

Complaint

Mr F complains that FirstRand Bank Limited (trading as “MotoNovo” Finance) unfairly entered into a hire-purchase agreement with him. He’s said the payments to his agreement were unaffordable.

Background

In January 2017, MotoNovo provided Mr F with finance for a used car. The cash price of the vehicle was £15,050.00. As I understand it, in order to proceed with this purchase Mr F also needed to pay £1,233.78 to settle the amount left to repay on an existing MotoNovo hire-purchase agreement. The agreement sets out that the newer vehicle was being financed on a hire-purchase basis and the shortfall to be paid on the personal loan was being provided as a personal loan.

Mr F didn’t pay a deposit and applied for a loan to cover the full amount of £16,283.78 needed to proceed with the purchase. The finance package had total interest, fees and charges of £4,577.62 (comprising of total interest of £4,189.62 (£3,876.00 for the new hire-purchase and £313.62 for the loan to settle the old finance agreement), an admin part A fee of £199 and an admin part B fee of £189 (which were fees associated with the hire-purchase side of the transaction). The total amount to be repaid of £20,871.40 was due to be repaid in 59 monthly instalments of £344.54 and one final payment of £543.54.

Mr F’s complaint was considered by one of our investigators. She didn’t think that MotoNovo had done anything wrong or treated Mr F unfairly. So she didn’t recommend that Mr F’s complaint should be upheld. Mr F disagreed with our investigator and the complaint was passed to an ombudsman for a final decision.

My findings

I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint.

We’ve explained how we handle complaints about irresponsible and unaffordable lending on our website. And I’ve used this approach to help me decide Mr F’s complaint.

Given Mr F’s response to our investigator’s assessment and his referral to what we say on our website, I think that it would be helpful for me to set out that we consider what a firm did to check whether loan payments were affordable (asking it to evidence what it did) and determine whether this was enough for the lender to have made a reasonable decision on whether to lend.

Generally, we think it’s reasonable for a lender’s checks to be less thorough – in terms of how much information it gathers and what it does to verify that information – in the early stages of a lending relationship. But we might think it needed to do more if, for example, a borrower’s income was low, the amount lent was high, or the information the lender had – such as a significantly impaired credit history – suggested the lender needed to know more about a prospective borrower’s ability to repay.

That said, I think that it is important for me to explain that our website does not provide a set list of mandated checks that a lender is expected to carry out on every occasion – indeed the regulator's rules and guidance did not and still do not mandate a list of checks to be used. It simply sets out the types of things that a lender could do. It is a for a lender to decide which checks it wishes to carry out, although we can form a view on whether we think what done was proportionate to the extent it allowed the lender to reasonably understand whether the borrower could make their payments.

Furthermore, if we don't think that the lender did enough to establish whether the repayments to an agreement was affordable, this doesn't on its own meant that a complaint should be upheld. We would usually only go on to uphold a complaint in circumstances where we were able to recreate what reasonable and proportionate checks are likely to have shown – typically using information from the consumer – and this clearly shows that the repayments in question were unaffordable.

MotoNovo says it agreed to Mr F's application after it completed an income and expenditure assessment. During this assessment, Mr F provided details of his monthly income. MotoNovo says it also carried out credit searches on Mr F which showed up some existing credit which it factored into its application.

Furthermore, MotoNovo says that Mr F would have enough left over to meet his regular living costs once his payments to his existing creditors and a reasonable estimation of his living expenses (based on statistical data) was deducted from the income he declared. On the other hand, Mr F says that he couldn't have afforded the payments to this agreement.

I've thought about what Mr F and MotoNovo have said.

The first thing for me to say is that MotoNovo's credit checks will have shown that Mr F had had previous difficulties with credit. He had more than one defaulted account. Although these defaults appear to have happened around five years prior to this application. So I don't think these defaults in themselves meant that Mr F shouldn't have been lent to.

However, much like our investigator, I do think that the presence of this adverse information and the term of the agreement means that think that the checks MotoNovo carried out didn't go far enough. In my view, MotoNovo needed to take further steps to ascertain Mr F's income and expenditure, given what the credit search showed in order for its checks to have been proportionate.

As I've explained, where a firm failed to carry out reasonable and proportionate checks before providing credit to a customer, I'd usually go on to recreate reasonable and proportionate checks in order to get an indication of what such checks would more likely than not have shown. However, despite being given significant opportunity to provide additional information, Mr F has only been able to provide us with copies of credit card bills and evidence that his parents transferred him some funds. He has not been able to provide us with bank statements, wage slips or anything else showing what his actual living costs were at the time.

I appreciate that Mr F says he can no longer obtain bank statements or his wage slips from the time. But even though that's the case, I don't think I can reasonably or safely say that what Mr F has provided, which is now being put forward with a view to making a successful complaint rather than in the hope of a successful application for credit, is clearly indicative of it being the case that proportionate checks would have shown that he couldn't have afforded to make the payments to his agreement.

I say this while mindful that Mr F says the £265 a month he was paying on his previous MotoNovo agreement was affordable for him. In these circumstances, even if I accept that he only received £1,100.00 to £1,150.00 each month rather than the £25,000.00 he appears to have declared at the time, Mr F has said he was paying £400 a month towards rent and bills. And this with the credit card statements provided does not show me that Mr F obviously couldn't afford to pay the extra £80 a month due as a result of this agreement.

I've also thought about what Mr F has said about the payments from his parents. But the vast majority of these payments were after the agreement being taken out. Without Mr F's bank statements, I don't know what payments he was sending to his parents in return – for example, the amount for rent and bills referred to. So, in any event, this information does not clearly show me Mr F's parents had to cover the extra being paid on this agreement.

I accept it's possible that Mr F's actual circumstances at the time might have been worse than what the information he's provided shows. But without clear evidence of seeing this, I can't reasonably say that proportionate checks would have shown MotoNovo that it shouldn't have lent – particularly bearing in mind some of what Mr F says now clearly contradicts what he declared at the time.

So overall and having carefully considered everything, while I don't think that MotoNovo's checks before entering into this hire purchase agreement with Mr F did go far enough, I've not been provided with sufficient evidence to satisfy me that MotoNovo carrying out reasonable and proportionate checks would have shown it that Mr F couldn't have afforded the monthly payments, or that it shouldn't have entered into the agreement with him.

I'm therefore satisfied that MotoNovo didn't act unfairly towards Mr F when it agreed to provide the funds and I'm not upholding Mr F's complaint. I appreciate that this will be very disappointing for Mr F as it isn't in dispute that MotoNovo didn't carry out proportionate checks in this instance. But I hope he'll understand the reasons why I've not seen enough to be able to safely say that such checks would have made a difference to the decision to lend here and that he'll at least feel his concerns have been listened to.

My final decision

My final decision is that I'm not upholding Mr F's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 8 March 2024.

Jeshen Narayanan
Ombudsman