

The complaint

Miss H complains that MotoNovo Finance Limited trading as MotoNovo Finance was irresponsible to have agreed car finance for her in 2017.

What happened

MotoNovo entered into a hire purchase agreement for a car with Miss H in September 2017. The price of the car was £10,568. Miss H contributed £1,768.15 by part-exchange and borrowed £8,799.85. The total amount owing under the agreement (including the deposit, interest and fees) came to £12,812.75. The monthly instalments were £184.06 for 59 months with a final payment of £185.06.

As it was a hire purchase agreement, MotoNovo remained the vehicle owner until Miss H had made all her repayments and so she was, in essence, paying for the use of it. Miss H made her payments by direct debit. She made late payments throughout the term and incurred default interest charges. I understand that there is an outstanding balance of £1,644.47 on the account as of March 2023.

Miss H complained to MotoNovo that she struggled to meet her repayments over the years. She said it didn't carry out sufficient checks to make sure she'd be able to afford the repayments and she was repaying several credit commitments including payday loans at the time. Miss H also said that MotoNovo didn't offer to freeze the interest when she was unable to meet her repayments.

MotoNovo disagreed that it had been irresponsible to lend to Miss H and didn't uphold her complaint. It said it relied on the information she supplied along with information on her credit report in order to make its lending decision.

Miss H didn't accept this response and brought her complaint to us. One of our investigators looked into it and recommended that it be upheld. They concluded that MotoNovo would likely have found out through further checks that the credit wasn't affordable for Miss H. They recommended that the lender transfer ownership of the car to Miss H and refund any payments she made above the cash price of the car, along with compensatory interest.

MotoNovo didn't accept this recommendation and asked for the complaint to come to an ombudsman to decide and it came to me. I issued a provisional decision on 7 August explaining why I didn't plan to uphold Miss H's complaint in relation to irresponsible lending but I did think MotoNovo didn't treat her fairly when she had difficulty meeting her repayments. From the information I had it seemed MotoNovo had reported deferred payments as missed payments to the credit reference agencies and applied default interest charges to the account. I shared the information I'd relied on in my decision and allowed some time for both parties to comment on what I'd said or provide any new information they wished me to consider when making my final decision. I haven't heard from either MotoNovo or Miss H.

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 considered everything again and having no new information to consider, I've seen no reason to depart from my provisional conclusions. I'll set out again my reasons for upholding Miss H's complaint in part in this final decision on the matter.

As I'd said in my provisional decision, MotoNovo will be familiar with the regulations in place at the time so I'll summarise its main obligations. MotoNovo needed to check that Miss H could afford to meet her repayments sustainably before entering into a credit agreement with her. In other words, it needed to check that she could meet her repayments out of her usual means without experiencing undue difficulty or adverse consequences, for example while meeting any existing commitments and without having to borrow or realise assets. The necessary checks needed to take into account both the nature of the credit (its type, amount, term etc.) and Miss H's particular circumstances.

The overarching requirement was that MotoNovo needed to pay due regard to Miss H's interests and treat her fairly. The regulator's guidance (CONC) paragraph 2.2.2G gave an example of contravening this requirement as 'targeting customers with regulated credit agreements which are unsuitable for them by virtue of their indebtedness, poor credit history, age, health, disability or any other reason.'

With this in mind, my main considerations are did MotoNovo complete reasonable and proportionate checks when assessing Miss H's application to satisfy itself that she would be able to make the repayments under the agreement out of her usual means without undue difficulty? If not, what would reasonable and proportionate checks have shown and, ultimately, did MotoNovo make a fair lending decision? Did MotoNovo treat Miss H unfairly in any other way?

Did MotoNovo complete reasonable and proportionate checks?

The regulations in place at the time weren't prescriptive about how lenders should implement a proportionate check but they were clear that it would generally mean independently verifying what the applicant had declared if it took income levels into consideration. CONC 5.3.1G – 4(b) stated that "It is not generally sufficient for a firm to rely solely for its assessment of the customer's income and expenditure, on a statement of those matters made by the customer."

MotoNovo said that when Miss H applied for finance it wasn't a requirement to gather information about applicants' annual salary. It relied on the information applicants supplied along with their credit file information in order to make its lending decisions. MotoNovo said it approved Miss H's application on the basis that she received an annual income of £19,040, about £1,350 net a month. It also said that her credit score was sufficient to meet its lending criteria.

Miss H would potentially need to meet her repayments for five years and MotoNovo was required to take reasonable steps to check she could do so in a sustainable manner, in other words while meeting her usual living costs and without having to borrow from elsewhere or go without. However, MotoNovo didn't independently verify Miss H's income or find out what her usual living costs were.

MotoNovo did check Miss H's credit file and provided us with summary information. This showed she was paying about £270 a month towards her debts including a loan, her

overdraft, several credit cards and a mail order account. Agreeing this finance with a monthly repayment of £184 would commit Miss H to spending about third of her income on debt.

Altogether, I can't say that MotoNovo took reasonable and proportionate steps to assess the affordability of the finance for Miss H on this occasion.

What would proportionate checks have shown and did MotoNovo lend responsibly?

I've considered what MotoNovo might have found out had it gone further in its affordability checks. Miss H has provided us with her full credit report, her bank statements and end of year tax certificates from around that time. To be clear, I'm not suggesting that MotoNovo should have asked specifically for this information but I think it's a reasonable proxy for what it might have found out about Miss H's circumstances.

Miss H was paying more on debt than MotoNovo realised at about £350 a month and her income at the time was much lower. The statements show that Miss H received an average of just over £700 in June, July and August 2017. This comprised child benefit payments and maternity pay.

