

## **The complaint**

Miss R complains that MotoNovo Finance Limited (MotoNovo) irresponsibly granted her a hire purchase agreement that she couldn't afford to repay.

## **What happened**

In December 2021 Miss R acquired a vehicle financed by a hire purchase agreement from MotoNovo. Miss R was required to make 59 monthly repayments of £385.76 followed by one final payment of £386.76. The total amount repayable under the agreement was £27,912.60. Miss R part-exchanged her existing vehicle for £7000. Miss R believes MotoNovo failed to complete adequate affordability checks. Miss R says that if it had it would've been clear that the agreement wasn't affordable.

MotoNovo disagreed. It said it carried out an adequate creditworthiness assessment which relied on the information supplied by Miss R, and the information obtained via credit reference agencies. It stated that Miss R had signed a declaration confirming the agreement was affordable.

Our Investigator recommended that the complaint should be upheld. They thought MotoNovo's checks weren't proportionate and that had it completed proportionate checks it would have likely found the agreement was unaffordable for Miss R.

Miss R agreed, but MotoNovo disagreed. It accepted that the finance shouldn't have been approved, but it felt that the compensation recommended by the Investigator was unfair. It felt the redress went beyond putting Miss R back in the correct position and caused an unfair loss to MotoNovo. It didn't feel that the part-exchange deposit should form any part of the redress as the sale of the car had meant MotoNovo was left without the asset to recoup its losses. It felt the proposed redress would place Miss R in a position of betterment. It asked for an Ombudsman to issue a final decision on the matter.

Our Investigator reconsidered their findings. They acknowledged that from the sale of the vehicle Miss R had received £737.26 more than the agreement amount being settled. Our Investigator thought that it would therefore be fairer to reduce the proposed refund by £737.26 as that put Miss R as close to the position she would have been in were it not for MotoNovo approving the finance.

Miss R accepted this outcome. MotoNovo failed to respond by the deadline provided, so the complaint has been passed to me for a decision to be made.

## **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.

Where evidence is incomplete, inconsistent, or contradictory, I reach my decision on the balance of probabilities – in other words, what I consider most likely to have happened in light of the available evidence and wider circumstances.

We explain how we handle complaints about irresponsible and unaffordable lending on our website. I've used this approach to help me decide Miss R's complaint. MotoNovo needed to ensure that it didn't lend irresponsibly as per the rules set out in the FCA's Consumer Credit Sourcebook (CONC). In practice, what this means is that MotoNovo needed to carry out proportionate checks to be able to understand whether any lending was affordable for Miss R before providing it.

MotoNovo was required to ensure it carried out adequate checks on Miss R's ability to sustainably afford the agreement. These checks had to be borrower-focussed and proportionate (see CONC 5.2A). What is considered proportionate will vary depending on the circumstances, such as (but not limited to): the total amount repayable, the size of the monthly repayments, the term of the agreement (CONC 5.2A.20 R), and the consumer's specific circumstances.

Our Investigator found that the checks MotoNovo carried out were not proportionate. I agree – given the size of the lending, the monthly repayments, the length of agreement, and the amount of credit commitments shown on Miss R's credit file. I think it would have been proportionate for MotoNovo to have verified Miss R's expenditure. This would have included costs such as food, petrol, utilities and housing.

I don't think MotoNovo necessarily needed to request bank statements, but in the absence of anything else, I've placed significant weight on the information contained in Miss R's statements from the three months leading up to the application. These show that proportionate checks would have most likely revealed Miss R was unable to sustainably afford the repayments owed under the agreement. So, it follows that I think MotoNovo did not make a fair lending decision.

MotoNovo have accepted the agreement should not have been approved. So, the issue now appears to be solely how best to put things right. Therefore, my decision will focus on whether the redress suggested by our Investigator is fair and reasonable in the circumstances.

