

Complaint

Mr O 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 commitments going forward, without borrowing from family members.

Background

In May 2016, MotoNovo Finance provided Mr O with finance for a used car. The purchase price of the vehicle was £19,000.00. Mr O didn’t pay a deposit and entered into a 61-month hire-purchase agreement with MotoNovo Finance for the entire amount.

The loan had interest, fees and total charges of £6,474.80 (made up of interest of £5,916.80, and admin fee part A of £399, admin fee part B of £149 and an option to purchase fee of £10) and the total amount to be repaid of £25,474.80 was due to be repaid in 59 monthly instalments of £421.93 followed by a final repayment of £580.93.

In February 2024, Mr O 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 his commitments going forward, without borrowing from family members.

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

Mr O’s complaint was considered by one of our investigators. He 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 O. So he didn’t think that Mr O’s complaint should be upheld.

Mr 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.

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 O’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 O'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"). He 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 O's complaint. Given the reasons for this, I'm satisfied that whether Mr O's complaint was made in time or not has no impact on that outcome.

I'm also in agreement with the investigator that Mr O's complaint should be considered more broadly than just the lending decision. I consider this to be the case as Mr O 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 commitments going forward, without borrowing from family members.

I'm therefore satisfied that Mr O'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 may still disagree that we can look Mr O'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 O's case, I am required to take relevant law into account. As, for the reasons I've explained above, I'm satisfied that Mr O'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 O), 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 O's complaint, I therefore need to think about whether MotoNovo Finance's decision to lend to Mr O, or its later actions resulted in the lending relationship between Mr O and MotoNovo Finance being unfair to Mr O, such that it ought to have acted to put right the unfairness – and if so whether it did enough to remove that unfairness.

Mr O's relationship with MotoNovo Finance is therefore likely to be unfair if it didn't carry out reasonable and proportionate checks into Mr O'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 O.

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 O'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 O's complaint.

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

MotoNovo Finance says it agreed to Mr O's application after he provided details of his monthly income. It says it also carried out credit searches on Mr O which suggested that Mr O had no significant adverse information – such as defaulted accounts or County Court Judgments ("CCJ") - recorded against him. Furthermore, Mr O's active credit was being managed well.

In its view, when reasonable repayments to the total amount Mr O owed plus a reasonable amount for Mr O'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. While it is likely to have taken steps to employ electronic checks on the amount of funds Mr O received each month, I don't think it was reasonable to rely on assumptions, or estimates of Mr O's living costs based on statistical data, given the amount of the monthly payment and the length of time of the agreement.

As I don't think that MotoNovo Finance did 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 O. 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 O has provided.

As I've explained, I would have expected MotoNovo Finance to have had a reasonable understanding about Mr O's regular living expenses as well as the funds he received and his existing credit commitments.

In the first instance, I note that MotoNovo is likely to have relied on determining Mr O's income from the amount of funds going into his bank accounts each month. I appreciate that Mr O says that the income and expenditure on one of his accounts wasn't his but was his father's and that it is unreasonable for this to be taken into account.

However, the account was in Mr O's name and given a customer knowingly allowing someone else to use an account in their name is against the terms and conditions, I think that MotoNovo Finance would reasonably be entitled to have believed what was going into the account was available to Mr O. This is particularly as there appear to be funds going to and from the account in question to Mr O's other accounts.

Furthermore, when Mr O's discernible committed regular living expenses and existing credit commitments were deducted from the amount going into his various accounts each month, it at the very least appears as though he did have the funds, at the time at least, to sustainably make the repayments due under this agreement.

I appreciate that Mr O says that he would have disclosed that he had no access to the funds in the account his father was using if he was asked to provide information on this account. However, I also have to consider that Mr O's most recent submissions are being made in support of a claim for compensation and what I need to decide here is what Mr O is likely to have disclosed to MotoNovo Finance should it have posed further questions about his financial circumstances at the time of his application for credit.

With this in mind and Mr O applied for this finance knowing his overall position and whether he could have afforded the monthly payments, I think that any explanations he would have provided at the time are more likely to have been with a view to persuading MotoNovo Finance to lend, rather than highlighting any unaffordability.

In these circumstances, while I don't completely rule out the possibility that Mr O would have said that the funds in question weren't his, it is extremely difficult for me to reasonably conclude that it is more likely than not that Mr O would have done this. I say this particularly as it is rather obvious that the monthly payments are not affordable without these funds and I have to question why Mr O would even make an application without having access to at least some of these funds.

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 at the outset bearing in mind all the circumstances, or that it ought reasonably to have realised would cause

significant harm to Mr O. 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 O, or that it doing so created unfairness.

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

So overall and having considered everything, while I can understand Mr O'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 O. 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 O's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 21 April 2025.

Jeshen Narayanan
Ombudsman