Miss H made her first payment towards the finance in November 2017 but her direct debit for December's payment was returned unpaid. I can see from the customer notes that Miss H told MotoNovo that she didn't receive any money that month. She explained that she had returned to work from maternity leave and would be first paid on the 10 January. Miss H paid £190 on the 14 December to cover that month's payment. Her early January direct debit was returned unpaid and Miss H explained that she'd forgotten to change the date of the direct debit to correspond with her pay date. Miss H made her January payment on the 10th and met her payments for the next three months.

I've reviewed Miss H's tax certificates for the years ending 6 April 2017 and 2018. These are from the same employer. MotoNovo said that Miss H said on her application form that she had been employed in the public sector in her current role for several years. The first certificate shows that Miss H received some maternity pay in that year. The second shows Miss H's income for the year as £11,693, £4,229 of which was maternity pay and £7,464 were earnings. The bank statements show that Miss H received half her usual maternity pay in November 2017. Based on all of this information, I'm satisfied that Miss H returned to work full time before the end of 2017 with a salary of more than £19,000.

The guidance at the time stated that a lender could take into account future changes in income where there was appropriate evidence of the change and the repayments were expected to be sustainable in the light of the change. I think had MotoNovo asked Miss H about her income when she applied for finance in September 2017 she would likely have said that she was returning to work and would be able to meet her repayments out of her usual salary. In this case, I don't think MotoNovo was irresponsible to lend on the basis that Miss H was on maternity leave when she applied for finance but intended to return to work shortly. I have considered whether Miss H would have been able to meet her repayments without difficulty out of her usual means going forward, this being her salary and child benefit payments, approximately £1,450.

Miss H explained that at that time she was spending her money on short term loans, catalogues and mobile phone contracts, paying mostly the minimum payment. She had lots of direct debits returned and was charged for these. The statements I've seen cover June to November 2017 and show three returned direct debits (which were successfully retaken) prior to the finance. And although Miss H's credit file shows a few missed payments on catalogue accounts prior to the finance I don't think there were obvious signs of financial

difficulty that should have prompted MotoNovo to decline to lend to her.

Miss H was spending about £600 to £700 a month on debt repayments, bills and living costs such as food and petrol. Miss H told us that the mortgage and utility bills were in her partner's name and she transferred money on an ad-hoc basis to their account to help towards the household bills. These costs were £420 for the mortgage, £130 for council tax and £280 for gas and electricity. Even if Miss H was paying half these costs, it seems she would have enough left over to meet her repayments for the car finance sustainably. So I think MotoNovo would still have agreed finance for Miss H had it carried out further checks before lending.

I've have considered how Miss H managed the agreement. As mentioned, Miss H met her repayments in February, March and April 2018. Her payment for May 2018 was returned and she changed the date of the direct debit then. Miss H had three direct debits returned over the next two years and she caught up with her missed payment within weeks.

During 2020 and 2021 Miss H told MotoNovo she had been financially impacted by the pandemic and MotoNovo arranged periods of payment deferrals with her. Looking at Miss H's wider financial circumstances, I can see that she took out a short term loan in September 2018 and defaulted on two communications accounts. She defaulted on another six accounts over the next four years and I think it's fair to say that Miss H was struggling with her finances over this time. However, I don't think this would have been foreseeable by MotoNovo when making its lending decision.

Altogether, I've concluded that MotoNovo wasn't irresponsible when it agreed to lend to Miss H.

Did MotoNovo treat Miss H unfairly in any other way?

Miss H said that MotoNovo didn't treat her fairly when she had problems meeting her repayments, for example it didn't freeze interest and charges on her account.

The customer contact notes show that Miss H asked for a payment deferral when she was impacted by the pandemic in 2020. MotoNovo agreed to this for June, July and August. Miss H made her October 2020 payment and requested a direct debit date change. It seems MotoNovo made a mistake in changing this and so didn't take Miss H's payments for November or December 2020. On discovering this it agreed to add these two payments to the end of the agreement, along with the initial three from the payment deferral period. Miss H asked for another payment deferral for February and March 2021, which MotoNovo also agreed. Miss H chose to pay these seven payments across six months from November 2022, being the end of the original agreement term. These incurred interest which was to be paid as part of this repayment plan.

The statement of account shows that Miss H made her usual monthly payments from April 2021 onwards, but missed a payment in December 2021 which she didn't make up. It also shows that Miss H was charged almost £200 in default interest from September 2020 to June 2022 (the latest account statement information I have). If this is in addition to the interest Miss H agreed to pay as part of her repayment plan from November 2022 then I think it should be waived. These weren't missed payments but agreed deferred payments.

In addition, Miss H's credit file shows missed payments in late 2020, throughout 2021 and six missed payments by June 2022. I don't think MotoNovo should have reported any missed payments until December 2021.

Putting things right

MotoNovo should:

- Remove any adverse information reported to Miss H's credit file in 2020 or 2021 in relation to the deferred payments;
- Waive any default interest relating to the deferred payments (if this is in addition to the interest Miss H agreed to pay as part of her deferral repayment plan) and reduce the outstanding balance on her account accordingly. If Miss H has since repaid the balance or the account is settled then MotoNovo should refund these amounts to her.

My final decision

For the reasons set out above, I am upholding Miss H's complaint against MotoNovo Finance Limited trading as MotoNovo Finance in part and it now needs to take the above steps to put things right for her.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss H to accept or reject my decision before 5 October 2023.

Michelle Boundy
Ombudsman