

Complaint

Ms R complains that FirstRand Bank Limited (trading as “MotoNovo” Finance) unfairly entered into a hire-purchase agreement with her. She’s said the monthly payments to the agreement were unaffordable and so she shouldn’t have been accepted for it.

Background

In July 2017, MotoNovo provided Ms R with finance for a used car. The cash price of the vehicle was £7,800.00. Ms R didn’t pay a deposit and entered into a 60-month hire-purchase agreement with MotoNovo for the entire amount.

The loan had interest, fees and total charges of £3,583.60 (made up of interest of £3,195.60, an admin fee part A of £189, an admin fee part B of £179 and finally an option fee to purchase fee of £20, which needed to be paid if Ms R exercised her option to purchase the vehicle) at the end of the term. So the total amount to be repaid of £11,385.60 was due to be repaid in 59 monthly instalments of £186.41 followed by a final repayment of £385.41.

Ms R’s complaint was considered by one of our investigators. He reached the conclusion that proportionate checks would have shown MotoNovo that it shouldn’t have entered into this agreement with Ms R. So he recommended that Ms R’s complaint should be upheld.

MotoNovo didn’t agree with our investigator and the complaint was passed to an ombudsman for a final decision.

My provisional decision of 22 April 2025

I issued a provisional decision – on 22 April 2025 - setting out why I wasn’t intending to uphold Ms R’s complaint.

In summary, I was satisfied that that proportionate checks wouldn’t have prevented MotoNovo from lending to Ms R. In these circumstances, I was of the view that it wasn’t unfair for MotoNovo to have lent to Ms R.

The parties’ responses to my provisional decision

Neither Ms R nor MotoNovo responded to my provisional decision or asked for any additional time in order to do so.

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 Ms R’s complaint.

Having carefully thought about everything I've been provided with, including what's happened since my provisional decision, I'm not upholding Ms R'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 Ms R could make her payments in a sustainable manner before agreeing to lend to her. 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 has said that it took some details of Ms R's employment as well as carried out credit checks. Having looked at the results of the credit check, while MotoNovo would quite reasonably have concluded that Ms R's active credit commitments were low, I think that it also is likely to have been aware that Ms R had previously defaulted on credit.

In my view, the presence of defaulted accounts on any credit search coupled with the amount advanced means that MotoNovo ought to have had a reasonable understanding of Ms R's actual living costs. I've not seen anything to indicate that MotoNovo did have this information. So I don't think that its checks before lending to Ms R were sufficient.

As I don't think that MotoNovo carried out sufficient checks, I have gone on to decide what I think MotoNovo is more likely than not to have seen had it obtained further information from Ms R. Given the circumstances here, I would have expected MotoNovo to have had a reasonable understanding about Ms R's regular living expenses as well as her income and existing credit commitments (which it already had).

MotoNovo could have if it wanted to have asked for bank statements, or it could have instead asked for copies of bills etc to build this picture of Ms R's living expenses. Having carefully considered everything, I'm not persuaded that Ms R's living expenses were significantly more than the average.

Indeed, I note that our investigator made a couple of significant errors in his income and expenditure assessment which led him to conclude that the payments to the agreement were unaffordable.

Firstly, the investigator concluded that Ms R's rent was £666 a month because that's what she paid over a three-month period. However, having reviewed Ms R's statements, it's clear that this average is skewed by a much larger payment made in the first month. I think that the first payment is likely to have included an advance payment and deposit and that Ms R's rent was actually £475, which was the amount that Ms R paid in months two and three.

Secondly, it appears to me that the investigator has mistaken one of Ms R's creditors as a payday lender. However, this lender provided revolving credit, rather than payday loans, Ms R had the ability to pay less to this creditor each month and clear her balance within a reasonable period of time, instead of in one go, if she wished to do so.

For the sake of completeness, I'd also add that even if this facility is included as a payday loan (as the investigator did in his assessment), I don't think it's fair and reasonable to include this in an assessment of what Ms R's ongoing commitments, for the duration of this agreement would be, would be. I say this because payday loans are taken out and repaid over a much shorter term than typical agreements for credit.

I don't think that it would have been reasonable for MotoNovo to assume that Ms R would continue taking out payday type lending for the duration of this agreement. I say this particularly as Ms R is unlikely to have said she would continue doing so if asked. So I don't think that it is reasonable to include the payments to one of Ms R's creditors as an ongoing commitment that Ms R had to make for the entire 60 months of this agreement.

I accept that Ms R's actual circumstances at the time may have been worse than what finding out more than about her committed living expenses is more likely than not to have shown. I can see that there are significant amounts of payments going out of Ms R's account which I would not categorise as essential expenditure. I accept that it is possible – but by no means certain – that if MotoNovo had seen what Ms R has provided now, it may have made a different decision on whether to lend.

However, MotoNovo didn't have Ms R's bank statements. Given the circumstances here as well as what I think that MotoNovo needed to find out, I don't think that reasonable and proportionate checks would have extended into obtaining bank statements from Ms R – especially as bank statements weren't the only way that MotoNovo could find out about Ms R's living expenses in the first place.

I also have to consider Ms R'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 R 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 to lend rather than highlighting the agreement was unaffordable.

Therefore, I think that it is unlikely – and certainly less likely than not – that Ms R would have disclosed her additional spending at the time, or more importantly that MotoNovo would have been in a position to know about this had it carried out proportionate checks.

So having carefully considered everything, I'm satisfied that the available information makes it appear, at least, as though proportionate checks would have shown that Ms R could make the monthly payments to this agreement in a sustainable manner. And in my view, it is unlikely – and less likely than not – that MotoNovo would have declined to lend if it had found out the further information that I think it needed to here.

Overall and having carefully considered everything, while I don't think that MotoNovo's checks before entering into this hire-purchase agreement with Ms R did go far enough, I'm not currently persuaded that reasonable and proportionate checks would have prevented MotoNovo from providing these funds, or entering into this agreement with her.

I have also thought about what Ms R has said about not being given any loan paperwork at the time of the sale and the costs of the loan being high. However, the information regarding the cost of the agreement, which is set in the background section of this final decision, is taken directly from the credit agreement Ms R signed.

I accept it is possible that Ms R might have wanted longer to consider this information. But I would have expected her to have asked for more time to consider the paperwork if this was the case, before she signed the agreement. So I think that Ms R was notified of the costs of

the agreement before she entered into it. And as Ms R signed the agreement, I can only reasonably conclude that she was at the time least happy to proceed on the basis of the terms proposed.

In reaching my conclusions, I've also considered whether the lending relationship between MotoNovo and Ms R might have been unfair to Ms R under section 140A of the Consumer Credit Act 1974 ("CCA").

However, for the reasons I've explained, I'm satisfied that MotoNovo did not irresponsibly lend to Ms R or otherwise treat her 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.

So I'm not upholding this complaint. I appreciate that this will be very disappointing for Ms R – particularly as our investigator, albeit erroneously, suggested that the complaint should be upheld. 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

For the reasons I've explained above and in my provisional decision of 22 April 2025, I'm not upholding Ms R's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms R to accept or reject my decision before 4 June 2025.

Jeshen Narayanan
Ombudsman