

## **The complaint**

Mr H complains that FirstRand Bank Limited trading as MotoNovo Finance ('MotoNovo') irresponsibly entered into a hire purchase agreement with him. He says MotoNovo failed to check he could make repayments under the agreement sustainably.

Mr H also raises concerns about the commission the finance broker earned for arranging the finance.

## **What happened**

In February 2017 MotoNovo provided Mr H with finance to purchase a used car. The car cost £7,967 and Mr H paid a deposit of £201. He entered into a hire purchase agreement to finance the remainder. After interest and charges the total amount due was £10,346.44, repayable in 35 monthly instalments of £281.54 and one payment of £291.54. Mr H settled the agreement in full in January 2020.

In March 2023 Mr H complained to MotoNovo saying that they didn't undertake appropriate affordability checks. He said that at the time of the application he was in dire financial difficulties and living off payday loans. And Mr H asked if the broker earned commission for arranging the finance. MotoNovo didn't uphold Mr H's complaint. They said the terms of the agreement had been set out clearly, including that commission might be paid. MotoNovo confirmed the amount of commission they paid to the broker for introducing Mr H. MotoNovo said they undertook a hard search prior to lending. The results met their lending criteria and risk appetite, and they lent on that basis.

One of our investigators considered the complaint. He didn't think MotoNovo's checks had been proportionate. In his view proportionate checks would have shown that the agreement wasn't affordable and sustainable for Mr H. For this reason, he thought the complaint should be upheld. Mr H agreed with our investigator's view. MotoNovo asked to see the bank statements our investigator had relied on when forming his view, and our investigator sent them across. MotoNovo then pointed out that Mr H had settled his agreement in full without missing payments. They asked for evidence to show Mr H was struggling during the term of the agreement.

As no agreement could be reached the case has come to me for a decision.

## **What I've decided – and why**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so, I'm upholding Mr H's complaint. I'll explain why.

The Financial Conduct Authority (FCA) sets out in a part of its handbook known as CONC what lenders must do when deciding whether to lend to a consumer. In summary, a firm must consider a customer's ability to make repayments under the agreement without having to borrow further to meet repayments or default on other obligations, and without the

repayments having a significant adverse impact on the customer's financial situation.

CONC says a firm must carry out checks which are proportionate to the individual circumstances of each case. What's proportionate depends on the specific circumstances of each application. I'd expect a lender to think about the nature of the credit (the amount repayable and the term, for example) and about the applicant's individual circumstances. CONC 5.3.1G(2) is of particular relevance in this case. It says that consumers ought to manage the repayments "...without...incurring financial difficulties or experiencing significant adverse consequences". Simply put, Mr H needed to be able to meet his financial commitments and not have to borrow elsewhere to repay MotoNovo for the agreement to be considered affordable and sustainable.

There are two overriding questions I need to consider when deciding this case. I'll deal with each in turn.

*Were MotoNovo's checks proportionate?*

MotoNovo provided us with details of Mr H's application. This shows he was single and living with his parents. Mr H declared he was in full-time employment. MotoNovo told our investigator that they didn't record or verify Mr H's income, and that they didn't conduct affordability checks. If this is correct, I find that worrying as it goes against the guidance set out in CONC and the obligations on MotoNovo to lend responsibly.

MotoNovo said they did check Mr H's credit report. This showed Mr H had five current accounts, three of which had agreed overdrafts totalling £2,750. The credit check showed Mr H had utilised £2,520 of his available overdraft at the time of the application. He also held three credit cards with an overall credit limit of £4,180 and a total outstanding balance of £4,124 – a credit utilisation of around 99%.

Finally, MotoNovo's credit check showed that between January 2016 and January 2017 Mr H had taken out 27 payday loans, two of which hadn't been settled at the point of his finance application. The total outstanding loan balance was £2,180 with total monthly payments of £366.

Given what MotoNovo learned about Mr H's financial circumstances as a result of the credit check, I think it could be argued that they ought to have simply declined Mr H's application. The extent of Mr H's overdrafts alone should have raised concerns about his ability to take on further borrowing sustainably. The frequent payday lending should have further added to that concern. If MotoNovo wanted to consider Mr H's application further, they needed to carry out additional checks to find out more definitively whether the proposed agreement could have been deemed to be affordable and sustainable for Mr H. By MotoNovo's own admission, this didn't happen here – and so I find that MotoNovo's checks weren't proportionate.

