

## **Complaint**

Mr C complains that Startline Motor Finance Limited ("SMF") unfairly entered into a hire-purchase agreement with him. He's said that the finance was unaffordable which resulted in him experiencing ongoing struggles going forward.

## **Background**

In January 2017, SMF provided Mr C with finance for a used car. The purchase price of the vehicle was £8,549.00. Mr C paid a deposit of £200 and entered into a 60-month hire-purchase agreement with SMF for the remaining £8,349.00 he required.

The loan had interest, fees and total charges of £4,460.20 (made up of interest of £4,450.20 and a £10 option to purchase fee) and the balance to be repaid of £12,809.20 (which does not include Mr C's deposit) was due to be repaid in 59 monthly repayments of £213.32 followed by a final payment of £223.32.

In November 2023, Mr C complained to SMF saying that it shouldn't have entered into this hire-purchase agreement with him, as it ought to have realised that it was unaffordable and this resulted in him experiencing ongoing struggles going forward.

When it provided its file of papers on Mr C's complaint, SMF told us that it considered that the complaint was made too late. Mr C's complaint was considered by one of our investigators. He reached the conclusion that proportionate checks would not have shown SMF that it shouldn't have entered into the hire-purchase agreement with Mr C. So he didn't think that Mr C's complaint should be upheld. Mr C 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.

### *Basis for my consideration of this complaint*

There are time limits for referring a complaint to the Financial Ombudsman Service. SMF has argued that Mr C's complaint was made too late because he complained more than six years after the decision to provide the finance as well as more than three years after he ought reasonably to have been aware of his cause to make this complaint.

Our investigator explained why it was reasonable to interpret Mr C's complaint as being one alleging that the relationship between him and SMF was unfair to him as described in s140A of the Consumer Credit Act 1974 ("CCA"). She also explained why this complaint about an allegedly unfair lending relationship had been made in time.

Having carefully considered everything, I've decided not to uphold Mr C's complaint. Given the reasons for this, I'm satisfied that whether Mr C's complaint was made in time or not has no impact on that outcome.

I'm also in agreement with the investigator that Mr C's complaint should be considered more broadly than just the lending decision. I consider this to be the case as Mr C has not only complained not about the decision to lend but has also alleged that agreement resulted in him experiencing ongoing struggles going forward.

I'm therefore satisfied that Mr C's complaint can therefore reasonably be interpreted as a complaint about the overall fairness of the lending relationship between him and SMF. I acknowledge SMF still may not agree we can look Mr C's complaint, but given the outcome I have reached, I do not consider it necessary for me to make any further comment, or reach any findings on these matters.

In deciding what is fair and reasonable in all the circumstances of Mr C's case, I am required to take relevant law into account. As, for the reasons I've explained above, I'm satisfied that Mr C's complaint can be reasonably interpreted as being about the fairness of the lending relationship between him and SMF, relevant law in this case includes s140A, s140B and s140C of the CCA.

S140A says that a court may make an order under s140B if it determines that the relationship between the creditor (SMF) and the debtor (Mr C), arising out of a credit agreement is unfair to the debtor because of one or more of the following, having regard to all matters it thinks relevant:

- any of the terms of the agreement;
- the way in which the creditor has exercised or enforced any of his rights under the agreement;
- any other thing done or not done by or on behalf of the creditor.

Case law shows that a court assesses whether a relationship is unfair at the date of the hearing, or if the credit relationship ended before then, at the date it ended. That assessment has to be performed having regard to the whole history of the relationship. S140B sets out the types of orders a court can make where a credit relationship is found to be unfair – these are wide powers, including reducing the amount owed or requiring a refund, or to do or not do any particular thing.

Given Mr C's complaint, I therefore need to think about whether SMF's decision to lend to Mr C, or its later actions resulted in the lending relationship between Mr C and SMF being unfair to Mr C, such that it ought to have acted to put right the unfairness – and if so whether it did enough to remove that unfairness.

Mr C's relationship with SMF is therefore likely to be unfair if it didn't carry out reasonable and proportionate checks into Mr C's ability to repay in circumstances where doing so would have revealed the monthly payments to the agreement to have been unaffordable, or that it was irresponsible to lend. And if this was the case, SMF didn't then somehow remove the unfairness this created.

