

Complaint

Mr M complains that FirstRand Bank Limited (trading as “MotoNovo Finance”) unfairly entered into a hire-purchase agreement with him. He’s said that the finance was unaffordable and this resulted in him being unable to meet his basic commitments going forward, without borrowing from family members.

Background

In March 2017, MotoNovo Finance provided Mr M with finance for a used van. The purchase price of the vehicle was £8,769.60. Mr M paid a deposit of £1,800.00 and entered into a 49-month hire-purchase agreement with MotoNovo Finance for the remaining £6,969.60 needed to complete the purchase.

The loan had interest, fees and total charges of £2,919.48 (made up of interest of £2,561.48, and admin fee part A of £199, admin fee part B of £149 and an option to purchase fee of £10) and the balance to be repaid of £9,889.08 (which does not include Mr M’s deposit) was due to be repaid in 47 monthly instalments of £202.71 followed by a final repayment of £361.71.

In April 2023, Mr M complained to MotoNovo Finance saying that it shouldn’t have entered into this hire-purchase agreement with him, as it ought to have realised that it was unaffordable and this resulted in him being unable to meet basic commitments as well as suffering ongoing financial difficulty.

MotoNovo Finance did not uphold Mr M’s complaint. It was satisfied that it had carried out proportionate checks at the time of Mr M’s application and the results showed that it was reasonable to lend. It also believed Mr M had, in any event, complained about too late.

Mr M’s complaint was considered by one of our investigators. She reached the conclusion that proportionate checks would not have shown MotoNovo Finance that it shouldn’t have entered into the hire-purchase agreement with Mr M. So she didn’t think that Mr M’s complaint should be upheld.

Mr M 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.

Basis for my consideration of this complaint

There are time limits for referring a complaint to the Financial Ombudsman Service. MotoNovo Finance has argued that Mr M’s complaint was made too late because he complained more than six years after the decision to provide the finance as well as more

than three years after he ought reasonably to have been aware of his cause to make this complaint.

Our investigator explained why it was reasonable to interpret Mr M's complaint as being one alleging that the relationship between him and MotoNovo Finance was unfair to him as described in s140A of the Consumer Credit Act 1974 ("CCA"). She also explained why this complaint about an allegedly unfair lending relationship had been made in time.

Having carefully considered everything, I've decided not to uphold Mr M's complaint. Given the reasons for this, I'm satisfied that whether Mr M's complaint was made in time or not has no impact on that outcome.

I'm also in agreement with the investigator that Mr M's complaint should be considered more broadly than just the lending decision. I consider this to be the case as Mr M has not only complained not about the decision to lend but has also alleged that this unfairly impacted him going forward and he alleges that this resulted in him being unable to meet his other essential payments.

I'm therefore satisfied that Mr M's complaint can therefore reasonably be interpreted as a complaint about the overall fairness of the lending relationship between him and MotoNovo Finance. I acknowledge MotoNovo Finance still doesn't agree we can look Mr M's complaint, but given the outcome I have reached, I do not consider it necessary for me to make any further comment, or reach any findings on these matters.

In deciding what is fair and reasonable in all the circumstances of Mr M's case, I am required to take relevant law into account. As, for the reasons I've explained above, I'm satisfied that Mr M's complaint can be reasonably interpreted as being about the fairness of the lending relationship between him and MotoNovo Finance, relevant law in this case includes s140A, s140B and s140C of the CCA.

S140A says that a court may make an order under s140B if it determines that the relationship between the creditor (MotoNovo Finance) and the debtor (Mr M), 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. S140B 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 Mr M's complaint, I therefore need to think about whether MotoNovo Finance's decision to lend to Mr M, or its later actions resulted in the lending relationship between Mr M and MotoNovo Finance being unfair to Mr M, such that it ought to have acted to put right the unfairness – and if so whether it did enough to remove that unfairness.

Mr M's relationship with MotoNovo Finance is therefore likely to be unfair if it didn't carry out reasonable and proportionate checks into Mr M's ability to repay in circumstances where doing so would have revealed payments to the agreements to have been unaffordable, or

that it was irresponsible to lend. And if this was the case, MotoNovo Finance didn't then somehow remove the unfairness this created.

I'll now turn to whether MotoNovo Finance acted fairly and reasonably when entering into the hire-purchase agreement with Mr M.

What we consider when looking at complaints about irresponsible or unaffordable lending

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 M's complaint.

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 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 were 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 M's complaint.

Was MotoNovo Finance's decision to enter into a hire-purchase agreement with Mr M fair and reasonable?

MotoNovo Finance says it agreed to Mr M's application after he provided details of his monthly income. It says it also carried out credit searches on Mr M which did show defaulted accounts, although it considered these to be historic as they were from 2012 to 2014. Furthermore, Mr M had no County Court Judgments ("CCJ") recorded against him and a low amount of active credit in his name.

In its view, when reasonable repayments to the total amount Mr M owed plus a reasonable amount for Mr M's living expenses were deducted from his monthly income the monthly payments were still affordable.

I've thought about what MotoNovo Finance has 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. I don't think it was reasonable to rely on assumptions, or estimates of Mr M's living costs based on statistical data, given the adverse information on his credit file. I don't think that the fact that MotoNovo Finance may have considered this adverse information to have been historic changes matters.

As MotoNovo Finance didn't carry out sufficient checks, I've gone on to decide what I think MotoNovo Finance is more likely than not to have seen had it obtained further information from Mr M. In order to try and get an understanding of what a proportionate check is likely to have shown MotoNovo Finance, I've considered the information Mr M has provided.

As I've explained, bearing in mind the adverse information MotoNovo Finance saw, the length of time of the agreement and the amount of the monthly payment, I would have expected MotoNovo Finance to have had a reasonable understanding about Mr M's regular living expenses as well as his income and existing credit commitments.

Having considered the information provided, it does appear to show that when Mr M's discernible committed regular living expenses and existing credit commitments were deducted from the amount he received each month, he did have the funds, at the time at least, to sustainably make the repayments due under this agreement.

In reaching my conclusions, I've also noted that Mr M made all the payments to his agreement and apart from a single late payment and a payments during what appears to be an authorised break during the pandemic, these were on time. I accept that this in not in itself determinative of the agreement being affordable.

But crucially MotoNovo Finance would also have seen that Mr M was paying a deposit equivalent to close to nine months' worth of monthly payments. Finally, it's also worth noting that Mr M was purchasing a van at this stage too and given the nature of his self-employment, I think that this is a vehicle that would have provided a significant benefit.

Having considered all of this and weighed it up in the round, I don't think that MotoNovo Finance accepted an application that was obviously unaffordable, or that it ought reasonably to have realised would cause significant harm to Mr M. As this is the case, I don't think that it was unfair for MotoNovo Finance to have entered into hire-purchase agreement with Mr M, or that it doing so created unfairness.

Overall, and based on the available evidence I don't find that the lending relationship between Mr M and MotoNovo Finance was unfair to Mr M. I've not been persuaded that MotoNovo Finance created unfairness in its relationship with Mr M by irresponsibly lending to him when it entered into this hire-purchase agreement with him. And I don't find MotoNovo Finance treated Mr M unfairly in any other way either based on what I've seen.

So overall and having considered everything, while I can understand Mr M's sentiments and appreciate why he is unhappy, I'm nonetheless not upholding this complaint. I appreciate that this will be very disappointing for Mr M. But I hope he'll understand the reasons for 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 M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 28 February 2025.

Jeshen Narayanan
Ombudsman