

## The complaint

Mr B has complained about a vehicle hire purchase agreement granted to him by FirstRand Bank Limited trading as MotoNovo Finance ('MotoNovo'). He says that MotoNovo didn't carry out suitable checks to confirm that the finance would be affordable for him. Mr B also says that on investigating a problem with the car he learned that it had previously been involved in an accident and he feels the car was mis-sold.

## What happened

MotoNovo agreed credit for Mr B in June 2017 via an intermediary in order for him to acquire a car. The cash price of the car, as per the agreement, was £15,495. The total amount owing under the agreement, including £5,586 interest and charges, came to £21,081. Mr B paid a deposit of £1,000 and the remainder was to be repaid by 59 instalments of £332 and a final payment of £491 (all figures rounded).

The credit was granted under a hire purchase agreement meaning Mr B would own the car when the credit had been repaid. MotoNovo was the owner of the car until that point and Mr B was, in essence, paying for the use of it.

Mr B's account history shows that he missed a payment in February 2019 and was charged default fees and interest. He continued to make his payments until March 2020. To date, Mr B has repaid a total of approximately £11,674 including his deposit.

Mr B says that MotoNovo should not have agreed to lend to him because he couldn't afford to meet the repayments as he worked part-time. He says that the information about his circumstances provided to the lender by the car dealership wasn't correct and MotoNovo wouldn't have agreed to lend to him if it had carried out further checks.

Mr B also says that the vehicle had been previously written off and should not have been sold to him. Specifically he said '*I recently drove the vehicle over a speed hump and the bonnet automatically popped up. I took the vehicle to an independent mechanic to see why this had happened. Upon inspection, the mechanic stated the vehicle had been subject to a previous accident and the airbag system was not intact.*' Mr B also says that he wasn't given all the information he should have been about the finance agreement before he entered into it.

Finally, Mr B says that he was in a vulnerable position at the time of the agreement. He explained that from 2017 to 2020 he had been lodging with friends and an ex-partner and never had a stable address. It seems Mr B was hospitalised in May 2020 as his mental health deteriorated when he lost his job (in March/April 2020) and ended up without anywhere to live. Mr B was referred by the hospital on discharge to the council's housing department, who gave him temporary accommodation.

Mr B initially said he would like MotoNovo to take back the car and refund his payments in order to resolve his complaint.

MotoNovo says that it carried out the required checks prior to agreeing finance for Mr B. It

also says that he applied for finance on four occasions prior to the application in question and gave different information about his employment each time. MotoNovo says that the vehicle wasn't written off according to the UK's write-off database and that Mr B had declined to provide it with any information about his vulnerability when he made his complaint.

Mr B gave permission for this Service to let MotoNovo know what he had told us about his mental health. Subsequently, in June 2020, MotoNovo offered to accept the return of the car with nothing further for Mr B to pay in order to resolve his complaint. It said this was because of Mr B's current vulnerability and not because it agreed with any aspect of his complaint. Mr B declined this offer.

Our investigator looked into what happened when Mr B's finance was agreed and found that MotoNovo ought to have carried out further checks but, had it done so, wasn't likely to have learnt anything that would have led it to decline his application. They also found that MotoNovo wouldn't have been aware of any vulnerability Mr B had at the time. Finally, our investigator concluded they didn't have enough information to find that the car had been of unsatisfactory quality when Mr B acquired it. They agreed that MotoNovo's offer to resolve the complaint was a fair one.

Mr B disagreed with the investigator's findings. He says he's paid a considerable amount under the agreement and he would rather come to a settlement figure with MotoNovo which would allow him to keep the car. MotoNovo said it would consider a reduced settlement but it would need documentation to validate that Mr B would be able to afford to make a full and final payment or enter into a repayment plan.

