

Complaint

Mr B 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 2016, MotoNovo provided Mr B with finance for a used car. The cash price of the vehicle was £5,600.00. Mr B paid a deposit of £200, received a part exchange value of £500 for his existing vehicle, and applied for finance to cover the remaining £4,900.00 needed to complete his purchase. MotoNovo agreed to provide this finance through a hire-purchase agreement.

The hire-purchase agreement had total interest, fees and charges of £1,673.52 (£1,325.52 in interest an admin part A fee of £149, an admin part B fee and an option to purchase fee of £10). The total amount to be repaid of £6,573.52 (not including Mr B’s deposit and part exchange) was due to be repaid in 35 monthly instalments of £177.07 followed by a final payment of £376.07.

Mr B’s complaint was considered by one of our investigators. She didn’t think that MotoNovo had done anything wrong or treated Mr B unfairly. So she didn’t recommend that Mr B’s complaint should be upheld.

Mr B 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 B’s complaint.

Having carefully considered everything, I’ve decided not to uphold Mr B’s complaint. I’ll explain why in a little more detail.

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 for a lender to decide which checks it wishes to carry out, although we can form a view on whether we think what was 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 mean 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.

I've kept this in mind when deciding Mr B's complaint.

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

Furthermore, MotoNovo says that Mr B 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 was deducted from his income. On the other hand, Mr B says that he couldn't have afforded the payments to this agreement.

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

The first thing for me to say is that I don't think that MotoNovo's checks went far enough. In my view, given the amount being lent, the length of time of the agreement and Mr B having active payday lending, I think MotoNovo needed to take further steps to ascertain Mr B's expenditure – particularly in relation to his regular living expenses.

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. I've recreated these checks with the help of information that Mr B has provided on his circumstances.

To be clear I've not carried out a forensic analysis of whether the loan payments were affordable. I've simply considered what MotoNovo is likely to have done if it obtained the missing information I think it should have done here. I say this because the information provided does appear to show that when Mr B's committed regular living expenses are deducted from his credit commitments, MotoNovo is likely to have concluded that Mr B could sustainably make the repayments due under this agreement.

I accept it's possible that Mr B's actual circumstances at the time might have been worse than what the information he's provided shows. But MotoNovo won't have known this. All it

could do was make a decision based on what it had, or is likely to have had, had it done proportionate checks.

Having considered everything, I'm satisfied that the available information indicates that MotoNovo is likely to have concluded that Mr B did have sufficient funds left over, once his regular living expenses and discernible committed expenditure was deducted from his monthly income, to make his monthly payments in a sustainable manner. As this is the case, while I do sympathise with the tough time Mr B has said he's gone through, I'm not persuaded that MotoNovo doing more checks here would have resulted in a different outcome here.

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 B 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 B 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 B when it agreed to provide the funds and I'm not upholding Mr B's complaint. I appreciate that this will be very disappointing for Mr B. But I hope he'll understand the reasons my decision 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 B's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 24 May 2024.

Jeshen Narayanan
Ombudsman