

Complaint

Mr H complains that First Rand 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 June 2018, MotoNovo provided Mr H with finance for a used car. The cash price of the vehicle was £9,096.00. Mr H didn’t pay a deposit and applied for finance to cover the entire amount of the purchase. MotoNovo agreed to provide this finance through a hire-purchase agreement.

The hire-purchase agreement had total interest, fees and charges of £4,094.80 (made up of £4,093.80 in interest and an option to purchase fee of £1). The total amount to be repaid of £13,190.80 was due to be repaid in 59 monthly instalments of £219.83 followed by a final payment of £220.83 which Mr H needed to pay if he wished to keep the vehicle.

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

Mr H 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 H’s complaint.

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

MotoNovo has simply described its general process when providing loans. It is my understanding that its argument would be that it would only have agreed to this application after its systems completed an income and expenditure assessment on Mr H. During this assessment, its systems would have considered information from credit reference agencies and must have concluded that Mr H could meet the payments as the agreement was approved.

On the other hand, Mr H says that he couldn't have afforded this agreement and shouldn't have been provided with it.

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

The first thing for me to say is that having considered the information provided by both sides, while Mr H did have some existing credit commitments, he doesn't appear to have had any significant adverse information – such as defaults or county court judgments ("CCJ") recorded against him.

Be that as it may, I still think that in order for its checks to have been proportionate, MotoNovo would have needed to obtain an understanding of Mr H's actual living costs and his income (as well as what it appears to have known about his credit commitments), given the amount lent, the total cost of the agreement and the monthly payments. What I've seen doesn't suggest that MotoNovo did obtain this before lending. So I'm not prepared to accept that the checks carried out were reasonable and proportionate.

As MotoNovo is unlikely to have carried out sufficient checks, I've gone on to decide what I think MotoNovo is more likely than not to have seen had it obtained further information from Mr H based on the information that has now been provided. As I've explained bearing in mind the circumstances here, I would have expected MotoNovo to have had a reasonable understanding about Mr H's regular living expenses as well as his income and existing credit commitments.

I accept that Mr H's actual circumstances may not have been fully reflected either in the information he has now provided, or whatever information MotoNovo may have obtained. However, what has been provided leads me to think that even if MotoNovo's checks had

extended into finding out more about Mr H's actual income and his living expenses, I don't think this would have made a difference to its decision.

I say this because the information Mr H has provided does appear to show that when his committed regular living expenses are added to his credit commitments and then deducted from his income, Mr H could sustainably make the repayments due under this agreement. Indeed, the bank statements provided show that Mr H had more than the amount of the monthly payment left in his account each month and this is accounting for all of his spending, including what was discretionary.

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 H's application for finance.

Given the circumstances here, I don't think that MotoNovo did anything wrong when deciding to lend to Mr H - it seems to me that reasonable and proportionate checks will have shown the monthly payments to have been affordable.

In reaching this conclusion I've also considered whether the lending relationship between MotoNovo and Mr H might have been unfair to Mr H under section 140A of the Consumer Credit Act 1974 ("CCA").

However, for the reasons I've explained, I don't think MotoNovo irresponsibly lent to Mr H or otherwise treated him unfairly in relation to this matter. And I haven't seen anything to suggest that section 140A CCA or anything else would, given the facts of this complaint, lead to a different outcome here. So I'm not upholding Mr H's complaint.

I appreciate that this will be disappointing for Mr H. But I hope he'll understand the reasons for my decision and at least consider that his concerns have been listened to.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 9 September 2024.

Jeshen Narayanan
Ombudsman