

The complaint

Mr W, who is represented by a third party, complains that FirstRand Bank Limited, trading as Motonovo Finance ('Motonovo'), irresponsibly granted him a hire purchase agreement he couldn't afford to repay.

What happened

In April 2017, Mr W acquired a used car financed by a hire purchase agreement from Motonovo. Mr W was required to make 61 monthly repayments of £279.74. The total amount of credit was £11,800 with the total repayable under the agreement being £17,183.40.

Mr W says he knew straight away that he couldn't afford the finance.

The car was unfortunately stolen in July 2020 which led to an insurance settlement for the majority of the balance of the agreement. The outstanding balance was settled by Mr W in March 2022.

In October 2023, Mr W complained to Motonovo. He said it didn't complete adequate affordability checks. He says if it had, it would have seen the agreement wasn't affordable.

Motonovo didn't agree. It said it had done enough to establish that the agreement was likely to be affordable.

Our investigator didn't recommend the complaint be upheld. She didn't think there was enough to show that Motonovo had acted unfairly or unreasonably by approving the finance agreement and the agreement appeared to be affordable.

As Mr W didn't agree, his complaint has been passed to me for a final decision.

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.

We've explained how we handle complaints about unaffordable and irresponsible lending on our website. And I've used this approach to help me decide Mr W's complaint.

There are time limits for referring a complaint to the Financial Ombudsman Service. Motonovo said that because Mr W had raised complaints about the car in 2021 and 2022, he ought to have known he could also complain about the agreement not being affordable. Our investigator noted that this complaint was referred to us too late because the decision to agree the finance took place more than six years ago. But she also thought that the three-year time limit for starting the complaint had begun soon after Mr W acquired the car – rather than in 2021 or 2022 - given that he'd said he thought the agreement was likely to be unaffordable almost as soon as he'd taken out the agreement.

Our investigator went on to explain why it was reasonable to interpret the complaint as being about an unfair relationship as described in Section 140A of the Consumer Credit Act 1974, and why this complaint about an allegedly unfair lending relationship had been referred to us in time.

Seeing as I've decided not to uphold Mr W's complaint and given the reasons for this (which I'll go on to explain), whether Mr W referred his complaint about the decision to agree to grant the finance more than six years ago in time or not has no impact on that outcome. Like our investigator, I think Mr W's complaint should be considered more broadly than just the agreement to grant the finance. I say that as he has complained not just about the decision to lend but also the impact this had on him over the course of his relationship with Motonovo. Mr W's complaint in this respect can therefore reasonably be interpreted as a complaint about the fairness of his relationship with Motonovo. I acknowledge Motonovo still doesn't agree we can look at his complaint, but given the outcome I have reached, I don't intend to comment on this further.

In deciding what is fair and reasonable I am required to take relevant law into account. Because Mr W's complaint can be reasonably interpreted as being about the fairness of his relationship with Motonovo, relevant law in this case includes s.140A, s.140B and s.140C of the Consumer Credit Act 1974.

S.140A says that a court may make an order under s.140B if it determines that the relationship between the creditor (Motonovo) and the debtor (Mr W), arising out of a credit agreement is unfair to the debtor because of one or more of the following, having regard to all matters it thinks relevant:

- any of the terms of the agreement;
- the way in which the creditor has exercised or enforced any of his rights under the agreement;
- any other thing done or not done by or on behalf of the creditor.

Case law shows that a court assesses whether a relationship is unfair at the date of the hearing, or if the credit relationship ended before then, at the date it ended. That assessment has to be performed having regard to the whole history of the relationship.

S.140B sets out the types of orders a court can make where a credit relationship is found to be unfair – these are wide powers, including reducing the amount owed or requiring a refund, or to do or not do any particular thing.

Given what Mr W has complained about, I therefore need to think about whether Motonovo's decision to provide the finance to Mr W, or any of its later actions, created unfairness in the relationship between him and Motonovo such that it ought to have acted to put right the unfairness – and if so whether it did enough to remove that unfairness.

Mr W's relationship with Motonovo is therefore likely to be unfair if it didn't carry out proportionate affordability checks, where doing so would have revealed its lending to be irresponsible or unaffordable, and if it didn't then remove the unfairness this created somehow.

