

The complaint

Ms M complains FirstRand Bank Limited trading as Motonovo Finance (MotoNovo) acted irresponsibly when they entered into a Hire Purchase agreement with her as she said the lending was unaffordable.

In bringing her complaint Ms M is represented by a third party. For ease of reading I will only refer to Ms M in my decision.

What happened

In September 2016 Ms M acquired a car when she entered into a hire purchase agreement with MotoNovo. The cash price of the car was £11,762.50. Ms M paid a deposit of £200 and there was a part exchange for £60. After interest and charges were applied Ms M had to repay in total £14,809.80. This was to be repaid over 60 months at £242.48 a month.

Ms M complained that MotoNovo hadn't checked sufficiently that the agreement was affordable and if they had they would have seen she couldn't sustain the repayments.

MotoNovo said they based their lending decision on the information Ms M provided at the time, and credit checks which confirmed that the finance was affordable and so it was reasonable to lend.

Ms M wasn't happy with MotoNovo's response and referred her complaint to us.

Our investigator said MotoNovo hadn't done proportionate checks but if they had they would have still lent to her as Ms M had sufficient disposable income to show the lending was affordable.

Ms M didn't agree she said her expenditure hadn't been fully considered by our investigator and asked for an ombudsman to decide.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so I'm not upholding this complaint. I'll explain why.

All lenders are required to ensure they don't lend irresponsibly. I've considered the relevant rules, guidance and good industry practice when someone complains about irresponsible and/or unaffordable lending. In reaching my decision there are two overarching questions I need to consider in order to decide what's fair and reasonable in all of the circumstances of the complaint. These are:

1. Did MotoNovo complete reasonable and proportionate checks to satisfy themselves that Ms M would be able to repay the credit in a sustainable way?

- a. if so, did MotoNovo make a fair lending decision?

b. if not, would reasonable and proportionate checks have shown that Ms M could sustainably repay the borrowing?

2. Did MotoNovo act unfairly or unreasonably in some other way?

Regulations in place at the time MotoNovo lent to Ms M required them to carry out a reasonable assessment of whether she could afford to repay the loan in a sustainable manner. The affordability checks should be “borrower-focused”, meaning MotoNovo need to think about whether repaying the loan sustainably would cause difficulties or adverse consequences for Ms M. In other words, it wasn’t enough for MotoNovo to think only about the likelihood that they would get their money back without considering the impact of repayment on Ms M herself.

There’s no set list for what reasonable and proportionate checks are. But I’d expect lenders to consider the specific circumstances of the loan application. What constitutes a proportionate affordability check will generally depend on several factors such as the specific circumstances of the borrower, their financial history, current situation and whether there are any indications of vulnerability or financial difficulty.

MotoNovo said they didn’t verify Ms M’s income and expenditure at the time she acquired the car but did check her credit history which showed she’d a mortgage and a current account. And Ms M said she was employed full time. Based on this they agreed to lend to her. Whether or not these checks were proportionate depends on various factors, including the size and length of the loan, the cost of credit, and what MotoNovo found. The total amount repayable for the loan was over £14,000 and Ms M would be indebted for five years - so I think the checks needed to be thorough.

The relevant guidance at the time of the lending said the lender should consider existing financial commitments including any repayments due in respect of other credit agreements, hire agreements, payments for housing costs including council tax and utilities, telecommunications, and other major outgoings known to the lender. While MotoNovo from their credit check identified Ms M had a mortgage they haven’t shown they considered any other essential spending before they agreed to lend to Ms M. So, I don’t think their checks were proportionate and reasonable.

This doesn’t automatically mean MotoNovo shouldn’t have lent to Ms M as I need to consider whether further checks would have shown that the repayments were unaffordable to her – or in other words that she lost out because of MotoNovo’s failure to complete proportionate checks.

Ms M has provided a breakdown of what her income and expenditure was at the time of the lending which she says shows the lending was unaffordable. But this breakdown includes all her outgoings both discretionary and non-discretionary.

So, I’ve looked at statements for Ms M’s bank account for the three months leading up to her application to MotoNovo. I’m not saying MotoNovo needed to look at Ms M’s bank statements, but they provide a good indication of her income and essential expenditure at the time the lending decision was made.

The bank statements provided show Ms M’s salaried and benefit income. They also show transfers into the account from another of Ms M’s bank accounts. Ms M has been asked to provide details of this account but she hasn’t sent these to us. So, on balance I think this shows Ms M had other available income. I can also see there are payments in and out of the bank account to and from Ms M’s partner which she has confirmed are for bill payments. Ms M’s credit report only showed she’d a credit commitment for a mortgage of around £276

a month. And I can see Ms M regularly transfers around £300 a month to her partner.

Ms M also said she was persistently using her overdraft which she says was evidence she was struggling financially. But the bank statements she's provided do not evidence this. While I can see on the odd occasion Ms M did utilise her overdraft this was sporadic and for a short period.

After considering the information Ms M has provided it appears to show that when her committed regular living expenses including transport and childcare costs as well as her existing credit commitments were deducted from her monthly income, she did have the funds, at the time she entered into the agreement to sustainably make the repayments due under this agreement. As after considering Ms M's non-discretionary spending and factoring in the new lending I found she'd be left with around £600 each month in disposable income for discretionary and unexpected costs.

While I think MototNovo's checks before entering into this hire purchase agreement with Ms M mightn't have gone far enough, I'm satisfied that carrying out further checks won't have stopped them from providing these funds or entering into this agreement.

I've also considered whether MototNovo acted unfairly or unreasonably in some other way given what Ms M has complained about, including whether their relationship with her might have been viewed as unfair by a court under s.140A Consumer Credit Act 1974. For the reasons I've already given, I don't think MotoNovo lent irresponsibly to Ms M or otherwise treated her unfairly. I haven't seen anything to suggest that Section 140A or anything else would, given the facts of this complaint, lead to a different outcome here.

So, I'm satisfied that MotoNovo acted fairly and reasonably towards Ms M when they agreed to provide the funds. And I'm not upholding this complaint. Taking all of the above into account I don't think MotoNovo has made an unfair lending decision as Ms M had sufficient disposable income to sustain her repayments.

I appreciate that this will be disappointing for Ms M. But I hope she'll understand the reasons for my decision and at least consider that her concerns have been listened to.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms M to accept or reject my decision before 13 January 2025.

Anne Scarr
Ombudsman