

## **The complaint**

Mr L is complaining about MotoNovo Finance Limited's (MotoNovo) decision to lend to him – he says the lending was unaffordable.

## **What happened**

In May 2017, Mr L took out a hire purchase agreement with MotoNovo to finance the purchase of a car. He paid a deposit of £500 and borrowed £5,800 over a 60-month term, with monthly repayments of £141.38, upfront admin fees totalling £199, and further admin fees at the end of the agreement, totalling £149. The agreement also included an option to purchase fee of £10. Mr L says that at the time his credit score was very poor and he already had many defaults. So he thinks MotoNovo shouldn't have lent to him.

Mr L says he struggled to make payments and had to take a payday loan in order to do so. He says MotoNovo became very aggressive chasing the debt. And he had to miss repayments to other creditors so he could pay MotoNovo.

Mr L complained to MotoNovo, but they didn't uphold his complaint. They said their systems showed Mr L was a self-employed photographer, was married and a homeowner. They said the regulations at the time didn't require them to check customer's wages – instead they relied on the information supplied, along with information from credit reference agencies (CRAs) to make a lending decision. MotoNovo said Mr L's credit score was high enough to meet their lending criteria, and that he'd signed a declaration to confirm the agreement was affordable as part of the process.

MotoNovo's response to Mr L's complaint included a brief assessment of affordability. In the absence of other information they assumed Mr L would have been earning £25,000 a year as a photographer and taking home around £1,700 each month. They calculated the amount he was paying against financial commitments on his credit file as £762.83, and said that after the monthly repayments for the car finance, this would have left Mr L with disposable income of roughly £795 per month. They said this should have been more than enough to cover other costs of living such as food, travel, insurance etc. On that basis they concluded the agreement was affordable for Mr L.

Mr L wasn't happy with MotoNovo's response so he brought his complaint to our service. He said his earnings were around £8,000 a year rather than the £25,000 MotoNovo were assuming and that made it completely unaffordable. He said his credit file would have shown overdrafts of over £8,000, defaults on credit cards and loans and a default on a second charge on his home for over £40,000. So he didn't understand how he'd met MotoNovo's lending criteria.

Our investigator looked into things and upheld the complaint – saying he didn't think MotoNovo had carried out proportionate checks. He said if MotoNovo had carried out proportionate checks they should have concluded it wasn't responsible to lend to Mr L. So he concluded that MotoNovo should refund to Mr L any payments in excess of £6,300 (the cash price of the car), together with interest at 8%.

Mr L accepted our investigator's view. But MotoNovo weren't happy. They asked to see bank statements and asked that we look at other evidence in relation to Mr L's income. Because MotoNovo didn't agree our investigator had reached a fair outcome in the absence of further evidence they asked for a decision – and it's come to me.

### **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.

Having done so I've decided to uphold Mr L's complaint for broadly the same reasons as our investigator. I'll explain below.

The Financial Conduct Authority (FCA) sets out in a part of its handbook known as CONC what lenders must do when deciding whether or not to lend to a consumer. In summary, a firm must consider a customer's ability to make repayments under the agreement without having to borrow further to meet repayments or default on other obligations, and without the repayments having a significant adverse impact on the customer's financial situation.

CONC says a firm must carry out checks which are proportionate to the individual circumstances of each case.

#### *Did MotoNovo carry out proportionate checks?*

It seems the only check carried out by MotoNovo before lending to Mr L was to check his credit score met their lending criteria. MotoNovo have said Mr L signed to confirm the agreement was affordable for him – but I'm not satisfied that goes any way towards meeting the requirements of CONC at the time.

MotoNovo have referred to the fact that the regulations changed in 2018 and that this lending decision was made before that change. But in 2017, when MotoNovo decided to lend to Mr L, CONC required a firm to carry out an assessment of the potential for the repayments to adversely impact the customer's financial situation and to consider enough information to enable it to make a reasonable assessment (CONC 5.2.2R). When saying the assessment should be proportionate, CONC 5.2.3G said this needed to take into account factors like the customer's credit history and existing financial commitments.

Mr L's credit file showed three credit card accounts in default with significant outstanding balances, as well as a mortgage, loan and other credit cards on which his payments were up to date. Although the defaults had taken place in 2013 and 2014, nearly three years before the agreement was signed, this was an indicator Mr L had previously been in financial difficulties. In addition, MotoNovo estimated Mr L's financial commitments as £765 per month before taking into account the new agreement. This is a significant amount. Taking these two factors together, I can't say it was reasonable or proportionate for MotoNovo to make a lending decision without at least gaining an understanding of the amount of Mr L's income.

#### *What would MotoNovo have found?*

A proportionate check would have involved MotoNovo finding out more about Mr L's income and expenditure.

Mr L's told us his income at the time was around £8,000 per year. And he's sent us his self-assessment tax returns which confirm this was the case. This suggests his monthly income was around £670. With existing credit commitments of £765, it seems that Mr L's expenditure exceeded his income, before taking into consideration any essential living costs, or the proposed new loan agreement.

We asked Mr L for his bank statements for February to April 2017 but he wasn't able to provide them – he said the account was closed and he couldn't get them from the bank. We asked the bank for the statements but they haven't provided them. Mr L told us the account became non-operational in October 2020 and was transferred to the bank's debt operations and then to a debt management company. He's provided a letter from the debt management company dated January 2021 which shows the balance he owed the bank was over £8,700. I'm aware MotoNovo have questioned us upholding Mr L's complaint without the bank statements. I've carefully considered this and I think it's more likely than not that Mr L didn't have significant other income at the time. Instead it seems he was obtaining credit wherever he could and living off that.

Taking all of this together, I'm satisfied MotoNovo didn't make a fair lending decision. If they'd checked his income it would have been clear to them that Mr L wouldn't be able to sustainably make repayments under the agreement. And it follows that they shouldn't have lent to him.

### **Putting things right**

It's not possible to put Mr L back in exactly the position he'd have been in if it wasn't for MotoNovo's unfair lending decision. Mr L has had use of the car, so it's fair he pays for that usage. I'm satisfied it's fair he pays the full cash price of the car and keeps the car as he's now had it for longer than the intended term of the agreement. However, as I don't think MotoNovo should have approved the hire purchase agreement, it's not fair for them to keep the interest and charges. MotoNovo should therefore refund all the interest and charges applied to the agreement, treating everything Mr L paid in excess of the original cash price as an overpayment. MotoNovo should then add 8% simple interest per year from the date of each overpayment to the date of settlement.

MotoNovo should also remove any adverse information they recorded on Mr A's credit file in relation to this agreement.

### **My final decision**

As I've explained above, I'm upholding this complaint. MotoNovo Finance Limited must:

- (If they haven't done so already) end the agreement with nothing further to pay, transferring ownership of the vehicle to Mr L;
- Refund Mr L's deposit, adding 8% simple interest per year from the date of payment to the date of settlement;
- Refund any payments Mr L made in excess of £6,300, adding simple interest at 8% per year from the date of each overpayment to the date of settlement; and
- Remove any adverse information recorded in Mr L's credit file in relation to this agreement.

If MotoNovo Finance Limited consider tax should be deducted from the interest element of my award they should provide Mr L a certificate showing how much they've taken off so that Mr L can reclaim that amount, assuming he is eligible to do so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 21 September 2023.

Clare King  
**Ombudsman**

