

## **Complaint**

Mr H 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 October 2015, MotoNovo provided Mr H with finance for a used car. The cash price of the vehicle was £7,000.00. Mr H paid a cash deposit of £400, received a part exchange value of £500 for his existing vehicle, and applied for finance to cover the remaining £6,100.00 he needed to complete his purchase. MotoNovo accepted his application and agreed to provide him with finance through a hire-purchase agreement.

The hire-purchase agreement had total interest, fees and charges of £2,592.80 (made up of interest of £2,204.80 an admin part A fee of £199, an admin part B fee of £179 and an option to purchase fee of £10). The total amount to be repaid of £8,692.80 (not including Mr H’s deposit or part exchange) was due to be repaid in 59 monthly instalments of £141.73 followed by a final payment of £330.73.

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

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

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

The first thing for me to say is that MotoNovo has not been able to provide the output of the credit checks it carried out at the time of Mr H's application. However, given this application took place more than nine years ago, I don't think that this is unreasonable. Nonetheless, without any indication of what these checks showed, I can't reasonably say that the checks carried out were reasonable and proportionate.

As I've explained, where a firm fails to carry out reasonable and proportionate checks before providing credit to a customer, I'd usually go on to recreate reasonable and proportionate checks in order to get an indication of what such checks would more likely than not have shown. I've recreated these checks with the help of information that Mr H has provided on his circumstances.

To be clear I've not carried out a forensic analysis of whether the loan payments were affordable. I've simply considered what MotoNovo is likely to have done if it obtained information on Mr H's income, living expenses and his main credit commitments like I think it should have done here. I say this because the information provided does appear to show that when Mr H's committed living expenses are added to his regular credit commitments and then deducted from his income, MotoNovo is likely to have concluded that Mr H could sustainably make the repayments due under this agreement.

I accept that Mr H's actual circumstances may have been worse than what the information about his committed living costs and existing commitments to credit shows. For example, I note that Mr H now says that the cash withdrawals he was making was to fund gambling. It's also possible – but by no means certain – that MotoNovo might have decided against lending to Mr H had it known this.

However, what I need to think about here is what were Mr H's actual committed living costs and what were his existing regular credit commitments? – given this was a first agreement and Mr H was being provided with a car, which he would not be able to gamble, rather than cash.

In my view, proportionate checks certainly wouldn't have gone into the level of granularity whereby MotoNovo ought reasonably to have realised that Mr H was making significant cash withdrawals and then gambling. I say this particularly bearing in mind the low monthly payments that were required on this agreement.

Furthermore, I also have to consider the Mr H's submissions in the context that they are now being made in support of a claim for compensation. Whereas at the time of sale, at least, Mr H clearly wanted the car he had chosen and it's fair to say that any explanations he would have provided would have been with a view to persuading MotoNovo to lend rather than highlighting the agreement was unaffordable. Therefore, I think that it is unlikely – and certainly less likely than not – that Mr H would have disclosed any gambling at the time, or that MotoNovo would have been in a position to know about this.

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 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, while there may be an argument for saying that MotoNovo's checks before entering into this hire purchase agreement with Mr H didn't go far enough, I'm not persuaded that MotoNovo carrying out further checks in this instance would have resulted in it reaching a different decision on lending to Mr H.

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.

I'm therefore satisfied that MotoNovo didn't act unfairly towards Mr H when it agreed to lend and I'm not upholding Mr H's complaint. I appreciate that this will be very disappointing for Mr H. 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 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 2 December 2024.

Jeshen Narayanan  
**Ombudsman**