DRN-5351434

Financial Ombudsman Service

The complaint

Mr M complains STARTLINE MOTOR FINANCE LIMITED ("Startline") shouldn't have lent to him as he had a large amount of existing debt and was utilising his overdraft.

What happened

In January 2023, Startline provided Mr M with a hire purchase agreement for a used car. The vehicle had a cash price of £26,849, Mr M put down a £1,800 deposit so £25,049 was financed. The agreement had interest, fees and charges of £11,282 and if Mr M repaid what he owed in line with the credit agreement, he would've repaid a total of £38,131. This was to be repaid over 59 monthly instalments of £605.35 followed by a final payment of £615.35.

Based on a statement of account produced in July 2024, Mr M still has a balance to pay. Startline considered Mr M's complaint and didn't uphold it. It concluded adequate checks were conducted which showed the agreement to be affordable.

Mr M's complaint was considered by an Investigator who upheld the complaint. They concluded the credit check results provided by Startline showed Mr M was reliant on credit given the number of new loan accounts he had recently opened, and so it wasn't appropriate to use estimates of Mr M's expenditure. A review of the bank statements showed that Mr M wasn't in a position to be able to take on the lending.

Mr M agreed with the proposed outcome, but Startline didn't. As no agreement could be reached, the complaint was passed to me. I issued a provisional decision explaining for different reasons why I was intending to uphold Mr M's complaint.

Both parties were asked to provide any further submissions, as soon as possible, but in any event, no later than 20 February 2025.

Mr M agreed with the outcome in the provisional decision. Startline responded, and it directed the Financial Ombudsman back to the response it had sent in December 2024 which it provided in response to the investigator's assessment.

A copy of the provisional findings follows this in smaller font and forms part of this final decision.

What I said in my provisional decision:

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 M's complaint. Having carefully thought about everything I've been provided with; I'm intending to uphold Mr 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 any lending was sustainable for Mr M before providing it.*

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.

Mr M declared he worked full time and received a gross annual income of £42,000. Startline then went about cross referencing this income with a tool provided by a credit reference agency. The results it received indicated that a net monthly income of £2,655 was likely to be accurate. At this point it was reasonable for Startline to have relied on this.

Startline also carried out a credit search and it's provided a copy of the results that it received from the credit reference agency. Mr M had three active loan accounts costing him £722 per month and total credit card debt of £922.

But Startline was told that two of the loans had been opened within the previous two months with outstanding balances totalling £25,317. It's worth saying here that the credit file showed that the open accounts had been well maintained with no insolvency data such as defaults or County Court Judgements.

Startline then says it went about applying a cost-of-living payment – this figure is arrived at by utilising data and information from the Office of National Statistics (ONS), the credit file data as well as the cost of motoring. This is then compared to the validated income to ensure the payments were affordable.

However, I don't think those checks went far enough and this is regardless as whether Mr M confirmed he could afford to make the payments. I do have concerns with relying on statistical data for the purposes of this assessment. Firstly, Startline was aware of Mr M's existing credit commitments, and added to the cost of this agreement he was due to spend more than 50% of his income solely servicing his credit commitments. I think this is already sufficiently high for Startline to question whether the loan would be sustainable.

I appreciate, that Mr M had told Startline that he lived at home, and so perhaps may have been able to absorb such a high percentage of his income going on credit commitments, but when Startline didn't know how much Mr M actually spent on his living costs, I don't think it was appropriate in those circumstances to have relied on the ONS data.

Like the Investigator, I do think that before the loan was approved, Startline needed to understand at the very least what Mr M's monthly outgoings were. It could've gone about doing this a number of ways, it could've asked for evidence from Mr M about his bills or requested any other documentation it felt was reasonable. Or, as I've done here used a copy of his bank statements to work out what his living costs likely were.

I accept that had Startline conducted proportionate checks it may not have seen all the information that I have seen. But, in the absence of Startline conducting a proportionate check I do think it's entirely fair and reasonable to consider the bank statement that I now have access to.

I also want to be clear that solely because I think further checks were needed that doesn't on its own mean Mr M's complaint should be upheld. After all, if further checks would've demonstrated to Startline that Mr M could afford his repayments then it wouldn't have been unreasonable to fund the finance.

And I want to be clear that I am not using the information obtained from the bank statements *to second guess what Startline may have seen. After all, it had carried out a check into Mr M's income – and was entitled to rely on the results it received.*

Part of the reason why the investigator concluded the loan was unaffordable for Mr M was he had another loan which was active, which he had opened in September 2022, and was due to cost him £437 per month. The credit file provided by Mr M shows that the particular loan account is still open. However, Startline's credit file showed the loan account was closed in November 2022 with a zero balance.

The question here is whether Startline was entitled to believe that the loan account had been closed, and I've concluded that it was entitled to believe this because it had no reason to think information the credit reference agency had provided it was inaccurate. But even without this loan payment, Mr M didn't have enough funds to afford the payment.

There wasn't anything it the information which I've seen that would've made Startline believe that the loan was still open and as I've said the review of the bank statements was to work out Mr M's other living costs – there wouldn't have been a need to consider what Mr M's existing credit commitments were because Startline had already gathered this information.