*If MotoNovo had carried out proportionate checks, what would they have shown?*

A proportionate check would have involved finding out more about Mr H's income and committed expenditure. There are different ways a lender can go about checking a prospective borrower's income and expenditure. I can't be sure what MotoNovo would have done had they decided to conduct further checks, or what Mr H would have told them. In the absence of anything else, I've placed significant weight on the information contained in Mr H's bank statements for the three months leading up to his application as an indication of what would most likely have been disclosed.

The bank statements show that Mr H's net monthly employment income averaged around £1,630 per month. Once MotoNovo had established that, I think it ought to have been quite clear that Mr H effectively had no disposable income despite the fact he was apparently living with parents and had no dependents. I say this because it's apparent from the credit check MotoNovo undertook that Mr H was entirely reliant on his overdraft, the combined limit of which was over 55% higher than his net monthly income. This strongly suggests that Mr H had significant problems managing his money.

I don't think I need to go into a detailed assessment of Mr H's committed expenditure here. Between the overdrafts, three existing credit cards being utilised to almost their full limits, and evidence of frequent short-term, high-cost credit, I think there was enough evidence to indicate that additional lending would not be sustainable. Mr H was clearly reliant on borrowing, had been for a considerable period, and there was no evidence to suggest that would change once he had taken on this additional debt.

MotoNovo pointed out that Mr H had paid his contractual monthly repayments on time throughout the duration of the agreement. But not missing any payments doesn't automatically mean the agreement was affordable. Mr H explained that he continued to rely heavily on high-interest loans to manage his finances. He said he was only able to escape this debt cycle with loans from family and friends. Mr H provided us with bank statements for the two months after MotoNovo had agreed to lend to him, as well as a copy of his credit report from April 2020. Both show evidence of repeated high-cost, short-term borrowing after Mr H had entered into the agreement with MotoNovo. And as I set out at the beginning of this decision, having to borrow elsewhere to meet repayments does not meet the definition of affordable or sustainable under the relevant rules at the time.

Overall, based on the information available to me, I'm satisfied that if MotoNovo had undertaken proportionate checks, they would have concluded the repayments wouldn't be affordable and sustainable for Mr H. It follows that they couldn't have fairly decided to lend to him.

### *Commission*

Mr H raised concerns about the commission MotoNovo might have paid to the finance broker for introducing him to MotoNovo. I don't think I need to reach a finding about this aspect of Mr H's complaint. This is because I've already found that MotoNovo shouldn't have entered into this agreement with Mr H as they ought to have realised that it was unsustainable and affordable for him. I'm satisfied that my proposed method of putting things right for Mr H, as a result of this, effectively places him in the position he would now be in had his agreement never existed. I think that this also unwinds the impact of any commission that MotoNovo might have paid to the broker for introducing Mr H.

As this is the case, I don't think there is any need for me to look at the complaint about commission as upholding this part of the complaint wouldn't make a difference to the overall outcome.

### *Did MotoNovo act unfairly in any other way?*

I've also considered whether MotoNovo acted unfairly or unreasonably in some other way given what Mr H has complained about, including whether their relationship with Mr H might have been unfair under s.140A Consumer Credit Act 1974.

However, I'm satisfied the redress I have directed below results in fair compensation for Mr H in the circumstances of his complaint. I'm satisfied, based on what I've seen, that no additional award would be appropriate in this case.

## **Putting things right**

As I don't think MotoNovo ought to have approved the lending, I don't think it's fair for them to be able to charge any interest or charges under the agreement.

Mr H has already paid more than the cash value of the vehicle to MotoNovo, having settled the agreement in full in January 2020. So, MotoNovo must do the following to settle Mr H's complaint:

- Calculate how much has been paid in total under the agreement (including any deposits and final settlements).
- Deduct the cash price of the vehicle (being £7,967) from the total paid.
- Pay Mr H the difference, adding 8% simple interest per year\* from the date of each overpayment to the date of settlement.
- Remove any adverse information recorded on Mr H's credit file regarding the agreement.

\*HM Revenue & Customs requires MotoNovo to take off tax from this interest. MotoNovo must give Mr H a certificate showing how much tax they've taken off if Mr H asks for one.

## **My final decision**

For the reasons I've explained, I'm upholding this complaint. FirstRand Bank Limited trading as MotoNovo Finance need to settle the complaint as set out above.

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

Anja Gill  
**Ombudsman**