

Complaint

Mr L 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 August 2016, SMF provided Mr L with finance for a used car. The purchase price of the vehicle was £8,549.00. Mr L didn't pay a deposit and entered into a 60-month hire-purchase agreement with SMF for the funds he required.

The loan had interest, fees and total charges of £3,253.40 (made up of interest of £3,243.40 and a £10 option to purchase fee) and the balance to be repaid of £8,943.40 was due to be repaid in 59 monthly repayments of £148.89 followed by a final payment of £158.89.

In November 2023, Mr L 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 L's complaint, SMF told us that it considered that the complaint was made too late. Mr L'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 L. So he didn't think that Mr L's complaint should be upheld.

Mr L 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 L'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 L'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 L's complaint. Given the reasons for this, I'm satisfied that whether Mr L's complaint was made in time or not has no impact on that outcome.

I'm also in agreement with the investigator that Mr L's complaint should be considered more broadly than just the lending decision. I consider this to be the case as Mr L 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 L'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 L'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 L's case, I am required to take relevant law into account. As, for the reasons I've explained above, I'm satisfied that Mr L'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 L), 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 L's complaint, I therefore need to think about whether SMF's decision to lend to Mr L, or its later actions resulted in the lending relationship between Mr L and SMF being unfair to Mr L, such that it ought to have acted to put right the unfairness – and if so whether it did enough to remove that unfairness.

Mr L's relationship with SMF is therefore likely to be unfair if it didn't carry out reasonable and proportionate checks into Mr L'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 L.

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 L's complaint.

I think that it would be helpful for me to set out that we consider what a firm did to check whether repayments to credit 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 a for a lender to decide which checks it wishes to carry out, although we can form a view on whether we think what 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 meant 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 L's complaint.

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

SMF says it agreed to Mr L's application after he provided details of his income and some details of his living costs. It says that it obtained a copy of a payslip to verify Mr L's income and it also carried out credit searches, which showed that Mr L had some active credit accounts which were being reasonably maintained.

However, it also saw that Mr L had defaulted on four previous credit agreements and a County Court Judgment ("CCJ") recorded against him. Nonetheless, as this adverse information was from more than a month prior to this application, it considered it to be historic.

In its view, when reasonable repayments to the total amount Mr L owed plus a reasonable amount for Mr L's living expenses were deducted from his monthly income, the monthly payments for this agreement were affordable.

On the other hand, Mr L has said that the finance was unaffordable and this resulted in him experiencing ongoing struggles going forward.

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

The information Mr L 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 L has said that he was sending a lot of money to his partner and borrowing from family and friends. However, this won't have shown in the credit checks that SMF carried out. So I don't think that it could have known about this.

I also have to consider Mr L's submissions in the context that they are now being made in support of a claim for compensation. Whereas at the time of sale, at least, Mr L clearly wanted the car he had chosen and it's fair to say that any explanations he would have provided would have been with a view to persuading SMF to lend rather than highlighting the agreement was unaffordable.

Therefore, I think that it is unlikely – and certainly less likely than not – that Mr L would have disclosed his transfers to his partner or that he was borrowing from friends and family, or more importantly that SMF would have been in a position to know about this had it carried out proportionate checks.

I've also thought about what Mr L has said about the difficulty he had making his payments to the agreement. Having reviewed SMF's records of contact with Mr L, I can see that Mr L did get in contact with SMF to explain that he was having difficulty making his payments.

I can also see that Mr L was sent an income and expenditure assessment form and once this was returned a payment plan was agreed. This payment plan was designed to bring his arrears up to date and the use of an income and expenditure assessment ensured that the payments on the plan weren't too much, or more than he could afford pay either.

Finally, I note that Mr L has said that things became more difficult because he had issues with the car itself. I'm sorry to hear that Mr L says that he had problems with the car. However, this complaint is solely concerned with the affordability of the agreement. As any issues to do with whether the car was of satisfactory quality are separate to whether Mr L could afford the monthly repayments in the first place, I cannot consider them as part of this complaint. Mr L will need to take that matter up with SMF should he maintain that the car was not of satisfactory quality.

Overall and having carefully considered everything, while I don't think that SMF's checks before entering into this hire-purchase agreement with Mr L 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 L and SMF was unfair to Mr L. I've not been persuaded that SMF created unfairness in its relationship with Mr L by irresponsibly lending to him when it entered into this hire-purchase agreement with him. And I don't find SMF treated Mr L unfairly in any other way either based on what I've seen.

So overall and having considered everything, while I can understand Mr L'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 L. 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 L's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 1 May 2025.

Jeshen Narayanan
Ombudsman