Mr B asked for his complaint to come to an ombudsman to review and resolve. I issued a provisional decision on the 14 August explaining why I was minded to uphold Mr B's complaint and my proposals for putting things right for him. I thought MotoNovo should refund all the payments Mr B made, including his deposit, but it was fair that it retained a portion of these payments to reflect that Mr B still had the use of the car. I gave both parties a month to respond.

MotoNovo said that, while I'd found Mr B was employed part-time he had stated on his application form that he worked full-time. MotoNovo also says that I concluded that the repayments would not be sustainable for Mr B because his income was variable. It didn't comment on my proposed redress.

Mr B didn't agree with my proposed redress as he feels he shouldn't be charged for the use of the car beyond March 2020. He says he stopped using it then but has paid money to keep it legally on the road since. Mr B provided evidence of an insurance payment in October 2021.

### **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.

I have again taken into account the law, any relevant regulatory rules and good industry practice at the time. These included, for example, the Consumer Credit Act 1974, its revisions in 2015 and the Financial Conduct Authority's Consumer Credit Handbook (CONC) which set our regulations and guidance for lenders such as MotoNovo. I've also considered what both parties have said in response to my provisional decision.

Having reviewed the case, I remain of the view that, on balance, MotoNovo was irresponsible when it agreed credit for Mr B. I've set out my reasons again in this document. I have not changed my view on how things should be put right, though I appreciate that will be disappointing for Mr B. I will explain why in the relevant section below.

The credit to buy the car was granted by MotoNovo under a hire purchase agreement meaning Mr B would own the car when the credit had been repaid. MotoNovo was the owner until that point and any complaints about the quality of the car as given to Mr B then fall to MotoNovo. In addition, as the owner of the car bought from the dealership, MotoNovo was responsible for any negotiations the dealership had with Mr B, including advertisements, before he entered into the hire-purchase agreement.

MotoNovo also needed to check that Mr B could afford to meet his repayments sustainably. In other words, it needed to check he could repay the credit out of his usual means without having to borrow further and without experiencing financial difficulty or other adverse consequences. The checks needed to be proportionate to the nature of the credit and Mr B's circumstances, and MotoNovo needed to take proper account of the information it gathered. The overarching requirement here is that MotoNovo needed to pay due regard to Mr B's interests and treat him fairly.

In coming to a decision on this case, I have thought about the following questions:

- did MotoNovo make a fair lending decision, in other words did it complete reasonable and proportionate checks when assessing Mr B's application to satisfy itself that he would be able to repay the finance in a sustainable way? If not, what would reasonable and proportionate checks have shown?
- was the car of satisfactory quality, in other words was it of a standard a reasonable person would consider satisfactory for the car in question? Was the car misrepresented to Mr B?
- was Mr B given clear, fair and not misleading information about the finance particulars before he entered into the agreement?
- did MotoNovo act unfairly or unreasonably in some other way, for example when Mr B had difficulty meeting repayments or regarding his vulnerabilities?

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Having considered everything carefully, I've concluded that MotoNovo ought to have carried out further checks before agreeing credit for Mr B. I think further checks would likely have shown that he could not afford to meet his repayments sustainably and so I'm upholding this aspect of his complaint.

MotoNovo says that Mr B's application stated that he was employed as an assistant manager on a full-time basis for several years earning a gross salary of £24,000. It also stated that he lived with his parents and had no dependents and provided a summary of his credit file information.

I think the information MotoNovo had should have prompted further checks. For example, the information provided by the dealership showed that Mr B had a default on an active loan

with a similar repayment amount. And, as MotoNovo pointed out, it seems Mr B had provided conflicting information to MotoNovo about his employment on four previous application for credit, most recently in November 2015. I think this ought to have prompted MotoNovo to seek verification of Mr B's circumstances.

