

Complaint

Mrs O complains that MotoNovo Finance Limited (“MotoNovo”) 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 October 2020, MotoNovo provided Mrs O with finance for a used car. The cash price of the vehicle was £15,670.00. Mrs O paid a cash deposit of £300 and received a part-exchange value of £2,110.00 and required finance for the remaining £13,157.00 she needed to complete her purchase.

MotoNovo accepted her application and as a result she entered into a 60-month hire-purchase agreement with it. The amount lent was £13,157.00 and the loan had interest of £5,556.00 as well as an option to purchase fee of £1. So the total amount to be repaid of £18,718.00 (not including Mrs O’s deposit and part exchange) was due to be repaid in 59 monthly instalments of £311.95 followed by a final monthly instalment of £312.95.

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

Mrs O 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 O’s complaint.

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

MotoNovo needed to make sure that it didn’t lend irresponsibly. In practice, what this means is that MotoNovo needed to carry out proportionate checks to be able to understand whether Mrs O could make her payments in a sustainable manner before agreeing to lend to her. And if the checks MotoNovo 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 says it agreed to this application after it completed an income and expenditure assessment on Mrs O. During this assessment, Mrs O provided details of her employer and her annual income. MotoNovo says it also carried out credit searches on Mrs O which showed she had low outstanding active balance on her existing commitments although she did also have a historic default recorded against her.

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

I've thought about what Mrs O and MotoNovo have said.

The first thing for me to say is that I don't think that the checks MotoNovo 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 needed to take further steps to get an appreciation of Mrs O's actual living costs.

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

I've considered the information Mrs O has provided on her circumstances at the time. But I don't think that MotoNovo attempting to find out further information about Mrs O's living costs would have made a difference here. I say this because I've not seen anything that shows me that when Mrs O's 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 O is unhappy that our investigator didn't take all of her expenditure into account. However, some of the expenditure Mrs O believes should be included are things like buy now pay later purchase payments, which weren't on the credit checks carried out and which she wasn't committed to paying over the course of the term of the agreement.

I'd also point out that MotoNovo would not necessarily have seen these statements either, as it didn't have to request bank statements (and certainly not for multiple accounts) in order to find out more about Mrs O's living expenses. Equally, while I accept that this may not in itself be determinative of the fact that the agreement was affordable, the fact that Mrs O has been able to make all of her payments is suggestive of the fact that the payments were sustainable.

Finally, I also need to keep in mind that, at the time at least, Mrs O wanted the vehicle she'd chosen as well as the finance needed to enable her to acquire it - albeit her complaint makes it clear that she no longer feels that way. However, Mrs O's submissions now are being made with a view to obtaining a successful outcome on her complaint.

I have to consider what Mrs O is now saying in this light and in these circumstances. It is therefore difficult for me to accept that Mrs O 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's checks before entering into this hire-purchase agreement with Mrs O did go far enough, I've not been persuaded that reasonable and proportionate checks would have prevented MotoNovo from providing these funds, or entering into this agreement.

In reaching my conclusions, I've also considered whether the lending relationship between MotoNovo and Mrs O might have been unfair to Mrs O 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 Mrs O 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 acted unfairly towards Mrs O and I'm not upholding the complaint. I appreciate that this will be very disappointing for Mrs O. 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 O's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs O to accept or reject my decision before 5 November 2024.

Jeshen Narayanan
Ombudsman