

Complaint

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

Background

In October 2016, MotoNovo provided Mr S with finance for a used car. The cash price of the vehicle was £10,530.14. Mr S paid a deposit of £1,000.00 and applied for finance to cover the remaining £9,530.14 required to complete the purchase.

MotoNovo accepted Mr S’ application and entered into a 60-month hire-purchase agreement with him. The loan had an APR of 16.8%, interest, fees and total charges of £4,264.26 (made up of interest of £4,263.26 and an option to purchase fee of £1). And the balance to be repaid of £13,794.40 (which does not include Mr S’ deposit) was due to be repaid in 59 monthly instalments of £229.89 and then a final instalment of £230.89.

In February 2024, Mr S complained that the agreement was unaffordable for him and MotoNovo shouldn’t have provided it to him. MotoNovo didn’t uphold Mr S’ complaint. As far as it was concerned it had carried out proportionate checks which showed that the agreement was affordable and that it was reasonable to lend. Mr S remained dissatisfied after MotoNovo’s response and referred his complaint to our service.

One of our investigators reviewed everything provided and concluded that proportionate checks ought reasonably to have shown MotoNovo that it shouldn’t have entered into this agreement with Mr S as it was unaffordable for him. As MotoNovo lent to Mr S in these circumstances it failed to treat him fairly and reasonably. So the investigator upheld the complaint.

MotoNovo accepted the investigator’s conclusion that it should refund the interest, fees and charges it applied to Mr S’ agreement. However, it refused to pay any interest on the refunded funds as Mr S had had the use of the vehicle and therefore had received a benefit. As Mr S didn’t accept MotoNovo’s alternative proposal the complaint was referred to an ombudsman for consideration.

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, including what we typically expect a lender to put things right should we consider that it failed to act fairly and reasonably, on our website. And I’ve used this approach to help me decide Mr S’ complaint.

MotoNovo has accepted that it shouldn’t have lent to Mr S. So I do not need to consider whether MotoNovo acted fairly and reasonably to Mr S. I merely need to consider whether

what MotoNovo has agreed to do to put things right for Mr S is fair and reasonable in all of the circumstances of this complaint.

Having considered the available evidence, I'm satisfied that MotoNovo needs to do more to put things right for Mr S in a fair and reasonable way. I'll now proceed to explain why I think that this is the case in a bit more detail.

Our approach to putting things right and what we typically tell a lender to do in a complaint about irresponsible and unaffordable lending

I've thought about the investigator's proposed method of putting things right and carefully considered whether it amounts to fair compensation in this case.

It might help for me to start by explaining that in broad terms, where I find that a business has done something wrong, I'd normally expect that business – in so far as is reasonably practicable – to put the consumer in the position they *would be in now* if that wrong hadn't taken place. In essence, in this case, this would mean MotoNovo putting Mr S in the position he'd now be in if the agreement hadn't been entered into in the first place.

But when it comes to complaints about irresponsible lending this isn't straightforward. For reasons I'll explain further on, the position is even more complicated where goods are involved. Mr S did enter into the agreement and *was*, at least, given the car in question. He also had the vehicle for around two years. So, in these circumstances, I can't undo what's already been done. And it's simply not possible to put Mr S back in the position he would be in if he hadn't been sold the car in the first place.

As this is the case, I have to think about some other way of putting things right in a fair and reasonable way bearing in mind all the circumstances of the case. Our website sets out the main things we consider when looking at putting things right in cases where we conclude that a lender did something wrong in irresponsible/unaffordable lending complaints.

We typically say the borrower should repay the amount lent and the lender refunds any interest, fees and charges the borrower paid. This is because the borrower will have had the benefit of the credit they were provided with and it's usually the extra paid over and above this – any interest fees and charges – that will have caused the consumer to lose out. As the customer will have been deprived of the money which needs to be refunded and won't have had the use of it, we'll typically require a lender to pay interest on any refunded amounts.

The position in Mr S' case

It's not always possible to apply our typical approach to putting things right in complaints about irresponsible or unaffordable lending involving car finance. This is because the customer will have been provided with the use of a car rather than cash and they won't have realised the benefit of the full amount they were lent unless and until they've taken ownership of the car after making all of their payments.

Often an irresponsible or unaffordable lending case will be referred to us while the agreement is still running or the payments made are less than the amount initially lent. However, this isn't the case here as it looks like the agreement was settled early in September 2018 after Mr S was involved in an accident.

