

Complaint

Mr M complains that MotoNovo Finance Limited (“MotoNovo”) unfairly entered into a hire-purchase agreement with him. He’s said the payments to his agreement were unaffordable.

Background

In December 2020, MotoNovo provided Mr M with finance for a used car. The cash price of the vehicle was £11,995.00. Mr M didn’t pay a deposit and applied for finance to cover the entire amount. MotoNovo accepted Mr M’s application and entered into a 49-month hire-purchase agreement with him.

The loan had interest, fees and total charges of £2,829.84 (comprising of interest of £2,828.84 and an option to purchase fee of £1) and the total amount to be repaid of £14,824.84 was due to be repaid in 47 monthly instalments of £308.83 and one final payment of £309.83.

Mr M’s complaint was considered by one of our investigators. He didn’t think that MotoNovo had done anything wrong or treated Mr M unfairly. So he didn’t recommend 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.

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.

Having carefully thought about everything I’ve been provided with, I’m not upholding Mr M’s complaint. I’d like to explain why in a little more detail.

MotoNovo needed to make sure that it didn’t lend irresponsibly. In practice, what this means is that MotoNovo needed to carry out proportionate checks to be able to understand whether Mr M could make his payments in a sustainable manner before agreeing to lend to him. And if the checks MotoNovo carried out weren’t sufficient, I then need to consider what reasonable and proportionate checks are likely to have shown.

Our website sets out what we typically think about when deciding whether a lender’s checks were proportionate. 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.

MotoNovo says it agreed to this application after it completed an income and expenditure assessment on Mr M. During this assessment, Mr M provided details of his monthly income. MotoNovo says it also carried out credit searches on Mr M which showed up some existing credit but that this was being relatively well maintained. Furthermore, MotoNovo says that Mr M would have had enough left over to meet his regular living costs once his payments to his creditors was deducted from his income.

On the other hand, Mr M says that he couldn't have afforded the monthly payments.

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

The first thing for me to say is that MotoNovo has provided the output of the credit checks it carried out at the time of Mr M's application. And there was no significant adverse information such as defaulted accounts or County Court Judgements ("CCJ") recorded against him. Furthermore, MotoNovo searches also appear to show that Mr M's unsecured debt total at the time of the application wasn't excessive either.

Nonetheless, I do think MotoNovo needed to obtain further information from Mr M about his actual regular living costs. That said, I do think that even if MotoNovo's checks had gone further and extended into finding out more about Mr M's actual living expenses, I don't think this would have made a difference to its decision. I say this because the information Mr M has provided appears to show that when his committed regular living expenses are added to his credit commitments and then deducted from his income, Mr M could sustainably make the repayments due under this agreement.

I accept that Mr M's actual circumstances at the time may have been worse than what the information I think that MotoNovo ought to have obtained shows. I know that Mr M has referred to his gambling and I accept that if MotoNovo had known about this as Mr M appears to be saying it should have, it is possible, but by no means certain, that it may have reached a different decision on lending to him.

However, what I need to think about here is what were Mr M's actual committed living costs and what were his existing regular credit commitments? – given this was a first agreement and Mr M 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 considering bank statements, which MotoNovo will have needed to do in order for it to have realised that Mr M was gambling. I say this particularly bearing in mind what MotoNovo will have learned from the results of the credit check it carried out.

Furthermore, I also have to consider Mr M's submissions now 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 M 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 M would have disclosed any gambling if pushed for further information on his living costs at the time, or that MotoNovo would have been in a position to know about this.

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 M'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 M 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 M.

In reaching this conclusion I've also considered whether the lending relationship between MotoNovo and Mr M might have been unfair to Mr M 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 M 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 M when it agreed to lend to him and I'm not upholding Mr M's complaint. I appreciate that this will be very disappointing for Mr M. 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 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 6 May 2025.

Jeshen Narayanan
Ombudsman