MotoNovo says that it didn't verify Mr B's income as there was no requirement for it to even request information about his income at that time. It said in its final response to Mr B *"Specific regulations relating to the supply of your income, along with affordability assessments; were only introduced after your agreement began. For further information on this, I would recommend reviewing the Financial Conduct authority's website; with particular attention to Consumer Credit Sourcebook 5 and the regulations which came into force in 2018."*

It is true that the wording of the relevant regulations changed in November 2018 to specifically mention that lenders must consider an applicant's income or savings when checking affordability. However, this doesn't mean that it would never have been appropriate to do so prior to this point. The regulations in place at the start of this agreement required lenders to check that applicants could make their repayments *sustainably*. CONC 5.3.1G-6 defined sustainable repayment as being able to make repayments on time while meeting other reasonable commitments, without having to borrow to meet the repayments, out of income and savings over the lifetime of the agreement.

It seems to me that in order to assess the risk to Mr B of not meeting his repayments of £332 a month for five years without difficulty, especially given what it already knew, MotoNovo would need to gather some understanding of his means and his existing commitments. MotoNovo hasn't mentioned that it sought information about Mr B's living costs as part of his application for credit, so I assume it didn't do so.

The regulations also stated that taking income levels into consideration generally meant independently verifying what the applicant had declared - CONC 5.3.1G – 4(b). MotoNovo said that Mr B said he worked full time earning a salary of £24,000 but I don't think it was enough in this case to accept what Mr B said without an independent verification.

Altogether, I can't say that MotoNovo did enough here to assess the risk to Mr B of not managing to meet his repayments sustainably. And so I think its checks weren't proportionate on this occasion.

Mr B has provided his bank statements, employment contract and some credit file information from 2017. He explained that in June 2017 he had been employed in his job for less than a year and was working part-time. Mr B also said that his family home address is linked to all his accounts because he feels it's safer to receive his mail there as he's never managed to have stable accommodation.

Our investigator reviewed this information and concluded that MotoNovo wouldn't have declined Mr B's application for credit had it understood more about his circumstances. However, I've come to a different conclusion. As our investigator explained, Mr B's income varied considerably from month to month – his lowest pay was £974 in April 2017 for example. His employment contract (dated August 2016) confirms that he was employed on a part-time basis. Mr B said his expenses included his phone, car, living costs and rent and commuting. These are not generally identifiable on his bank statements as it seems he managed his finances mostly by cash.

I'd provisionally concluded that this information wouldn't have reassured MotoNovo that Mr B would have been able to meet his repayments sustainably over five years given that he might need to spend over a third of his monthly wage on making his repayments in any given

month. I found, on balance, that it was more likely than not that MotoNovo would have declined to lend to Mr B, and so I found that it was irresponsible to have entered into this agreement.

MotoNovo said, in response to my provisional decision, that I'd concluded that the repayments would not be sustainable for Mr B because his income was variable. To be clear, I am not suggesting that an applicant with a variable income is automatically at a higher risk of not being able to meet their repayments sustainably. In this case, because the evidence I've seen shows Mr B's wages varied to the extent he might end up spending more than a third of his income on this credit in any given month, I thought the risk was high that he would not be able to meet his repayments sustainably over the term of the agreement. Furthermore, Mr B's work contract shows an hourly rate of just over £7 an hour for 15 hours a week or less than £500 a month. Mr B has confirmed that his wages included a sales bonus. It's possible Mr B might have earned less in some months than the minimum of £974 I've seen.

Having reconsidered this matter carefully, I remain of the view that it's more likely than not that MotoNovo would have declined to lend to Mr B had it fully understood his means, and so I've found that it was irresponsible to have entered into this agreement.

I appreciate that Mr B managed to meet his payments for ten months before being late with a payment, and that he managed to meet his payments for 18 months before being sent a default notice and paying additional interest. As mentioned Mr B stopped making payments in early 2020. In this case I don't think it's reasonable to conclude that successfully meeting any repayments meant that Mr B was able to do so without undue difficulty. I can understand why Mr B's loss of employment in 2020 caused obvious and immediate problems for him, however, based on everything I've seen I think it's more likely than not that Mr B struggled from the outset to meet his repayments sustainably, which later events compounded.