I understand that Mr S settled the finance and took ownership of the car at this point. Therefore, it seems to me that the facts of this case mean that it is possible for MotoNovo to settle the complaint in line with our typical approach. MotoNovo has agreed to refund any

interest fees and charges Mr S paid, but it doesn't agree that it should have to pay Mr S interest on this amount.

I've considered its submissions and now proceed to set out my thoughts on them.

Why I think it would be fair and reasonable for MotoNovo to pay interest at 8% simple a year on the amounts it refunds to Mr S

As I've explained, we typically award a customer interest for being deprived of the funds that they overpaid – in this case, any extra over and above the £9,530.14 Mr S was lent. So in this case this would mean MotoNovo paying Mr S interest at 8% per year simple from the date Mr S paid more than £9,530.14 to the date that MotoNovo settles the complaint.

That said, we do look at each case individually and on its own particular merits. And while we have a general approach to how we might tell a lender to put things right where it provided credit it shouldn't have (such as here), we can and will tell it to do something different and/or something more if there's a strong reason to say that's what would be fair and reasonable to do in the circumstances of that individual case.

MotoNovo effectively argues that a strong reason exists in this case. It argues that I should depart from our typical approach because Mr S had use of the vehicle and requiring it to pay interest at 8% simple a year doesn't take into account the benefit he derived.

I've thought about what MotoNovo has said. However, I don't agree with its position. I say this because, once the complaint has been settled, Mr S will be left in the position where he will have repaid MotoNovo £9,530.14. Mr S is being required to repay this amount precisely because he had the use of the car and eventually took ownership of it as a result of this agreement.

In other words, Mr S will pay this amount because he received a benefit as a result of MotoNovo lending to him. MotoNovo isn't being asked to refund this amount or pay interest on it. Indeed, if Mr S didn't receive such a benefit then there would be a question as to whether MotoNovo was entitled to keep £9,530.14 of the payments Mr S made.

I'm therefore satisfied that Mr S repaying the capital lent already accounts for his usage of the car and any benefit he received. However, Mr S shouldn't have to pay any interest, fees and charges as a result of MotoNovo's decision to lend to him. Presumably MotoNovo accepts this is the case as it has agreed to refund this interest to him.

Mr S lost the use of the funds that MotoNovo now needs to refund him. We normally ask a lender to pay interest at 8% simple a year where it is refunding money that the customer lost the use of. This is because it is unclear what the customer would have done with the funds had they not lost the use of them. It's fair to say that some customers may have saved the money, some may have dissipated the funds by purchasing other items and some may have, as Mr S says he did here, borrowed elsewhere in order to make the payments the lender has to refund.

I've not been provided any direct evidence of Mr S having borrowed to make his payments, or if he did do so what rate of interest he paid. Nonetheless, I'm mindful that consumer borrowing rates are typically higher than the 8% simple we typically award. For example, the interest rate on this loan itself was 16.8%, and in my experience credit card and overdraft rates are typically higher.

In the circumstances and while I accept the possibility that Mr S may have paid interest at a higher rate than 8% in order to pay the charges MotoNovo needs to refund him, as I've not

been provided with evidence that this is more likely than not to be the case, I see no reason to depart from our usual approach to compensating a consumer who lost the use of funds being refunded. Therefore, I think awarding 8% per year simple interest, on the interest and charges Mr S paid, is fair and reasonable in the circumstances of this case.

In reaching my conclusions, I've also considered whether the lending relationship between MotoNovo and Mr S might have been unfair to Mr S under s140A of the Consumer Credit Act 1974.

However, I'm satisfied that what I direct MotoNovo to do in the section below results in fair compensation for Mr S given the overall circumstances of his complaint. For the reasons I've explained, I'm also satisfied that, based on what I've seen, no additional award is appropriate in this case.

Fair compensation – what MotoNovo needs to do to put things right for Mr S

Overall and having considered everything, I'm satisfied that it would be fair and reasonable for MotoNovo to put things right for Mr S by:

- refunding all interest, fees and charges Mr S paid as a result of this hire-purchase agreement;
- adding interest at 8% per year simple on any refunded payments from the date they were made by Mr S to the date of settlement†
- removing any and all adverse information it recorded about this hire-purchase agreement from Mr S' credit file.

† HM Revenue & Customs requires MotoNovo to take off tax from this interest. MotoNovo must give Mr S a certificate showing how much tax it has taken off if he asks for one.

My final decision

For the reasons I've explained, I'm upholding Mr S' complaint. First Rand Bank Limited (trading as "MotoNovo" Finance) should put things right in the way I've directed it to do so above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 9 June 2025.

Jeshen Narayanan
Ombudsman