

The complaint

Miss E is complaining about FirstRand Bank Limited trading as MotoNovo Finance's decision to lend to her – she says the loan was unaffordable. A representative has brought the complaint to our service but for ease, I've written as if we've dealt directly with Miss E throughout.

What happened

In February 2017, Miss E took out a hire purchase agreement with MotoNovo, via a broker, to finance the purchase of a car. She borrowed £19,509 over a 49-month term, with 48 monthly repayments of £379.77 followed by an optional final payment of £6,448.75 which would allow her to keep the car. Miss E made her June 2018 and October 2018 payments late but the remainder of her payments were on time until a payment holiday in 2020. She settled the agreement early in January 2021.

In January 2023 Miss E complained to MotoNovo, saying MotoNovo hadn't done appropriate affordability checks and if they had, her application would have been declined. She also complained about secret commission being paid by MotoNovo to the dealer – but she's not taken this aspect of the complaint any further.

In response, MotoNovo said Miss E hadn't provided enough information for them to fully investigate her complaint, so they weren't upholding it. Miss E brought her complaint to our service.

One of our investigators looked into the matter. His view was that although MotoNovo hadn't done proportionate checks he wasn't able to uphold the complaint – because he thought if they had done proportionate checks they'd have been able to fairly decide the loan was affordable for Miss E.

Miss E didn't agree with our investigator's view. She said it wasn't reasonable to include the receipts from her partner in an analysis of her income and expenditure because they were ad hoc and intended to put towards bills, rather than being regular income. Miss E told us she and her partner had split up around 10 months after she took out the agreement, and that he'd made only small payments to her since. She also noted that she was consistently using her overdraft prior to MotoNovo's lending decision. Miss E asked for an ombudsman's decision – and the complaint came to me.

I issued a provisional decision on 15 February 2024. In that, I said I was inclined to uphold Miss E's complaint as follows:

“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?

MotoNovo's checks were very limited. They did a credit search but I've seen no evidence of other checks. The credit search showed Miss E already had high levels of debt, with monthly repayments on non-revolving credit (including her mortgage) of nearly £1,400 and balances on revolving credit of over £7,000. I can't see MotoNovo made any attempt to ascertain Miss E's income or other expenditure.

In short, I'm satisfied MotoNovo did not carry out proportionate checks when deciding to lend to Miss E. They were lending her a significant amount of money which required payments over a five-year period. I've seen nothing to suggest MotoNovo considered Miss E's ability to sustainably make the necessary repayments.

If MotoNovo had carried out proportionate checks, what would they have found?

A proportionate check would have involved MotoNovo finding out more about Miss E's income and expenditure to determine whether she would be able to make repayments in a sustainable way.

As well as Miss E's credit file, I've looked at statements for Miss E's bank account for the four months preceding her application to MotoNovo. I'm not saying MotoNovo needed to obtain bank statements as part of their lending checks. But in the absence of other information, bank statements provide a good indication of Miss E's financial circumstances at the time the lending decision was made.

The bank statements show that Miss E's net income from earnings and child benefit was around £741 per month (excluding what appears to be a Christmas bonus). The statements also show Miss E received substantial amounts from her partner at the time. Going through the statements, I've excluded these receipts (and the corresponding expense) where I can see they relate directly to a specific outgoing – it appears Miss E's partner was transferring money to her for specific items as well as general household expenses. I've estimated Miss E's partner was contributing around £1,250 each month towards the household bills and Miss E's debts. So in total, I'm inclined to say Miss E's income was just under £2,000 per month at the time.

I'm aware Miss E doesn't think her partner's income should be included in this assessment, but I disagree. Her partner contributed significant amounts every month and had done so consistently for many months. So I'm inclined to say it would have been reasonable for MotoNovo to include this income in an affordability assessment.

However, when I look at Miss E's expenditure, I'm inclined to say the agreement was unaffordable. She was paying around £1,250 each month to creditors including her mortgage. On top of this she was spending around £200 per month on council tax and utilities, around £300 per month on communications and TV, and around £275 per month on food and fuel. She was also paying around £40 per month on some insurance and bank charges.

The total of these outgoings is just over £2,000 per month. So it seems Miss E had no disposable income from which to fund the monthly repayments on the new vehicle. I've considered the possibility that she would be replacing her existing hire purchase agreement with this new one – but the payments under the existing hire purchase agreement were £211 per month whereas the payments for this new agreement were around £380 per month.

It's also clear from the bank statements that Miss E was struggling to stay on top of her finances at the time – spending much of each month in her overdraft. I've also seen limited evidence of discretionary expenditure in Miss E's statements.

In summary, I'm inclined to say Miss E had no disposable income at the time MotoNovo decided to lend to her. And the repayments under the new agreement were more than those under her existing hire purchase agreement. So I don't think the agreement was affordable for Miss E."

Miss E accepted my provisional decision and MotoNovo didn't respond.

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.

As neither party has submitted any evidence or comments for consideration, my thoughts remain unchanged from those set out in my provisional decision, and I'm upholding Miss E's complaint for the reasons set out above.

Putting things right

As MotoNovo shouldn't have approved the lending, it's not fair for them to charge any interest or other charges under the agreement. As I explained in my revised provisional decision dated 20 February 2024, Miss E should only have to pay the original cash price of the car, being £19,509 according to the hire purchase agreement. Anything Miss E has paid in excess of that amount should be refunded as an overpayment.

To settle Miss E's complaint MotoNovo should do the following:

- Refund any payments Miss E has made in excess of £19,509, representing the original cash price of the car. They should add 8% simple interest per year from the date of each overpayment to the date of settlement.
- Remove any adverse information recorded on Miss E's credit file regarding the agreement.

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

My final decision

As I've explained above, I'm upholding Miss E's complaint. FirstRand Bank Limited trading as MotoNovo Finance need to take the steps I've outlined above to settle the matter.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss E to accept or reject my decision before 12 April 2024.

Clare King
Ombudsman