Mr B has been charged interest and fees on an agreement which I don't think should have been put in place and MotoNovo needs to take steps to put this right for him. I've set out how this should happen later in this document.

*Was the car of satisfactory quality, in other words was it of a standard a reasonable person would consider satisfactory for the car in question? Was the car misrepresented to Mr B?*

Mr B says that the car had previously been involved in an accident and he had experienced an issue with the bonnet opening unexpectedly. He provided a message from a local garage who had checked the car, which said:

*“... I personally gave you a worst case scenario that you might need to replace the bonnet pop-up sensors as its related to the airbag system and we cannot compromise yours or others safety as your bonnet popped up whilst driving on a hump. We also advised you to contact the main dealer as its possible it might be under warranty even though your vehicle was a previous category damage, which you did.”*

MotoNovo said in its final response to Mr B that it had “carried out a search of the UKs write off database... have found this vehicle was not deemed any category of write off, prior to your purchase.”

I accept that Mr B experienced an incident with his car bonnet however, without any further explanation or evidence of the issue he experienced, I can't determine whether this is likely to have been present at the time he acquired the car. So I haven't found that the car was of unsatisfactory quality.

I also don't have enough information to determine whether or not the car had been in an accident and been deemed an insurance write-off prior to Mr B's acquisition. So I can't reasonably conclude that such information had been withheld from him and, had it been provided, Mr B would have not proceeded with the agreement.

*Was Mr B given clear, fair and not misleading information about the finance particulars before he entered into the agreement?*

Mr B says that he was initially declined for credit but the dealership explained that a larger deposit would help his application. I can see from the business notes provided by Mr B that his application was declined on 16 June 2017. The dealership explained to MotoNovo on the 17 June that Mr B had provided a deposit of £1,000 and his application was then accepted. Mr B says the following about the sale:

*"The sales man then rushed me through an online signing platform and made me sign an electronic pad. He said and I quote 'sign here for this' 'sign here for this' I wasn't shown anything of payments, length of contract and interest. The salesman then explained I will receive a copy in the post to be able to review for my own records. I can confirm I never received this in the post. I was believing the application was on the same basis as the first but only a higher initial deposit. I had no idea how much Interest I was going to pay or length of contract. You ask why I didn't contact MotoNovo to ask for the contract. I didn't even know MotoNovo was the lender until I called up the dealership and asked the salesman who then checked records and told me MotoNovo was the lender."*

In order to direct a business to make amends for something that it got wrong, I need to be persuaded that the business's error caused a loss for the consumer. In other words, if the error hadn't happened and everything had gone as it should have, would that have changed the outcome?

Clearly, I can't know the details of what was discussed between Mr B and the car dealership. I note that Mr B signed the hire purchase agreement which sets out the cash price of the car, the fees and interest associated with the credit, the total owed and the repayment amounts and term. It may be that Mr B wasn't told everything he should have been before signing the agreement. But I think if he wasn't expecting to make payments of £332, which started two months later in August, Mr B might have queried the agreement details sooner and I can't see that this happened.

So, even if Mr B had been given all the information, in other words if everything had gone as it should have done regarding the finance information Mr B should have received, I don't think it would have changed his mind about entering into the agreement.

*Did MotoNovo act unfairly or unreasonably in some other way, for example when Mr B had difficulty meeting repayments or regarding his vulnerabilities?*

Let me first say that I'm sorry to hear of Mr B's health issues and his financial and personal difficulties. I fully accept what he's told us about these matters and I'm sorry things have been so difficult for him.

