

The complaint

Mr F believes MotoNovo Finance Limited acted irresponsibly by agreeing a hire purchase agreement he'd applied for.

What happened

In September 2014, Mr F was supplied with a used car through a hire purchase agreement with MotoNovo. The agreement was for £3,995 over 48 months, with monthly repayments of £111.53.

Mr F has complained that MotoNovo didn't act responsibly when approving the finance. He's said he desperately needed a car to get to work. But, at the time he took out the agreement, he was behind on his mortgage and credit card payments; and he was using payday loans to try and keep up with his monthly commitments. He's also said that his financial difficulties got worse after taking out the finance, resulting in him having to sell his home in 2017.

MotoNovo didn't agree they'd acted irresponsibly, so Mr F brought his complaint to us for investigation.

Our investigator said MotoNovo couldn't provide a copy of the credit file they checked when they approved Mr F's application, although she didn't doubt they'd done one. So she considered the credit file Mr F supplied, which showed details of his financial position in 2014. And she thought this would likely be the same information as MotoNovo saw in 2014.

The investigator said the credit file showed Mr F had been in arrears with his mortgage from January 2011, as well as being in arrears with his credit card payments. And this showed he was struggling with his existing financial commitments. Because of this, and the size, term and APR of the finance Mr F had applied for; the investigator thought MotoNovo should've conducted further checks before they agreed to lend.

The investigator considered Mr F's bank statements from the time of his application, as these were what she thought MotoNovo should've looked at. And these showed Mr F had a monthly income of £1,612, and a monthly expenditure (including the insurance and road tax costs of the car he was financing) of £1,371 before food, petrol or the payment to MotoNovo.

The investigator said that, after paying MotoNovo, Mr F would be left with £126 to pay for food, petrol and other necessary expenses. Which she didn't think was enough – Mr F had said he spent £200 a month on food and would need to spend a further £120 a month on petrol for driving to and from work. So the investigator said that the hire purchase agreement wasn't affordable or sustainable. And she didn't think MotoNovo acted fairly or reasonably in approving the lending.

Because Mr F had already settled the agreement in full by selling the car, the investigator said he should only have to pay the money he borrowed. So she thought that MotoNovo should refund him all of the interest and fees he's paid them, plus interest on this refund. And she said they should also remove any adverse information from his credit file.

MotoNovo didn't agree with the investigator. They said the credit file they'd checked showed Mr F was up to date with his mortgage payments, although they can't provide us with a copy of this for data protection reasons. But they've said we should be able to request a copy of the credit file they checked, directly from the credit reference agencies.

MotoNovo said that *"the car was inexpensive and the repayments were reasonable as a result; the customer was in permanent full time employment."* They also said that Mr F never made them aware that he was struggling to make repayments and made all of the scheduled payments until the agreement was repaid. Because of this, MotoNovo thought they'd acted responsibly when agreeing to lend.

The investigator explained to MotoNovo how their comments didn't change her mind. So MotoNovo have asked for an ombudsman to make 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.

When someone complains about irresponsible and/or unaffordable lending, there are two overarching questions I need to consider in order to decide what's fair and reasonable in all of the circumstances of the complaint. These are:

1. Did MotoNovo complete reasonable and proportionate checks to satisfy itself that Mr F would be able to repay the credit in a sustainable way?
 - a. if so, did MotoNovo make a fair lending decision?
 - b. if not, would reasonable and proportionate checks have shown that Mr F could sustainably repay the borrowing?
2. Did MotoNovo act unfairly or unreasonably in some other way?

And, if I determine that MotoNovo didn't act fairly and reasonably when considering Mr F's application, I'll also consider what I think is a fair way to put things right.

Did MotoNovo complete reasonable and proportionate checks to satisfy itself that Mr F would be able to repay the credit in a sustainable way?

There's no set list for what reasonable and proportional checks are, but I'd expect lenders to consider things such as the amount, duration and payments of the finance being applied for; as well as the borrowers' personal circumstances at the time of each application.

MotoNovo have explained that they're unable to provide us with a copy of the credit file they checked due to data protection reasons. And they've said we can request a copy of this from the credit reference agencies. But MotoNovo are undoubtedly aware that we're unable to obtain a copy of this. If they're unable or unwilling to provide this information, only Mr F can obtain a copy of his credit file.

