payments are combined with what Mr W already had to pay to his credit commitments and then deducted from what he received each month, it is clear that he didn't have much left over.

Given what I've been provided with indicates Mr W was already struggling to meet his existing commitments, I'm satisfied that Mr W simply wasn't in a position to make the monthly payments to this agreement. This especially as he would also incur other reasonable associated running costs for the vehicle such as petrol, tax and insurance. So I'm satisfied that Mr W simply didn't have the funds necessary to make the monthly payments to this agreement, without having to borrow further, or it having a significant adverse impact on his financial position.

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

In reaching my conclusions, I've also considered whether the lending relationship between SMF and Mr W might have been unfair to Mr W 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 Mr W given the overall circumstances of his 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 Mr W has also complained about the commission SMF paid to his motor dealer. He says that this was not disclosed to him 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 Mr W effectively places him in the position he would now be in had his 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 Mr W.

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 Mr W

The information I've been provided with indicates that Mr W's finance 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 Mr W by:

- refunding any and all interest, fees and charges he 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 Mr W to the date of settlement†

- removing any and all adverse information it may have recorded on Mr W's credit file as a result of this agreement.

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

My final decision

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

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

Jeshen Narayanan
Ombudsman