

Complaint

Ms C complains that FirstRand Bank Limited (trading as “Motonovo Finance”) unfairly entered into an unaffordable hire-purchase agreement with her.

Background

In March 2019, Motonovo Finance provided Ms C with finance for a used car. The cash price of the vehicle was £10,046.00. Ms C paid a cash deposit of £1,000.00 and entered into a 60-month hire-purchase agreement with Motonovo Finance for the remaining amount needed to complete her purchase.

The loan was for £9,046.00 had interest, fees and total charges of £3,823.20 (made up of interest of £3,822.20 and an option to purchase fee of £1) So the total amount to be repaid of £12,869.20 (not including Ms C’s deposit) was due to be repaid in 59 monthly instalments of £214.47 followed by a final monthly payment of £215.47.

Ms C’s complaint was considered by one of our investigators. She didn’t think that Motonovo Finance had done anything wrong or treated Ms C unfairly. So she didn’t recommend that Ms C’s complaint should be upheld. As Ms C disagreed, 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 Ms C’s complaint.

Having carefully thought about everything I’ve been provided with, I’m not upholding Ms C’s complaint. I’d like to explain why in a little more detail.

Motonovo Finance needed to make sure that it didn’t lend irresponsibly. In practice, what this means is that Motonovo Finance needed to carry out proportionate checks to be able to understand whether Ms C could make her payments in a sustainable manner before agreeing to lend to her. And if the checks Motonovo Finance carried out weren’t sufficient, I then need to consider what reasonable and proportionate checks are likely to have shown.

Our website sets out what we typically think about when deciding whether a lender’s checks were proportionate. 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.

Motonovo Finance says it agreed to this application after it completed an income and expenditure assessment on Ms C. During this assessment, Ms C provided details of her employer. Motonovo Finance says it also carried out credit searches on Ms C which showed no significant adverse difficulties – such as defaulted accounts or County Court Judgments (“CCJ”) recorded against her. Furthermore, it considered that the existing credit Ms C had wasn’t excessive either.

As I understand it, MotoNovo says when reasonable payments to the amount Ms C already owed and the monthly payments for this agreement were deducted from what it believed to be her monthly income, she had enough left over to meet her living expenses. So it considered the payments to be affordable. On the other hand, Ms C says that these payments were unaffordable.

I’ve thought about what Ms C and Motonovo Finance have said.

The first thing for me to say is that I don’t think that the checks Motonovo Finance carried out did go far enough. In my view, given the length of time the agreement was due to run for, I’m satisfied that Motonovo Finance needed to take further steps to get an appreciate of Ms C’s actual living costs.

As Motonovo Finance didn’t carry out sufficient checks, I have gone on to decide what I think Motonovo Finance is more likely than not to have seen had it obtained further information from Ms C. Given the circumstances here, I would have expected Motonovo Finance to have had a reasonable understanding about Ms C’s regular living expenses as well as her income and existing credit commitments (which it already had).

I’ve considered the information Ms C has provided us with. And having done so, this information does appear to show that when Ms C’s committed regular living expenses and existing credit commitments are deducted from the funds she received each month, she did have the funds, at the time at least, to sustainably make the repayments due under this agreement.

Ms C is unhappy that credits she was receiving from her husband have been taken into account in our assessment. However, these credits were regularly going into the account which statements have been provided for and the bills were being paid from it to. And given the payments were for similar amounts and over the whole period we’ve been provided statements for, I’m simply not persuaded that these should have been viewed as short term. These appear to me to have been contributions toward the household bills.

Furthermore, as Ms C was being provided with an asset that could benefit the entire household, rather than a cash loan, I don’t think it unreasonable to think that Ms C’s husband’s contributions to the household expenditure could have flexed up and down to have accounted for any increased expenditure. Indeed, while I accept that this may not in itself be determinative of the fact that the agreement was affordable, the fact that Ms C made all of the payments on time also suggests that her husband’s contributions were regular.

In these circumstances, I think that it would be wholly unreasonable (and arguably irrational) to conclude that Ms C was solely responsible for the bills going out of the account, in the way that it is been suggested that this matter should be considered, without taking any account of the fact that she was receiving regular contributions towards these bills from her husband.

And, in my view, it is unlikely – and less likely than not – that Motonovo Finance would have declined to lend if it had seen this information. I say this particularly as Ms C was able to

make a cash deposit payment of £1,000.00 too and this is not indicative of an individual in financial difficulty.

Finally, I also need to keep in mind that, at the time, at least Ms C wanted the vehicle she'd chosen as well as the finance needed to enable her to acquire it - albeit her complaint makes it's clear that she no longer feels that way. However, Ms C's recollections now are being made with hindsight and with a view to a successful outcome on her complaint. I have to consider what she's now saying in this light and in these circumstances, it's difficult for me to accept that she would proactively have looked to have shown the payments to be unaffordable, in circumstances where the information I've seen actually suggests they were.

Overall and having carefully considered everything, while I don't think that Motonovo Finance's checks before entering into this hire-purchase agreement with Ms C did go far enough, I've not been persuaded that reasonable and proportionate checks would have prevented Motonovo Finance from providing these funds, or entering into this agreement.

In reaching my conclusions, I've also considered whether the lending relationship between MotoNovo Finance and Ms C might have been unfair to Ms C under section 140A of the Consumer Credit Act 1974 ("CCA").

However, for the reasons I've explained, I don't think MotoNovo Finance irresponsibly lent to Ms C or otherwise treated her 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.

This means I've not been persuaded that Motonovo Finance acted unfairly towards Ms C and I'm not upholding the complaint. I appreciate that this will be very disappointing for Ms C. But I hope she'll understand the reasons for my decision and that she'll at least feel her concerns have been listened to.

My final decision

My final decision is that I'm not upholding Ms C's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms C to accept or reject my decision before 4 October 2024.

Jeshen Narayanan
Ombudsman