

The complaint

Mr G complains FirstRand Bank Limited trading as Motonovo Finance (Motonovo) irresponsibly entered into a hire purchase agreement because he feels it didn't carry out reasonable or proportionate checks to ensure the agreement was affordable.

What happened

Mr G entered into a hire purchase agreement with Motonovo in April 2018 for a used car. The cash price of the car was £17,298 and Mr G paid a deposit of £750. The total amount payable was £21,827.20. Mr G was to pay 59 monthly repayments of £349.22 and 1 monthly repayment of £473.22. There was also an option to purchase fee of £10.

Mr G complained to Motonovo on 6 October 2021. He said it should have been clear he wouldn't be able to afford the agreement. He said this adversely affected his ability to pay other credit which meant he fell into severe financial difficulties.

Motonovo responded to the complaint in November 2021. In its final response to Mr G, it said the checks it carried out at the point of sale demonstrated affordability of the agreement. It also asked Mr G to provide bank statements and credit file information to consider Mr G's financial position at the time of the agreement. It felt this information showed Mr G had sufficient disposable income at the time.

Mr G, unhappy with Motonovo's response, contacted our service and asked us to investigate. Motonovo consented to our service considering this complaint. Our Investigator issued a view explaining that Motonovo's checks had not been proportionate and it should have done more to understand Mr G's specific financial circumstances at the time including his expenditure. Our Investigator said that had proportionate checks been carried out they would have shown the agreement was not affordable for Mr G.

In order to put things right, our Investigator said Motonovo should collect the car and end the agreement and return Mr G's deposit plus 8% simple interest. Additionally, our Investigator felt £12,800 would be a reasonable amount to recognise the use Mr G had of the car. So, he asked Motonovo to deduct the amount Mr G had already paid from the fair usage and arrange an affordable repayment plan for the arrears.

Motonovo raised some queries about how our Investigator had calculated Mr G's disposable income and it was provided with further information about Mr G's expenses. Following this, it confirmed it accepted our Investigator's view and offered to settle the agreement without anything further to pay providing Mr G returned the car and it could keep the money Mr G had already paid under the agreement (including the deposit).

Mr G agreed something had gone wrong but didn't accept our Investigator's recommendation on how things should be put right. He was concerned he would still owe Motonovo as a result of the fair usage amount. The offer from Motonovo was also put to him but he didn't accept it.

In summary, Mr G strongly felt he should be able to keep the car and said:

- He made a big effort to keep up with the payments for 20 months including a care protection plan he had also been sold. He felt considerable pressure because of the repayments and feels he would not be in financial difficulties now were it not for the agreement. He now has three County Court Judgments (CCJ) that he can't afford to pay and two of them with an arrangement to pay of £1 per month.
- He felt Motonovo took too long to end the agreement when he told them of his financial difficulties and only offered a brief deferment period.
- He feels as a result of the distress caused to him, he should be able to keep the car.
- He also outlined his personal circumstances to demonstrate how much he needs it.

Therefore, the complaint has been passed to me to decide.

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.

Both Motonovo and Mr G have accepted the Investigator's view that the checks weren't proportionate or reasonable and had such checks been carried out its likely they would have shown the agreement wasn't affordable. As both parties are in agreement, I won't go into detail about the reasons for my conclusions as they are broadly in line with our Investigator's. This will allow me to focus on what is still in dispute - how things should be put right.

In summary and having reviewed the file, I would agree the evidence doesn't show proportionate and reasonable checks were carried out and more should have been done to verify and understand Mr G's specific income and expenditure at the time of the agreement. This is with the term of the agreement and monthly repayments in mind.

Moreover, I've considered the evidence I have about Mr G's income and committed expenditure and agree it seems he didn't have sufficient disposable income to sustainably repay the agreement. Therefore, had reasonable and proportionate checks been carried out at the time, it's likely to have shown the agreement wasn't affordable for Mr G.

Putting things right

Our Investigator set out in their view how Motonovo should put things right. I'm satisfied this is in line with our usual approach. The fair usage figure reflected Mr G's overall use of the car, the costs he would have had to stay mobile without the car and the amount of interest charged on the agreement. Our Investigator felt £12,800 would be appropriate in this circumstance. Motonovo were asked to deduct the repayments from the fair usage which would leave Mr G owing further money to Motonovo.

Since our Investigator's view, there has been correspondence with both parties about the resolution of this complaint. Motonovo have confirmed it would be willing to resolve the complaint on the following basis:

- Mr G returns the vehicle and Motonovo retains the money already paid which totals £8,646.34. This sum includes the repayments made by Mr G and the deposit (£750).
- The agreement would then be settled with nothing further to pay; and
- Motonovo would then remove adverse credit information relating to the agreement

from Mr G's credit file.

Both parties have had the opportunity to comment on this. However, Mr G felt he should be able to keep the vehicle. He also outlined his current circumstances. I want to assure him I've carefully considered these. I won't repeat the circumstances in detail here as they are personal to him. He has also explained the long-term effects making repayments under the plan has caused him and the distress he's experienced. This included the impact of Motonovo not ending the agreement sooner.

I want to explain that I do appreciate the impact this has had on him, but it doesn't lead me to conclude it would be right for Mr G to keep the vehicle. I say this because the initial cash price of the car was £17,298. Mr G could not afford the repayments under the agreement and has only paid £8,646.34 (including the deposit) which is significantly less than the cash price of the vehicle. I'm also satisfied that the car was not affordable, and it would not be fair to allow him to keep a car that he could not afford. I can also see from the information provided about the mileage that Mr G has made significant use of the car and over the average yearly mileage expected. In these circumstances, it wouldn't be fair to say Mr G should be allowed to keep the car.

I'd also note the Investigator felt the deposit should be returned to Mr G and again this is in line with our usual approach. However, I'm mindful the Investigator's recommendation also asked Mr G to contribute towards fair usage. In light of this, I think Motonovo's offer which includes retaining the deposit is fair in the circumstances. This is because of Mr G's overall usage of the vehicle, the amount he's paid towards the agreement and because Motonovo are willing to resolve things with nothing further to pay providing it can collect the car.

Whilst I appreciate the distress caused to Mr G and the worry regarding the repayments, I'm satisfied Motonovo's offer is fair and reasonable in all the circumstances of this complaint. Therefore, FirstRand Bank Limited trading as Motonovo Finance should put things right in the following way:

- Motonovo collects the vehicle at no cost to Mr G, and retains the money already paid which totals £8,646.34. This sum includes the repayments made by Mr G and the deposit (£750).
- The agreement would then be settled with nothing further to pay; and
- Motonovo would remove adverse credit information relating to the agreement from Mr G's credit file.

My final decision

I'm upholding this complaint and FirstRand Bank Limited trading as Motonovo Finance should put things right in the way outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 1 December 2023.

Laura Dean
Ombudsman