

Complaint

Ms L complains that FirstRand Bank Limited (trading as “MotoNovo Finance”) unfairly entered into a hire-purchase agreement with her.

She’s said that the proper checks weren’t carried out which led to her being provided with finance that was unaffordable and the stress of having to make payments caused her difficulties going forward.

Background

In December 2014, MotoNovo Finance provided Ms L with finance for a used car. The purchase price of the vehicle was £14,687.00. Ms L paid a deposit of £247.35 and entered into a 54-month hire-purchase agreement with MotoNovo Finance for the remaining £14,440.45 she required.

The loan had interest, fees and total charges of £3,289.89, which was made up of interest of £2,891.89, an admin fee part A of £199, an admin fee part B of £189 and an option to purchase fee of £10. And the balance to be repaid of £17,730.34 (which does not include Ms L’s deposit) was due to be repaid in 52 monthly instalments of £330.78 followed by a final monthly payment of £529.78.

In January 2024, Ms L complained to MotoNovo Finance saying that the agreement was unaffordable and therefore MotoNovo Finance shouldn’t have entered into it with her. MotoNovo Finance didn’t uphold Ms L’s complaint. Ms L remained dissatisfied at matters and referred her complaint to our service.

When responding to our request for its file on Ms L’s complaint, MotoNovo Finance told us that it believed that Ms L complained too late. Ms L’s complaint was subsequently considered by one of our investigators. He reached the conclusion that proportionate checks would not have shown MotoNovo Finance that it shouldn’t have provided Ms L with the finance. So he didn’t think that Ms L’s complaint should be upheld.

Ms L 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 Ms L’s complaint was made too late because she complained more than six years after its decision to provide the finance as well as more than three years after Ms L ought reasonably to have been aware of her cause to make this complaint.

Our investigator explained why it was reasonable to interpret Ms L's complaint as being one alleging that the relationship between her and MotoNovo Finance was unfair to her 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 Ms L's complaint. Given the reasons for this, I'm satisfied that whether Ms L's complaint about the hire-purchase agreement was made in time or not has no impact on that outcome.

I'm also in agreement with the investigator that Ms L's complaint should be considered more broadly than just the lending decision. I consider this to be the case as Ms L has not only complained not about the decision to lend but has also alleged that this unfairly impacted her going forward.

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

Ms L's relationship with MotoNovo Finance is therefore likely to be unfair if it didn't carry out reasonable and proportionate checks into Ms L's ability to repay in circumstances where doing so would have revealed the monthly payments to the agreement 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 Ms L.

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 Ms L's complaint.

I think that it would be helpful for me to set out that we consider what a firm did to check whether repayments to credit 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 it 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 we think 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 a 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 Ms L's complaint.

Was MotoNovo Finance's decision to enter into the hire-purchase agreement with Ms L fair and reasonable?

MotoNovo Finance says it agreed to Ms L's application after Ms L provided details of her occupation and her employer. It says it also carried out credit searches on Ms L which showed that she didn't have any significant adverse information – such as county court judgments ("CCJ") or defaulted accounts recorded against her.

On the other hand, Ms L has said that the repayments were unaffordable for her and the stress of having to make these unaffordable payments caused her difficulties going forward.

I've thought about what MotoNovo Finance and Ms L have said.

The first thing for me to say is that while I accept that MotoNovo Finance carried out a credit check, I'm not entirely persuaded that MotoNovo Finance's checks went far enough. In my

view, given the amount of the monthly payment and the length of time the agreement was due to run for, I think that MotoNovo Finance needed to take further steps to ascertain Ms L's income as well as some idea of her living costs for its checks to have been proportionate here.

I can't see that MotoNovo Finance did this. So I'm not satisfied that its checks before lending were proportionate in this instance.

Ordinarily, where a firm failed to carry out reasonable and proportionate checks before providing credit to a customer, I'd usually go on to recreate reasonable and proportionate checks in order to get an indication of what such checks would more likely than not have shown.

However, Ms L has been unable to provide us with all of the information we've asked her for in order to be able to assess what MotoNovo Finance finding out more about her circumstances is likely to have shown. I appreciate that Ms L says that the second account may have been in her name but that her partner was the main one using it. However, she does appear to be in receipt of transferred funds from that account. So without sight of what is going on in that account, I don't have sufficient evidence to reasonably conclude that the monthly payments to this agreement were as a matter of fact unaffordable for Ms L.

I appreciate that Ms L may feel it is unreasonable and unfair to expect her to provide information which she doesn't have and she cannot reasonably be expected to have. But I also have to take into account that MotoNovo Finance isn't required to have retained all of this information either. This is particularly as the agreement was taken out in 2014 and it was Ms L that chose to make her complaint approaching a decade later. As this is the case, I have to decide the complaint on what I have before me.

Equally, it is only fair and reasonable for me to uphold a complaint in circumstances where I can see that any credit provided was unaffordable. And I'm afraid that I've not been provided with sufficient evidence which corroborates what Ms L has said about the payments being unaffordable.

I also have to consider the Ms L's submissions in the context that they are now being made in support of a claim for compensation. Whereas at the time of sale, at least, Ms L clearly wanted the car she had chosen and it's fair to say that any explanations she would have provided would have been with a view to persuading MotoNovo Finance to lend rather than highlighting the agreement was unaffordable.

I'm satisfied that the available information does not clearly show me that proportionate checks would have shown that Ms L could not make the monthly payments to this agreement in a sustainable manner. As this is the case, I've not been sufficiently persuaded that MotoNovo Finance would have declined to lend if it had found out the further information that I think it needed to here. So I've not been persuaded that it was unfair for MotoNovo Finance to lend to Ms L.

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

Overall and having considered everything, while I can understand Ms L's sentiments and appreciate why she is unhappy, I'm nonetheless not upholding this complaint. I appreciate that this will be very disappointing for Ms L. But I hope she'll understand the reasons for my

decision and that she'll at least feel her concerns have been listened to.

My final decision

My final decision is that I'm not upholding Ms L's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms L to accept or reject my decision before 14 April 2025.

Jeshen Narayanan
Ombudsman