And I've seen a copy of the credit file Mr F obtained from the credit reference agencies, which shows his financial position at the time he applied to MotoNovo. The credit file clearly shows that Mr F had three mortgage accounts:

- account one shows constant arrears of one- or two-months payments from January 2012 to June 2013. All payments are then showing as being up to date until the application was made.

- account two shows occasional missed payment between October 2011 and March 2012, then the account is showing as being up to date until the application was made.
- account three shows a missed payment in September 2011, one-months arrears from January to September 2012, then all payments up to date until the application was made.

Based on this, I agree with MotoNovo that the mortgage was showing as up to date at the time the application was made. But there were historic arrears, and this indicates that Mr F had had problems maintaining his financial commitments in the recent past. And, because the mortgage is a priority debt, I think that this makes the historic arrears more concerning.

The credit file also shows Mr F had two credit cards and a loan. The first credit card was opened in March 2014 (a few months before the application was made) and that all payments were up to date. The second credit card shows as being between one- and three-months in arrears from January 2012 to January 2014, then being up to date until the application was made. And the loan shows as being taken out in February 2014 (again, a few months before the application was made) and being one month in arrears at the date of the application.

There's no evidence on the credit file that Mr F was using short-term payday lenders before making the application, but this does show he was using them afterwards.

Different lenders have different criteria, so I wouldn't expect MotoNovo to automatically decline the application due to the historic arrears. But I would expect them to take these into consideration when making their overall lending decision. And the extent of the arrears, the recent lending that Mr F had taken out, and the fact that this lending was already in arrears, indicates that Mr F was in financial difficulties. So, I would've expected MotoNovo to do additional checks before making their lending decision.

Would reasonable and proportionate checks have shown that Mr F could sustainably repay the borrowing?

The main additional check I'd expect MotoNovo to have done is to check Mr F's income and expenditure to ensure their finance was affordable at the point of application, and to see that affordability was sustainable throughout the lifetime of the lending. I can't see that MotoNovo ever independently verified Mr F's income, and I don't think it's reasonable for them to rely on self-declared income. Especially when the other checks have indicated possible signs of financial difficulty.

Mr F has provided his bank statements for the period 4 July to 3 October 2014 – he made his application to MotoNovo in August 2014, and it was approved in late September 2014. In the absence of anything else, I think these bank statements give a good indication of what MotoNovo would likely have discovered if they'd asked about Mr F's expenditure.

The bank statements show that Mr F was almost continually overdrawn, and that he'd exceeded his overdraft limit on seven separate occasions during this three-month period. Which resulted in him being charged interest and fees by his bank.

The bank statements show Mr F had an average income of £1,614 for the three-month period. And his average monthly expenditure was £1,036 (for his mortgage, utilities, insurances, phone, TV and his two credit cards). But the loan of £134 showing on the credit search isn't showing on his bank statements, nor are his council tax payments. So, deducting this loan, allowing £110 for his council tax (which is what Mr F says he paid at the time), £40 for his average monthly overdraft fees, and £111 for the MotoNovo payment; Mr F would be left £183 disposable income a month.

I don't consider £183 a month to be sufficient for Mr F to cover his food, fuel, expenses related to his new car, and other outgoings such as clothing. So, for this reason, I don't think the finance was affordable or the payments sustainable. And in not doing the additional checks I'd expect them to do, MotoNovo didn't act responsibly when approving the finance.

Did MotoNovo act unfairly or unreasonably in some other way?

I haven't seen anything to make me think MotoNovo acted unfairly or unreasonably in some other way.

Putting things right

Mr F has explained that financing the car pushed him over the edge "*into the arms of payday lenders and mortgage arrears.*" But he had use of the car, and he sold it and paid off the outstanding amount on the agreement.

Taking this into account, I think it's right that Mr F should pay for the car. But, because the finance should never have been agreed, I don't think it's right that he should have to pay any interest or charges. And his credit file should reflect that the finance shouldn't have been approved.

So, MotoNovo should:

- refund all of the interest and charges applied to Mr F's finance agreement, plus simple interest at 8% from the date the interest and charges were paid to the date of the refund †; and
- remove all records of the finance agreement from Mr F's credit file.

†HM Revenue & Customs requires MotoNovo to take off tax from this interest. MotoNovo must give Mr F a certificate showing how much tax they've taken off if he asks for one.

My final decision

For the reasons explained above I uphold Mr F's complaint. MotoNovo Finance Limited must follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 29 March 2021.

Andrew Burford
Ombudsman