

Complaint

Miss M complains that Startline Motor Finance Limited ("SMF") unfairly entered into a hire-purchase agreement with her.

She has said that the proper checks weren't carried out which led to her being provided with finance that was unaffordable and the stress of having to make payments caused her difficulties going forward.

Background

In October 2017, SMF provided Miss M with finance for a used car. The purchase price of the vehicle was £9,995.00. Miss M received a part-exchange value of £1,000.00 for her existing car and entered into a 60-month hire-purchase agreement with SMF for the remaining £8,995.00 she required.

The loan had interest, fees and total charges of £4,945.20, which was made up of interest of £4,500.00, an arrangement fee of £250, a credit facility fee of £185 and an option to purchase fee of £10. And the balance to be repaid of £13,940.20 (which does not include Miss M's part exchange credit) was due to be repaid in 59 monthly instalments of £224.92 and £419.92.

In January 2024, Miss M complained to SMF saying that the agreement was unaffordable and therefore SMF shouldn't have entered into it with her. SMF didn't uphold Miss M's complaint. It considered that the complaint had been made too late. Miss M remained dissatisfied at matters and referred her complaint to our service.

When responding to our request for its file on Miss M's complaint, SMF reiterated its view that Miss M complained too late. Miss M's complaint was subsequently considered by one of our investigators. He reached the conclusion that proportionate checks would not have shown SMF that it shouldn't have provided Miss M with the finance. So he didn't think that Miss M's complaint should be upheld.

Miss 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.

Basis for my consideration of this complaint

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

Our investigator explained why it was reasonable to interpret Miss M's complaint as being one alleging that the relationship between her and SMF was unfair to her 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 Miss M's complaint. Given the reasons for this, I'm satisfied that whether Miss M's complaint about the hire-purchase agreement was made in time or not has no impact on that outcome.

I'm also in agreement with the investigator that Miss M's complaint should be considered more broadly than just the lending decision. I consider this to be the case as Miss M has not only complained not about the decision to lend but has also alleged that this unfairly impacted her going forward.

I'm therefore satisfied that Miss M's complaint can therefore reasonably be interpreted as a complaint about the overall fairness of the lending relationship between her and SMF. I acknowledge may still disagree that we can look Miss M'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 Miss M's case, I am required to take relevant law into account. As, for the reasons I've explained above, I'm satisfied that Miss M's complaint can be reasonably interpreted as being about the fairness of the lending relationship between her 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 (Miss M), 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 Miss M's complaint, I therefore need to think about whether SMF's decision to lend to Miss M, or its later actions resulted in the lending relationship between Miss M and SMF being unfair to Miss M, such that it ought to have acted to put right the unfairness – and if so whether it did enough to remove that unfairness.

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

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 Miss M'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 it 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 we think 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 a 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 kept this in mind when deciding Miss M's complaint.

Was SMF's decision to enter into the hire-purchase agreement with Miss M fair and reasonable?

SMF says it agreed to Miss M's application after Miss M provided details of her monthly income which it cross-checked against information from credit reference agencies on the amount of funds going into her main bank account each month.

It says it also carried out credit searches on Miss M which showed that she didn't have any county court judgments ("CCJ") recorded against her. And while Miss M did have defaulted accounts recorded against her, it considered this information to be historic as the most recent default occurred more than two years prior to this application.

On the other hand, Miss M has said that the repayments were unaffordable for her and the stress of having to make these unaffordable payments caused her difficulties going forward.

I've thought about what SMF and Miss M have said.

The first thing for me to say is that while I accept that SMF carried out a credit check and validated Miss M's income, bearing in mind Miss M's previous difficulties with credit, I'm not entirely persuaded that SMF's checks went far enough. In my view, given, the albeit historic, adverse information on the credit searches, I think that SMF needed to take further steps to ascertain Miss M's actual living costs, rather than relying on Miss M's statistical data in order for its checks to have been proportionate here.

SMF did not do this, so, unlike our investigator, I'm not satisfied that its checks before lending were proportionate in this instance.

At this point, given I've agreed that the checks weren't proportionate, I think that it might be helpful for me to explain that my conclusion that the SMF didn't do enough to establish whether the repayments were affordable, doesn't, on its own, meant that Miss M's complaint should be upheld.

This is because we would usually only go on to uphold a complaint in circumstances where we are 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 therefore considered whether that is the case here.

As I've explained, given the circumstances here, I would have expected SMF to have had a reasonable understanding about Miss M's regular living expenses as well as her income and existing credit commitments (which it already had).

Having carefully considered the information Miss M has provided, it appears to show that when Miss M's identifiable committed regular living expenses are combined with what she was paying to 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.

To be clear as SMF cross-checked Miss M's declaration of income against information from credit reference agencies on the amount of funds going into her main bank account each month and this suggested that this amount was reasonable, I'm satisfied that SMF was entitled to rely on this information.

Furthermore, I do accept that Miss M's actual circumstances at the time were worse than what finding out more than about her committed living expenses is more likely than not to have shown. I can see that there are significant amounts of payments that are being made through a third-party which Miss M says are for gambling transactions. I accept that it is possible – but by no means certain – that if SMF had seen what Miss M has provided now, it may have made a different decision on whether to lend.

However, SMF wasn't aware of Miss M's gambling. Equally, I also need to keep in mind that this was a first agreement and Miss M was being provided with a car, which she would not be able to gamble, rather than cash.

Given the circumstances here as well as what I think that SMF needed to find out, I don't think that reasonable and proportionate checks would have extended into obtaining bank statements from Miss M – especially as bank statements weren't the only way that SMF could find out about Miss M's living expenses in the first place. This is especially when keeping in mind that the most recent of Miss M's defaults took place over two years prior to this agreement.

I also have to consider the Miss M'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, Miss M clearly wanted the car she had chosen and it's fair to say that any explanations she 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 Miss M would have disclosed any gambling at the time, or more importantly that SMF would have been in a position to know about this had it carried out proportionate checks.

I'm satisfied that the available information makes it appear, at least, as though proportionate checks would have shown that Miss 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 SMF would have declined to lend if it had found out the further information that I think it needed to here. As this is the case, I've not been persuaded that it was unfair for SMF to lend to Miss M.

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

Overall and having considered everything, while I can understand Miss M's sentiments and appreciate why she is unhappy, I'm nonetheless not upholding this complaint. I appreciate that this will be very disappointing for Miss M – particularly as it is clear that she has gone through a very difficult time, which I sympathise with, and she feels strongly about this complaint. 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 Miss M's complaint.

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

Jeshen Narayanan
Ombudsman