When assessing affordability, there wasn't a set list of checks that Motonovo needed to complete, but they needed to be borrower focussed and proportionate to things like the type of lending, the cost of the lending as well as the amount, and how long Mr W would need to make repayments for.

I have therefore considered the following questions:

1. Did Motonovo carry out reasonable and proportionate checks to satisfy itself that Mr W was in a position to sustainably meet the repayments that were due under the agreement?

Whilst I've seen that Motonovo carried out an affordability check when Mr W made his application for the finance, it didn't take steps to verify his income. Instead, it relied on the information he'd submitted in his application about his employment and residential status. It also asked him to confirm his regular monthly outgoings, such as rent, utilities, insurance and any existing credit. Although it also completed a credit check, which didn't reveal any recent adverse markings on his credit file, this won't have provided detailed information to establish a better picture of his existing financial position which could then be verified.

Without have a better indication of Mr W's overall financial situation, Motonovo wouldn't have got a reasonable understanding of whether the agreement was affordable or not. I also have to keep in mind that Mr W was taking on a significant financial commitment over a five-year period. So, I think it therefore would have been proportionate for Motonovo to have got a more thorough understanding of Mr W's financial circumstances before lending to him.

2. What would reasonable and proportionate checks have shown at the time? Did Motonovo reach a fair decision to lend?

I can't be certain what Mr W would have told Motonovo had it asked about his regular expenditure. I don't think Motonovo needed to request bank statements, but in the absence of anything else, I've placed significant weight on the information contained in the bank statements Mr W has sent us, as an indication of what would most likely have been disclosed.

I've reviewed bank statements covering a period of four months leading up to Mr W applying for and being granted the finance. Our investigator asked Mr W some additional questions to help better understand about some of the payments shown as being received. Unfortunately, we didn't receive any response to these enquiries within the specified timeframe.

I've seen that Mr W received his income on a weekly basis and that it varied up and down, most likely due to the nature of his work. I'm in broad agreement with our investigator that Mr W was receiving a monthly income that averaged out at around £1,500 to £1,600 per month. I also broadly agree that the statements give a good indication of Mr W's day-to-day and committed expenditure – including for rent and other household costs such as utilities, council tax, food and insurance.

It follows that overall, I haven't seen sufficient information for me to conclude that Mr W's spending may have been at a level such that he wouldn't have had enough disposable income to meet the monthly repayment costs of the agreement. Based on what I can see of his spending, he appears to have had available disposable income that averaged out at around £108 each month, after meeting the sum due under the agreement. I therefore think the agreement was affordable for Mr W. And to be clear, I am not suggesting that Mr W wouldn't have to be careful with his finances to ensure that he could continue managing his existing commitments alongside the new agreement and the cost of running the car.

All of this means that had MotoNovo carried out more detailed checks I don't think it necessarily follows that it wouldn't have agreed to lend to Mr W. I'm therefore not persuaded that MotoNovo acted unfairly in approving the finance.

3. Did Motonovo act unfairly in some other way?

I've seen from MotoNovo's customer notes that Mr W was missing payments from time to time and that on each occasion he was able to provide an explanation as to what had happened. I can see that Motonovo made efforts to accommodate him, including setting up a payment arrangement for him in September 2019. And during the pandemic in 2020, Motonovo agreed a two-month payment holiday.

It follows that, taking all the evidence and information I've seen into account, I don't consider there is enough to show that the agreement may have been unaffordable for Mr W. I've seen that Mr W raised other issues about the car during the course of the agreement, but they have been dealt with separately and therefore are not something I've looked at.

Overall, and based on the available evidence and information, I don't find that Mr W's relationship with Motonovo was unfair. It's not clear enough to me that Motonovo created unfairness in its relationship with Mr W by lending to him irresponsibly. I don't find Motonovo treated Mr W unfairly in any other way either based on what I've seen.

For this reason, I'm therefore not persuaded that Motonovo acted unfairly in approving the finance.

My final decision

For the reasons I've given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 27 February 2025.

Michael Goldberg

Ombudsman