I would also add that Mr M's credit report which has provide showed the balance for the loan opened in September 2022 was being reported as having a zero balance in both November and December 2022. But, regardless of what Mr M's own credit file shows, Startline was entitled to rely on the results of its credit search results. Therefore, it was reasonable for it to believe that the September 2022 loan had been settled when it approved this finance.

So, what I've found about Mr M's living costs need to be added together to the known credit commitments Startline was told, and his commitment to Startline about and then deducted from Mr M's checked income.

Startline was already on notice that Mr M's existing credit commitments came to just under £1,400 per month (with its payment). With his checked salary that left around £1,300 per month to afford all his other living costs– so I've looked at the statements to see whether a proportionate check would've shown Startline that these costs were more or less then that each month.

At the time Mr M says he was living with parents – and this is consistent with the details he provided as part of his application. Mr M has said he paid £125 per week – so around £500 per month to his parents to cover his share of the food and household costs.

In the months before I can then see other regular direct debit payments for a TV licence at £13.25, vehicle tax at £25.37 per month, account fee at £21 per month, credit reference agency subscription at £14.99, insurance at £160 per month as well of fuel costs of around £200 per month.

*And while the credit check results highlighted the existing loan payments and told Startline Mr M had existing mobile phone / communication contracts – no figures were given to it in the results. Had Startline reviewed the bank statements or found out about these costs – it would've seen that these accounts were costing Mr M around £240 per month.
On top of this, Mr M has also explained that he had costs for his children, while maintenance wasn't regularly paid, he says he was assisting with other payments, and he's given us details of the payments he was making to support them.*

Mr M says there are various transactions each month – such as clothing and for clubs. Given what I've seen including payments for these additional activities meant Mr M wasn't going to have sufficient money each month to afford to make his payments to Startline. So, like the investigator, I'm concluding that a proportionate check would've likely shown Startline that Mr M couldn't afford these repayments.

I am intending to uphold Mr M's complaint.

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.

The main crux of Startline's response was about the loan which had been recently opened and which its own credit search results showed had been closed. Whereas Mr M's credit report showed the loan to still be active (and was costing him £437 per month) when he approached Startline for credit.

But I covered this off in the provisional decision, whereby I explained it was reasonable for Startline to believe the loan account was closed because it was entitled to rely on the credit check results it received and there was no reason for it to believe the results it had been given were in anyway inaccurate.

Notwithstanding, the loan Mr M had which Startline believed had been repaid, I still think Startline needed to conduct further checks before it lent to Mr M – and had it done so, for the reasons I gave in the provisional decision. Startline would've likely seen, by carrying out a proportionate check that the loan wasn't affordable and so shouldn't have lent to Mr M.

As no new substantive submissions were made – which hadn't been considered as part of the provisional decision, I still think Mr M's complaint should be upheld and I've explained what Startline needs to do to put things right for Mr M below.

Finally, I've also thought about whether Startline acted unfairly or unreasonably in any other way and I've considered whether the relationship might have been unfair under s.140A of the Consumer Credit Act 1974. However, I'm satisfied the redress I have set out below results in fair compensation for Mr M in the circumstances of his complaint. I'm satisfied, based on what I've seen, that no additional award would be appropriate in this case.
I've set out below what Startline needs to do in order to put things right.

Putting things right

Mr M made use of the credit facility Startline provided, and he purchased a used car with this. As such, it's only fair that he pays for these. However, as Startline shouldn't have approved his application, I don't think it's fair that he should pay any interest and charges. So, Startline should refund these, along with statutory interest.

I can see that Mr M still has the car and so I think this should be returned to Startline – at no cost to Mr M. Startline should also end the agreement with no further payments to be made. I also don't think that the monthly repayments of £605.35 are a fair reflection of what fair usage would be. This is because a proportion of those repayments went towards repaying interest.

There isn't an exact formula for working out what a fair monthly repayment would be to reflect Mr M's usage. But in deciding what's fair and reasonable I've thought about the amount of interest charged on the agreement, Mr M's likely overall usage of the car and what his costs to stay mobile would likely have been if he didn't have this car. In doing so I think a fair amount Mr M should pay is £500 for each month he's had use of the car up to the point it is returned.

Therefore, if it hasn't already done so, Startline should:

- end the agreement and collect the car with nothing further for Mr M to pay;

- refund the deposit Mr M paid plus 8% simple interests from the date of payment to the date of settlement and
- refund all of the monthly payments Mr M made, less £500 per month for the time he has had use of the vehicle.

If Mr M has paid more than the fair usage figure:

- Startline should refund any overpayments adding 8% simple yearly interest on the refunds, calculated from the date Mr M made the overpayments to the date of the refund†; and
- remove all adverse entries relating to this agreement from Mr M's credit file.

However, if Mr M has paid less than the fair usage figure, then Startline should:

- if applicable, recover any debt back from any third-party to whom it may've been sold to OR liaise with the debt owner to ensure that all steps are undertaken;
- arrange an affordable repayment plan with Mr M, while taking into consideration the requirements to treat Mr M's financial difficulties with forbearance and due consideration.

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

My final decision

For the reasons I've explained above and in the provisional decision, I'm upholding Mr M's complaint.

STARTLINE MOTOR FINANCE LIMITED should put things right for Mr M as directed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 28 March 2025.

Robert Walker
Ombudsman