

Complaint

Mr K 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 August 2016, MotoNovo provided Mr K with finance for a used car. The cash price of the vehicle was £3,295.00. Mr K received a part exchange value of £200 for his existing vehicle, and applied for finance to cover the remaining £3,095.00 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 £839.72 (£541.72 in interest an admin part A fee of £99, an admin part B fee of £189 and an option to purchase fee of £10). The total amount to be repaid of £3,934.72 (not including Mr K’s part exchange) was due to be repaid in 35 monthly instalments of £103.77 followed by a final payment of £302.77.

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

Mr K 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 K’s complaint.

Having carefully considered everything, I’ve decided not to uphold Mr K’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 K's complaint.

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

Furthermore, MotoNovo says that Mr K 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 K says that he couldn't have afforded the payments to this agreement.

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

The first thing for me to say is that MotoNovo has provided the output of the credit checks it carried out at the time of Mr K's application. There were a couple of defaults recorded against him. But MotoNovo searches also appear to show that Mr K's unsecured debt total at the time of the application wasn't excessive. Crucially, Mr K doesn't appear to have been using all of the credit that he had available to him either.

I accept that Mr K's actual circumstances may not have been fully reflected either in the information he provided, or the information MotoNovo obtained. And I'm really sorry to hear about the difficult financial situation he says she's experienced after taking this agreement. But even if I accept that MotoNovo's checks ought to have gone further and extended into finding out more about Mr K's actual living expenses, which there is a reasonable argument for, I don't think this would have made a difference to its decision.

I say this because Mr K hasn't provided with anything which shows that including his actual living expenses, rather than estimates, would have shown the monthly repayments for this agreement to be demonstrably unaffordable.

As I've explained, it's only fair and reasonable for me to uphold a complaint in circumstances where proportionate checks will have shown a lender that the payments were unaffordable. It is not sufficient for me to uphold a complaint simply because more should have been done. I have to be satisfied that doing more would have resulted in the lender taking a different course of action – in this case, declining Mr K's application for finance.

Given the circumstances here, I don't think that MotoNovo did anything wrong when deciding to lend to Mr K - it carried out checks which, on the face of things, suggested the repayments were affordable. And, in any event, I've not been persuaded that obtaining further information would have prevented it from lending.

So overall and having carefully considered everything, while there may be an argument for saying that MotoNovo's checks before entering into this hire purchase agreement with Mr K didn't 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 K 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 K when it agreed to provide the funds and I'm not upholding Mr K's complaint. I appreciate that this will be very disappointing for Mr K. 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 K's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 4 June 2024.

Jeshen Narayanan
Ombudsman