

## **The complaint**

Mr R complains that Startline Motor Finance Limited (“Startline”) lent to him irresponsibly when it gave him a hire purchase (HP) agreement which he says he couldn’t afford.

## **What happened**

Mr R took out an HP agreement for a vehicle with Startline in July 2018. It cost £9,100 and Mr R paid a deposit of £500. He paid £219.33 a month over a 60 month term. Mr R voluntarily terminated the agreement in May 2021.

Mr R says that Startline shouldn’t have lent to him because he was struggling with a gambling problem. He says that he had missed payments, defaults and arrears on multiple lines of credit and if Startline had done sufficient checks it would have realised.

Mr R complained to Startline, but it didn’t uphold his complaint. Mr R brought his complaint to this service. Mr R asks that Startline refund all the interest and charges he paid on the agreement and adjust his credit file, along with paying 8% statutory interest on the interest and charges.

Our investigator thought Mr R’s complaint should be upheld. Startline disagreed. As Startline didn’t agree with the investigator’s view Mr R’s complaint has been passed to me to make a 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.

We’ve set out our general approach to complaints about unaffordable and irresponsible lending - including the key relevant rules, guidance and good industry practice - on our website and I’ve taken that into account when I have considered Mr R’s complaint.

Having done so, I have come to the same conclusion as that of our investigator. Our investigator provided a very thorough explanation of why he thought Mr R’s complaint should be upheld but I will explain why I have also reached this decision.

Startline needed to take reasonable steps to ensure that it didn’t lend irresponsibly. In practice this means that it should have carried out proportionate checks to make sure Mr R could afford to repay what he was being lent in a sustainable manner. These checks could take into account a number of different things, such as how much was being lent, the repayment amounts and Mr R’s income and expenditure. There is no set list of checks a business has to do but Startline says it asked Mr R about his income and living arrangements and reviewed Mr R’s credit file.

Mr R declared his monthly income as £1,593 and he rented his property. Startline says it verified his financial circumstances with a credit reference agency and noted that he was managing his existing credit well. It calculated that Mr R had over £1,050 a month for his essential and discretionary spending, although it does not explain how it reached that conclusion.

Startline noted that Mr R had an active hire purchase agreement costing around £179 a month, with a balance of £4,836 a month at the time of application. Startline says it insisted Mr R clear that hire purchase agreement before it would lend to him. This would mean that the new hire purchase agreement would only cost Mr R about £50 more a month than he was already paying. On this basis, Startline was satisfied that the lending was affordable for Mr R.

However, Mr R's credit record also recorded 11 defaults. These weren't all recent – they spanned from late 2012 to early 2017 – and one had been repaid, but the balances on the remaining ones weren't reducing and Mr R wasn't making any payments towards most of them. Our investigator thought this, along with an erroneous assumption that Mr R would be retaining at least one other hire purchase agreement, meant Startline ought to have completed further checks on Mr R's financial situation.

Startline corrected the investigator's assumption about the hire purchase agreements, but I still agree with our investigator that the number of defaults alone should have caused Startline to seek further information about Mr R's circumstances.

But this doesn't mean that I should automatically uphold Mr R's complaint. I need to think about what Startline would have found out if it had done further checks. And there is no prescriptive list of checks a business should do. Startline says it wouldn't have ever asked for bank statements, but it hasn't said how, if it thought further checks should be done, it would have got more information. So, I think it's reasonable to rely on the only available additional information about Mr R's financial circumstances, which is the bank statements he has provided.

Our investigator reviewed bank statements for the account that Mr R received his income into. His income was around £1,429 a month and he appeared to be transferring a significant amount to another bank account. From the income-receiving account Mr R was spending a very large amount on gambling transactions – over £2,500 in the two months leading up to the application with Startline. Living expenses were paid from another account, which I have also reviewed. These show that Mr R was gambling heavily from this account, too, including over £3,000 in May 2018 alone. I think these accounts show that Mr R's gambling was out of control. He was spending far more than his monthly income each month on such transactions. And I think if Startline had completed necessary and proportionate checks it would have seen that Mr R was vulnerable and was unable to manage his finances in a responsible way, and that he would be likely to be unable to sustain any additional credit.

So, even though the additional lending from Startline wasn't large – I've said it was around £50 a month more than the hire purchase agreement he settled in order to take out the agreement with Startline – I don't think the lending was affordable or sustainable for Mr R. I think if Startline had completed necessary and proportionate checks it would have understood this and not lent to Mr R.

## **Putting things right**

Where a business has made an error, our service would usually aim to put the customer back in the position they would have been in had the error not occurred. However, in cases where a business has lent irresponsibly this isn't entirely possible, as the lending provided cannot be undone.

As I don't think Startline ought to have provided the lending, I don't think it's fair for it to be able to charge any interest or charges under the agreement. But Mr R did have use of the car for around 33 months, so I think it's fair that he pays for that use. But I'm not persuaded that monthly repayments of £219.33 a month are a fair reflection of what fair usage would have been. This is because a significant proportion of those repayments went towards paying interest.

There isn't an exact formula for working out what a fair monthly repayment would be to reflect Mr R's usage. But in deciding what's fair and reasonable I've thought about the amount of interest charged on the agreement, Mr R's likely overall usage of the car and what his costs to stay mobile would likely have been if he didn't have his car. In doing so, I think a fair amount Mr R should pay is £151.67 for each month he had use of the car. This means Startline can only ask him to repay a total of £5,005.11.

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

- Refund the deposit, adding 8% simple interest per year\* from the date of payment to the date of settlement.
- Calculate how much Mr R has paid in total and deduct £5,005.11 for fair usage. If Mr R has paid more than the fair usage figure, Startline should refund any overpayments, adding 8% simple interest per year\* from the date of payment to the date of settlement.
- Remove any adverse information recorded on Mr R's credit file regarding the agreement.
- If there are any arrears after the settlement has been calculated, Startline should arrange an affordable repayment plan and treat Mr R with forbearance and due consideration.

\*H M Revenue and Customs requires Startline to take off tax from this interest. Startline must give Mr R a certificate showing how much tax has been taken off if Mr R asks for one.

## **My final decision**

I am satisfied that Startline Motor Finance Limited acted unfairly when it lent to Mr R and so I uphold Mr R's complaint. Startline Motor Finance Limited must put things right in the way I have set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 6 August 2024.

Sally Allbeury  
**Ombudsman**