The central issue is the refund of the part-exchange deposit. In taking out the finance Miss R part-exchanged her existing vehicle for £7,000 (with a settlement amount of £2,234). When Miss R struggled to maintain the payments for her agreement, she decided to sell the vehicle to another dealership rather than voluntarily surrender the vehicle with MotoNovo. In exchange the dealership settled her agreement with MotoNovo in full and paid her an additional £737.26 directly. MotoNovo says that in this circumstance a refund of the original part-exchange would place Miss R in a position of betterment.

I've thought about this carefully and can't agree. Miss R no longer has the car that was originally part-exchanged, she also no longer has the vehicle financed by MotoNovo. She's only left with £737.26 in cash. But for MotoNovo's actions she would likely still have her original vehicle or would have been able to part-exchange it for another vehicle that was affordable for her circumstances.

It isn't fair or reasonable for Miss R to no longer have this asset (or its equivalent monetary value) due to MotoNovo's actions. Miss R is currently in a worse position than before the agreement was taken out. By directing MotoNovo to refund this deposit I'm attempting to put Miss R, as close as possible, back in the position she would've been in were it not for the finance being unfairly approved.

MotoNovo's other considerations around this point amount to the idea that it will be unable to offset its own losses. As the way the finance ended means it no longer is in possession of the vehicle and so it will incur additional costs as a result. I've thought about this too, but I'm not persuaded that any additional cost for MotoNovo should mean Miss R should be disadvantaged as a result. Ultimately the finance should not have been approved and the cost of resolving the matter fairly for Miss R is now the responsibility of MotoNovo.

I do agree however that it would be unfair for Miss R to receive the full refund amount back when she's benefitted from an additional £737.26 when selling the vehicle. So, the deposit refund should reflect this and be reduced by that amount.

### **Putting things right**

As I don't think MotoNovo ought to have approved the lending, I don't think it's fair for it to be able to charge any interest or charges under the agreement. Miss R has already settled the agreement through the sale of the vehicle, having also made monthly repayments for the time she had use of and access to the vehicle. Given Miss R did have use of the car until March 2023, I think it's fair that she pays for that use. I don't think that the monthly repayments under the agreement are a fair reflection of what fair usage for the vehicle ought to be. This is because a large proportion of the repayments went towards repaying interest.

There isn't an exact formula for working out what fair usage ought to be. However, in deciding what's fair and reasonable, I've thought about the amount of interest charged on the agreement, the likely use Miss R had of the car and the costs she would likely have incurred to stay mobile if she'd never entered into this agreement. In doing so, I think a fair amount Miss R should pay is £225 for each month she had use of the vehicle, up to the point she sold it and settled the agreement in March 2023.

Miss R also part-exchanged her existing vehicle when taking out the finance with MotoNovo, and the invoice shows the part-exchange was £7,000, including a settlement amount of £2,234. For the reasons already explained Miss R should receive this amount back, less the settlement amount and the additional £737.26 she received from the sale.

To put things right MotoNovo Finance Limited should:

- Refund £4,028.74 of the deposit, adding 8% simple interest per year\* from the date of payment to the date of settlement
- Refund all the payments Miss R made, less £225 a month for each month Miss R had use of the vehicle.
  - If Miss R has paid more than the fair usage figure, MotoNovo should refund any overpayments, adding 8% simple interest per year\* from the date of each overpayment to the date of settlement. Or:
  - If Miss R has paid less than the fair usage figure, MotoNovo should arrange an affordable and sustainable repayment plan for the outstanding balance.
- Once MotoNovo has received the fair usage amount, it should remove any adverse information recorded on Miss R's credit file regarding this agreement.

\*HM Revenue and Customs requires MotoNovo to deduct tax from the interest payment referred to above. MotoNovo must give Miss R a certificate showing how much tax it's deducted if she asks for one.

**My final decision**

My decision is that I uphold this complaint and direct MotoNovo Finance Limited to put things right in the manner set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss R to accept or reject my decision before 28 September 2023.

Paul Clarke  
**Ombudsman**