DRN-3381733

The complaint

Mr G complains that Startline Motor Finance Limited irresponsibly provided him with a hire purchase agreement he couldn't afford to repay.

What happened

In July 2017, Mr G acquired a used car financed by a hire purchase agreement from Startline. Mr G paid a deposit of £1,950 and was required to make 59 monthly repayments of £483 followed by a final payment of £493. The total repayable under the agreement was £30,961.

Mr G says that Startline didn't complete adequate affordability checks. He says if it had, it would have seen the agreement wasn't affordable. Startline didn't agree. It said that it carried out a thorough assessment of Mr G's credit worthiness which included gathering information through the application process, a credit check and obtaining bank statements from Mr G's accounts. Mr G's agreement was terminated in October 2019 however it was agreed that Mr G could keep the car if he maintained payments. Startline says that the last payment received from Mr G was in July 2021. Mr G still has the car and I understand there is a court hearing scheduled for May 2022.

Mr G has raised other concerns about his agreement, specifically relating to hidden commission and this is being dealt with in a separate complaint.

Our adjudicator recommended the complaint be upheld. She thought Startline ought to have realised the agreement wasn't affordable to Mr G.

Startline didn't agree and said that Mr G applied for the finance with a stated monthly income of £3,500 and this was confirmed through an external affordability tool. It didn't accept our investigator's calculation of monthly income of £1,851 saying this didn't include some larger receipts which given the nature of Mr G's income would reasonably be included. It said that Mr G's bank statements showed he was transferring funds to a savings account and paying for high-end purchases which didn't suggest he was in financial difficulty. Startline said that Mr G's material payment issues coincided with the start of lockdown which couldn't have been foreseen. It noted that the credit search showed that Mr G had two small defaults and two county court judgements, and these were all settled in early 2017.

The case has been passed to me for a final decision.

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.

Startline will be familiar with all the rules, regulations and good industry practice we consider when looking at a complaint concerning unaffordable and irresponsible lending. So, I don't consider it necessary to set all of this out in this decision.

Before granting the finance, I think Startline gathered a reasonable amount of evidence and information from Mr G about his ability to repay. I say this because it gathered information through the application process about Mr G's income and employment and requested copies of his banks statements which showed his income and expenses. It also carried out a credit check. It has explained this recorded some adverse information but that the defaults and county court judgements had been settled prior to the finance being provided. However, just because I think it carried out proportionate checks, it doesn't automatically mean it made a fair lending decision. So, I've thought about what the evidence and information showed.

Startline has said that Mr G recorded a monthly income of £3,500 and this was validated with the use of an external data source. While I note this, Mr G was self-employed and Startline acknowledged that his income could vary. It requested copies of Mr G's bank statements and so I think it would have been reasonable to check his income in the bank statements to ensure the figure used was reasonable.

I have looked through the bank statements and Mr G had his work income account (Account 1) and another account (Account 2) into which he received payments. He also had a property income account (Account 3) which he has explained was an additional source of income. In the three months leading up to the agreement (April, May and June 2017) Mr G received payments from multiple sources into Account 1. These averaged around £1,300 a month. Startline has noted a large payment made to Mr G in March 2017, of £35,000. Mr G has explained this was received by him but then used to pay suppliers. I can see this payment was transferred to another of Mr G's accounts and that his accounts didn't show this amount in his accounts at the start of April which supports Mr G's comments.

Looking at the transactions in Account 2, these show payments which appear to be related to Mr G's work as well as some personal expenditure. He also received payments which appear to be work related. These averaged around £400 a month. However, the payments into this account were more than offset by the payments out of the account. Account 2 had a positive balance of £4,700 at the start of April 2017 and by end June 2017 it was operating within the overdraft limit with a negative balance of around £3,600. I note the comments Startline has made about Mr G making large discretionary payments and I can see he made two payments within the three months totalling £2,670. I appreciate these don't suggest Mr G was in financial difficulties. However, taking these payments out of the calculation still shows that Mr G reduced his money in Account 2 by around £5,700 in the three month period showing a significant reduction in the funds available.

In the three months leading up to the agreement, Mr G received an average income of around £580 into Account 3. This account was used to make some discretionary payments (such as to the national lottery) but the main transfers out were to another of Mr G's accounts.

The bank statements also show Mr G's expenditure. I can see that he transferred money into another account (Account 4) from which the majority of his living expenses were paid. In the months leading up to the agreement, Mr G's expenses paid from Account 4 averaged around £1,600. This included payments for rent (£1,000 although Mr G has said he was due to pay £1,500 but was allowed to make reduced payments), utilities, council tax, insurance and other credit commitments.

Mr G had a savings account (Account 5) which was mainly funded by transfers from his other accounts. There were a few payments made from this account for expenses such as payments to supermarkets, but this was generally used as a savings account with transfers in and out. The balance on this account at the start of April was around £3,800 and had reduced to £1,780 by 7 July 2017.

Based on the above, Mr G had income through Account 1 of around £1,300 a month and further income into Account 3 of around £600, giving a monthly income of £1,900 against his expenses through Account 4 of £1,600. While Mr G received income of around £400 into his Account 2 this was more than offset by his expenses and Mr G had other expenses from other accounts which further reduced his disposable income. As the repayments on Mr G's agreement were for £483 these weren't affordable. I further think that the significant reduction in Account 2 and Account 5 in the months leading up to the agreement should have raised concerns that Mr G was spending more than he was receiving and that providing further credit wouldn't be sustainable for him.

In conclusion, while Mr G was able to maintain his repayments for a period of time, I think the information available to Startline at the time of the finance application showed the new agreement wasn't affordable for Mr G. Startline therefore didn't make a fair lending decision.

Putting things right

As I don't think Startline ought to have approved the lending, I don't think it's fair for it to be able to charge any interest or charges under the agreement. However, Mr G has now had use of the car for around 57 months, so I think it's fair he pays for that use. But I'm not persuaded that monthly repayments of over £483 a month are a fair reflection of what fair usage would be. This is because a significant proportion of those repayments went towards repaying interest.

There isn't an exact formula for working out what a fair usage should be. In deciding what's fair and reasonable I've thought about the amount of interest charged on the agreement, Mr G's likely overall usage of the car and what his costs to stay mobile would likely have been if he didn't have the car. In doing so, I think a fair amount Mr G should pay is £280 for each month he had use of the car. This means Startline can only ask him to repay a total of £15,960.

To settle Mr G's complaint, Startline should do the following:

- As the agreement has already been terminated, there is no need to end the agreement.
- Collect the car with nothing further to pay.
- Refund all the payments Mr G has made, less £15,960 for fair usage.
    - If Mr G has paid more than the fair usage figure, Startline should refund any overpayments, adding 8% simple interest per year* from the date of each overpayment to the date of settlement. Or;
    - If Mr G has paid less than the fair usage figure, Startline should arrange an affordable and sustainable repayment plan for the outstanding balance.
- Once Startline has received the fair usage amount, it should remove any adverse information recorded on Mr G's credit file regarding the agreement.

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

My final decision

I uphold this complaint and direct Startline Motor Finance Limited to put things right in the manner set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 25 May 2022.

Jane Archer
Ombudsman