

The complaint

Mr W complains about how FirstRand Bank Limited trading as MotoNovo Finance ("MotoNovo") has treated him in relation to a finance agreement he has with it.

What happened

I set out what happened in this complaint in the provisional decision that I issued earlier this year. But for ease of reading in this decision I'll repeat what I said before about the background to Mr W's complaint.

In February 2018 Mr W entered into a hire purchase agreement with MotoNovo under which it supplied him with a used car.

Due to the Covid-19 Pandemic Mr W began to have difficulties in making his repayments to his agreement. Therefore, in May 2020, MotoNovo agreed to a payment deferral. Mr W deferred his repayments for April, May, June, and July 2020. However, on 21 August 2020 Mr W and MotoNovo agreed he would resume his repayments. Specifically, they agreed that he'd go back to making his contractual repayment and the four months of payments which had been the subject of the payment deferral would be paid later. The mechanism for this was that Mr W's agreement with MotoNovo would be extended by four months to allow him to make up these repayments.

According to Mr W he was expecting MotoNovo to begin taking his payment again as normal in August 2020. It seems he was under the impression this could happen without any further action from him. Instead it was not until April 2021 that his repayments began again. By which point MotoNovo told Mr W he had seven months of arrears. Moreover, it told Mr W that it would be adding charges to the arrears and asking the credit reference agencies to mark them on his credit file.

Mr W suggest MotoNovo has treated him unfairly. Mr W wants an apology. Further, Mr W wants to pay what he owes without the addition of interest, charges and fees in relation to the arrears not covered by the payment deferral. Moreover, he wants to make sure that no negative information is registered on his credit file about the arrears.

MotoNovo indicates that it contacted Mr W by text message in July and August 2020. According to it these text messages told Mr W that his direct debit (which is the way he had been making his payments before the payment deferral) had been stopped. Moreover, the texts also said that the payment deferral was coming to an end in August 2020. It also suggests that at that point at least, it let Mr W know that payments had not been coming out of his account since March 2020.

MotoNovo says it attempted to have a follow-up call with Mr W on 24 August 2020. It did get to speak to him, instead it left a message on his answer machine. However, it does not tell us what it said in that message. Instead it merely tells us that it received no reply to that message.

MotoNovo suggests its next telephone contact with Mr W was in early March 2021. MotoNovo indicates that whilst it did get through to Mr W, he told it he was unable to talk at that point. It was not until about ten days later that Mr W called MotoNovo back. In this call MotoNovo told Mr W about the arrears and he told it that he had thought his direct debits had re-started back in August 2020.

MotoNovo says that payment methods were not discussed in the call of August 2020. It apologised for this and initially offered £50 to make up for this, it then increased this offer to £100.

MotoNovo's stance is that ultimately Mr W was responsible for making sure he made his repayments to it. It also told Mr W that it would be reporting the payments he missed after July 2020 as arrears. MotoNovo said it intended to ask the credit reference agencies to mark these arrears on Mr W's credit file. It said it would be adding interest, charges, and fees to the arrears.

Dissatisfied Mr W came to our service.

Once Mr W's complaint was with us, he supplied some further information. He told us he had the money set aside to pay the seven months of arrears in full. However, he was unwilling to pay any interest, charges, and fees in relation to the arrears, as he thought this was unfair.

One of our investigators looked into Mr W's complaint. She noted that Mr W and MotoNovo had discussed resuming payments on 21 August. Mr W had told MotoNovo that he was able to resume his repayments. This was followed up by an email from MotoNovo sent after the call telling Mr W that if his direct debit was no longer active it would reinstate it.

Moreover, MotoNovo clearly expected its employees to take steps to deal with an inactive direct debit in these circumstances as its processes required the employee to indicate if the direct debit had been reinstated.

As a result of all of this, our investigator indicated that Mr W was entitled to expect that the payments had recommenced given everything that had happened. Further our investigator disagreed with MotoNovo's stance about the information it was entitled to ask the credit reference agencies to register. She concluded, it was not fair and reasonable to say MotoNovo need not remove the negative information from Mr W's credit file because the onus was on him to make sure the payments were in fact called for.

In all the circumstances, our investigator recommended that it was fair and reasonable that MotoNovo:

- Allow Mr W to clear the seven months arrears without charging additional interest, charges or fees on this amount.
- Remove any adverse information from his credit file relating to this situation.

Mr W appeared to accept our investigator's recommendation, MotoNovo agreed with the first part of the redress (bullet point one) but rejected the second part (bullet point two). It repeated its previous stance about why it thought it was not fair and reasonable to ask it to remove the negative information it had had registered on Mr W's credit file.

MotoNovo asked that an ombudsman review Mr W's complaint.

I issued a provisional decision. This is what I said about what I had decided and why in the provisional decision.

"Where the evidence is incomplete, inconclusive, or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.

It seems the parties now agree that Mr W should be allowed to clear the seven months of arrears without MotoNovo charging additional interest or fees [or charges]. As far as I can see Mr W is no longer asking for an apology. Therefore, it seems that the only remaining question is what negative information (if any), might it be fair and reasonable for MotoNovo to ask the credit reference agencies to register on Mr W's credit file.

The FCA who regulates MotoNovo provided guidance about how motor finance companies should behave where customers were experiencing temporary payment difficulty due to the impact of the Covid-19 pandemic ("the guidance"). Motor finance companies were obliged to follow the guidance.

The guidance covered Mr W's situation. Moreover, the guidance built on firms pre-existing obligations to customers. In particular, it built on Principle 7 ('A firm must pay due regard to the information needs of its clients and communicate information to them in a way which is clear, fair and not misleading'). Specifically, firms also had to be clear with their customers about what would happen after a payment deferral ended and payments started up again.