As mentioned above, I understand that Mr B wasn't in stable accommodation but was staying with family and friends at the time of the agreement. I also understand that he was working part-time. The medical documentation he has provided states that Mr B struggled to deal with his circumstances for a number of years. And when he lost his job and his accommodation in early 2020, his mental health deteriorated. Mr B told us *"All my employment money went to Motonovo finance and therefore led to my break out in [-] and mental health."*

As I've explained above, I think MotoNovo should have looked into Mr B's circumstances further before it agreed credit for him. I think MotoNovo was likely to have learnt then that Mr B wouldn't have been able to meet his repayments without difficulty. However, I haven't seen anything in what Mr B has told us or the available documentation which makes me think MotoNovo ought to have known about Mr B's living arrangements or the impact this was having on him at the time.

I understand that when Mr B complained to MotoNovo in April 2020 he didn't wish to tell them about his circumstances, but when he brought his complaint to us he gave permission for us to share this information with MotoNovo. On learning about Mr B's difficulties in 2020 and later, MotoNovo offered to take back the car at no further cost to him. This offer was made in August 2020 and rejected by Mr B.

Altogether, I don't think MotoNovo treated Mr B unfairly when he revealed that he was vulnerable as it doesn't seem to me he explained his situation to it in any detail at the time. And when MotoNovo understood more about his circumstances, it made an offer to resolve his complaint, which our investigator considered was fair.

### **Putting things right**

As I've explained above, I've found that MotoNovo was irresponsible when it entered into this agreement with Mr B. He's lost out financially because of this as he's been charged interest and fees on the money he borrowed and the agreement has been reported on his credit file.

Mr B has told us that he would like to repay the capital amount only and hold on to the car. I can understand Mr B's wishes, but my decision deals with what's gone wrong regarding the current agreement so I've set out below what I think needs to happen to put this right. Mr B doesn't have to accept this decision and it would then be up to him and MotoNovo to come to an agreeable resolution together or allow a court to decide what's best. MotoNovo has said that it's open to consideration of a reduced settlement but would need to understand how Mr B would repay any balance.

In order to redress its error and put Mr B back into the position he would have been in prior to the agreement, MotoNovo first needs to cancel this agreement. MotoNovo remains the owner of the vehicle, but because I don't think the agreement should have been set up it needs to refund the payments Mr B made under it.

In addition, I think it's fair that MotoNovo retains a portion of Mr B's payments because he has had the use of the car since June 2017 and it's likely he would have incurred some costs to stay mobile or made other arrangements. There isn't an exact formula for working out what a fair proportion of Mr B's payment might reflect his usage of the car. I've considered the cash price of the car, the amount of interest charged on the agreement, how the agreement was structured and the likelihood of the car having decreased in value since the agreement's inception.

I said in my provisional decision that Mr B has had the use of the car since June 2017 and I understood his usage of it hadn't been impaired due to the operation of the car, despite Mr B's concerns about its history. Mr B said, in response, that he stopped using the car in March 2020 due to his hospitalisation and he feels he shouldn't have to pay a fair usage charge beyond this. Mr B says he's insured the car to keep it road-legal. I can understand why Mr B would continue to insure the car, not least because it's a requirement of the agreement. However, I understand that the car was repaired to pass its MOT in November 2020 and is currently taxed. If Mr B wasn't using the car or wasn't intending to use it, then he

could have saved these costs and declared the car as off-road to DVLA. So, taking everything into account, I don't think I can disregard any of the time Mr B's had the car in his possession.

Having thought about everything again, I remain of the view that an amount of £175 a month from the date of inception of the agreement to the date of collection of the car would be a fair proportion of the refund for MotoNovo to retain.

In summary, to put things right for Mr B MotoNovo should:

- End the agreement and collect the car with nothing further for Mr B to pay; and
- Refund any payments Mr B has made (including his deposit) minus a fair usage charge of £175 a month for the months Mr B's had the car in his possession; and
- Remove all adverse information about this finance agreement from Mr B's credit file.

### **My final decision**

For the reasons set out above, I am upholding Mr B's complaint about FirstRand Bank Limited trading as MotoNovo Finance and require it to put things right for him as I've proposed.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 22 December 2021.

Michelle Boundy  
**Ombudsman**