

## **Complaint**

Mrs L complains that FirstRand Bank Limited (trading as “Motonovo Finance”) unfairly entered into a hire-purchase agreement with her. She’s said the agreement was unaffordable and so she shouldn’t have been accepted for it.

## **Background**

In February 2018, Motonovo Finance provided Mrs L with finance for a used car. The cash price of the vehicle was £7,500.00. Mrs L didn’t pay a deposit and entered into a 61-month hire-purchase agreement with Motonovo Finance for the entire amount of the purchase.

The loan had interest of £3,526.80. So the total amount to be repaid of £11,026.80 was due to be repaid in 60 monthly instalments of £183.78.

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

Mrs L 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 Mrs L’s complaint.

Having carefully thought about everything I’ve been provided with, I’m not upholding Mrs L’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 Mrs L 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 Mrs L. During this assessment, Mrs L provided details of her employer and her annual income. Motonovo Finance says it also carried out credit searches on Mrs L 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 Mrs L had wasn’t excessive either.

As I understand it, MotoNovo says when reasonable payments to the amount Mrs L 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, Mrs L says that these payments were unaffordable.

I’ve thought about what Mrs L 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, as well as the fact that there were some late payments on the credit check carried out, I’m satisfied that Motonovo Finance needed to take further steps to get an appreciation of Mrs L’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 Mrs L. Given the circumstances here, I would have expected Motonovo Finance to have had a reasonable understanding about Mrs L’s regular living expenses as well as her income and existing credit commitments (which it already had).

I’ve considered the information Mrs L has provided on her circumstances at the time. But I don’t think that MotoNovo Finance attempting to find out further information about Mrs L’s living costs would have made a difference here. I say this because I’ve not seen anything that shows me that when Mrs L’ committed regular living expenses, other non-discretionary expenditure and her existing credit commitments were deducted from what she received each month, she did not have the funds to make the payments to this agreement.

I say this in the knowledge that Mrs L is unhappy that credits she was receiving from her partner 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 Mrs L 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 Mrs L’s partner’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 Mrs L not only made all of the payments she did on time but also settled the finance significantly early, is a further indication that her partner’s contributions were regular.

In these circumstances, I think that it would be wholly unreasonable (and arguably irrational) to conclude that Mrs L was solely responsible for paying all of the bills referred to, 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 from her partner.

I've also noted that Mrs L has had some discussion with the investigator over her actual expenditure and the fact that she was gambling. I do accept that it's possible – but by no means certain – that if MotoNovo Finance had seen what I have now seen, it may have made a different decision on whether to lend, although I think that Mrs L doesn't appear to be gambling significantly.

In any event, all parties accept that MotoNovo Finance wasn't aware of any gambling. And the truth is, given the circumstances here as well as what I think that MotoNovo Finance needed to find out, I don't think that reasonable and proportionate checks would have extended into obtaining bank statements from Mrs L – especially as bank statements weren't the only way that MotoNovo Finance could find out about Mrs L's living expenses in the first place.

Finally, I also need to keep in mind that, at the time, at least Mrs L 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, Mrs L's submissions now (particularly what she is likely to have disclosed if asked in relation to contributions from her partner and any gambling) are being made with a view to obtaining a successful outcome on her complaint.

I have to consider what Mrs L is now saying in this light and in these circumstances. It is therefore difficult for me to accept that Mrs L would proactively have looked to have shown the monthly payments for the agreement to be unaffordable, in circumstances where the information I've seen suggests proportionate checks would have shown that 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 Mrs L 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 Mrs L might have been unfair to Mrs L 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 Mrs L 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 Mrs L and I'm not upholding the complaint. I appreciate that this will be very disappointing for Mrs L. 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 Mrs L's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs L to accept or reject my decision before 21 October 2024.

Jeshen Narayanan

**Ombudsman**