I'll now turn to whether SMF acted fairly and reasonably when entering into the hire-purchase agreement with Mr C.

*What we consider when looking at complaints about irresponsible or unaffordable lending*

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 C's complaint.

I think that it would be helpful for me to set out that we consider what a firm did to check whether loan payments were affordable (asking it to evidence what it did) and determine whether this was enough for the lender to have made a reasonable decision on whether to lend.

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.

That said, I think that it is important for me to explain that our website does not provide a set list of mandated checks that a lender is expected to carry out on every occasion – indeed the regulator's rules and guidance did not and still do not mandate a list of checks to be used. It simply sets out the types of things that a lender could do.

It is for a lender to decide which checks it wishes to carry out, although we can form a view on whether what was done was proportionate to the extent it allowed the lender to reasonably understand whether the borrower could make their payments.

Furthermore, if we don't think that the lender did enough to establish whether the repayments to an agreement were affordable, this doesn't on its own mean that a complaint should be upheld. We would usually only go on to uphold a complaint in circumstances where we were able to recreate what reasonable and proportionate checks are likely to have shown – typically using information from the consumer – and this clearly shows that the repayments in question were unaffordable.

I've kept this in mind when deciding Mr C's complaint.

*Was SMF's decision to enter into a hire-purchase agreement with Mr C fair and reasonable?*

SMF says it agreed to Mr C's application after he provided details of his income and some details of his living costs. It says it also carried out credit searches on Mr C which showed that he had some active credit accounts which were being reasonably maintained but that Mr C also had defaulted on four previous credit agreements. However, it considered these defaulted accounts to be historic.

In its view, when reasonable repayments to the total amount Mr C owed plus a reasonable amount for Mr C's living expenses were deducted from his monthly income, the monthly payments for this agreement were affordable. On the other hand, Mr C has said that the finance was unaffordable and this resulted in him experiencing ongoing struggles going forward. I've thought about what Mr C and SMF have said.

The first thing for me to say is that I don't think that the checks SMF carried out did go far enough. I don't think it was reasonable to rely on modelled living costs for Mr C, given the defaulted accounts, the amount being borrowed, the cost of the credit and the term of the agreement. In these circumstances, I think that SMF needed to do more to find out about Mr C's actual living expenses. As I can't see that SMF did this, I don't think that the checks it carried out before providing this finance were reasonable and proportionate.

As SMF didn't carry out sufficient checks, I've gone on to decide what I think SMF is more likely than not to have seen had it obtained further information from Mr C. As I've explained,

bearing in mind the circumstances here, I would have expected SMF to have had a reasonable understanding about Mr C's regular living expenses as well as his income and existing credit commitments.

The information Mr C has provided from the time does appear to show that when his discernible committed regular living expenses are added to payments to the credit commitments SMF knew about and then deducted from what he received each month, he did have the funds, at the time at least, to sustainably make the repayments due under this agreement.

I appreciate that Mr C has said that our investigator's assessment was based on an incorrect income which is higher than the amount he received. I've considered what Mr C has said but even if I were to rely on a monthly income of £2,000.00, which is lower than the amount on the payslip Mr C supplied SMF with, the monthly payments for this agreement are still affordable. So I don't think that Mr C's monthly income perhaps being lower than what he told SMF and provided evidence to support, actually makes a difference here.

Overall and having carefully considered everything, while I don't think that SMF's checks before entering into this hire-purchase agreement with Mr C did go far enough, I'm satisfied that carrying out reasonable and proportionate checks won't have stopped SMF from providing these funds, or entering into this agreement.

In these circumstances, I don't find that the lending relationship between Mr C and SMF was unfair to Mr C. I'm not persuaded that SMF created unfairness in its relationship with Mr C by irresponsibly lending to him when it entered into this hire-purchase agreement with him. And I don't find SMF treated Mr C unfairly in any other way either based on what I've seen.

So overall and having considered everything, while I can understand Mr C's sentiments and appreciate why he is unhappy, I'm nonetheless not upholding this complaint. I appreciate that this will be very disappointing for Mr C. But I hope he'll understand the reasons for my decision and that he'll at least feel his concerns have been listened to.

### **My final decision**

My final decision is that I'm not upholding Mr C's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 7 April 2025.

Jeshen Narayanan  
**Ombudsman**