Taking both Principle 7 and the guidance into account I think it is clear that MotoNovo did not communicate with Mr W about the reinstatement of the direct debits, in a way that was clear, fair, and not misleading. I recognise, MotoNovo had told Mr W his direct debits had stopped during the payment deferral period. But it also failed to talk to Mr W at all about how the repayments would start in the call of 21 August, which was clearly an oversight. Then it compounded this mistake by telling Mr W in writing "if your direct debit is no longer active, we will reinstate it".

In the circumstances, I find that MotoNovo gave Mr W the misleading impression that the direct debits would start again after 21 August and he would need to do nothing further. MotoNovo recognises it fell short here and has offered £100 as a result. I've no doubt that this error did cause Mr W distress and inconvenience and that £100 is appropriate for this. I don't agree that MotoNovo can avoid all further responsibility here by suggesting that the onus was on Mr W to make sure he made his repayments. Not least of all because it gave him the impression that the repayments would automatically resume. For all of these reasons I don't think that what MotoNovo has already offered goes far enough. I say this because Mr W was given inaccurate information and he was entitled to rely on it, up to a point.

I talk about Mr W being able to rely on what MotoNovo said and on its omissions up to a point because I'm not satisfied that it is fair and reasonable to say MotoNovo's actions reasonably caused Mr W to be unaware for the entire seven months. Mr W may have chosen not to check his statements and that was his choice to make. But if he had checked his statements, he likely would have seen the money was not coming out and he would have likely realised what was going on and lessened his loss much earlier than he did. On that basis I find that MotoNovo must not ask the credit reference agencies to report any negative information for the first three months after its mistakes, that is August, September, and October 2020. But I don't agree I have any proper grounds for saying MotoNovo must not ask the credit reference agencies to register any negative information for the entire seven-month period.

Both Mr W and MotoNovo now have till the due date set out above to send in any further information, should they wish to do so. All I would add is that any final submissions should be materially new. Neither party needs to repeat what it's said to us before."

I said my provisional decision was:

"My provisional decision is that I intend to require FirstRand Bank Limited to:

- Permit Mr W to repay the seven months of arrears without any additional interest or [fees or] charges, as it has already agreed to do.*
- Ask the credit reference agencies to remove any negative information it has asked them to register on Mr W's credit file in relation to the arrears for August, September, and October 2020.*
- Pay Mr W £100 for distress and inconvenience if it has not already done so."*

Mr W did respond to my provisional decision. As far as I am aware, we have received no response from MotoNovo. In summary, Mr W wanted us to consider three points. He tells us he refused both the £50 that MotoNovo offered and then the revised offer of £100. Despite this he says MotoNovo deposited this sum into his account. Mr W wanted to know if this was acceptable. Plus, he reiterated that from his perspective MotoNovo's actions have caused him months and months of distress and inconvenience. He also suggests now he has been refused credit by a third party and he holds MotoNovo responsible for this. For all of these reasons Mr W indicates he wants a "*meaningful and substantial gesture of goodwill.*"

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 thank Mr W for his response to my provisional decision. Ideally, I would have liked to have heard from MotoNovo too. However, I am satisfied it has had a fair opportunity to respond. I've reviewed the complete file again and revisited my provisional decision.

I would expect a business to respect a consumer's opinion about whether he wanted to accept compensation. That said, I cannot see what detriment Mr W experienced due to the payment into his account of the £100. I can understand that Mr W might have been very irked in the context that MotoNovo went ahead without his say-so and put the money in his account. But I don't find it likely that the impact of this on him was such that I should fairly or reasonably require MotoNovo to increase the amount it seems it has already paid him for distress and inconvenience. It follows I have no proper basis to ask MotoNovo to compensate Mr W for not being guided by his wishes on this point.

Mr W tells us that he has now been refused credit due to the actions of MotoNovo. This is a completely new issue and has not been considered by MotoNovo in its final response to Mr W or investigated within this complaint. It follows that I am unable to look at this matter in this final decision. If Mr W wishes to pursue this entirely new matter, he would need to raise it in the first instance with MotoNovo and give it a chance to respond.

I said in my provisional decision I was persuaded that Mr W had been caused distress and inconvenience by the mistakes made by MotoNovo. I also said I was satisfied that £100 was an appropriate amount to compensate him for this. I recognise that Mr W appears not to think this is enough as he asks for a meaningful and substantial gesture of goodwill.

However, whilst I accept that for the three months mentioned above MotoNovo should not have asked the credit reference agencies to register negative information on his credit file about the arrears on the agreement. Plus, I also found that MotoNovo gave Mr W the misleading impression that the direct debits would start again after 21 August and he would need to do nothing further. And as I have already mentioned I take on board that MotoNovo put £100 into his account against his wishes. I find that the £100 is appropriate in the circumstances for the impact of these mistakes.

Moreover, I can't oblige MotoNovo to make a goodwill gesture, a goodwill gesture is something that a business makes without compulsion of its own free will without being ordered to.

I have not been persuaded by Mr W's response to my provisional decision. It follows that I have reached the same conclusions for the same reasons as I reached in my provisional decision.

My final decision

My final decision is I require FirstRand Bank Limited trading as MotoNovo Finance to:

- Permit Mr W to repay the seven months of arrears without any additional interest or fees or charges, as it has already agreed to do.

- Ask the credit reference agencies to remove any negative information it has asked them to register on Mr W's credit file in relation to the arrears for August, September, and October 2020.
- Pay Mr W £100 for distress and inconvenience, if it has not done so already although I note Mr W tells us it has already paid him this money.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 11 August 2022.

Joyce Gordon
Ombudsman