

Complaint

Mrs 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 that this caused her ongoing hardship.

Background

In March 2017, MotoNovo Finance provided Mrs L with finance for a used car. The purchase price of the vehicle was £13,267.00. Mrs L paid a deposit of £500 and entered into a 60-month hire-purchase agreement with MotoNovo Finance for the remaining £12,767.00 she required.

The loan had interest, fees and total charges of £2,760.60, which was made up of interest of £2,795.60 and an option to purchase fee of £1. And the balance to be repaid of £16,027.60 (which does not include Mrs L’s deposit) was due to be repaid in 59 monthly instalments of £267.11 followed by a final monthly payment of £268.11.

In May 2024, Mrs 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 Mrs L’s complaint. Mrs L remained dissatisfied at matters and referred her complaint to our service.

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

Mrs 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 Mrs 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 Mrs L ought reasonably to have been aware of her cause to make this complaint.

Our investigator explained why it was reasonable to interpret Mrs 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 Mrs L’s complaint. Given the reasons for this, I’m satisfied that whether Mrs 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 Mrs L’s complaint should be considered more broadly than just the lending decision. I consider this to be the case as Mrs L has not only complained not about the decision to lend but has also alleged that this unfairly impacted her going forward as she endured ongoing hardship.

I’m therefore satisfied that Mrs 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 Mrs 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 Mrs L’s case, I am required to take relevant law into account. As, for the reasons I’ve explained above, I’m satisfied that Mrs 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 (Mrs 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 Mrs L’s complaint, I therefore need to think about whether MotoNovo Finance’s decision to lend to Mrs L, or its later actions resulted in the lending relationship between Mrs L and MotoNovo Finance being unfair to Mrs L, such that it ought to have acted to put right the unfairness – and if so whether it did enough to remove that unfairness.

Mrs L’s relationship with MotoNovo Finance is therefore likely to be unfair if it didn’t carry out reasonable and proportionate checks into Mrs 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 Mrs 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 Mrs 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 Mrs L's complaint.

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

MotoNovo Finance says it agreed to Mrs L's application after Mrs L provided details of her occupation and her employer. It says it also carried out credit searches on Mrs 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, Mrs L has said that the repayments were unaffordable for her and caused her difficulties going forward.

I've thought about what MotoNovo Finance and Mrs 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

Mrs 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.

At this point, given I've agreed that the checks weren't proportionate, I think that it might be helpful for me to explain that my conclusion that the MotoNovo Finance didn't do enough to establish whether the repayments were affordable, doesn't, on its own, mean that Mrs L's complaint should be upheld.

This is because we would usually only go on to uphold a complaint in circumstances where we are 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 therefore considered whether that is the case here.

While I've looked at the bank statements Mrs L has provided in order to assess what proportionate checks are more likely than not to have shown, I've done this because I'm having to retrospectively determine this a number of years after this should have been done. And bank statements have all the information I now need to do this. However, I wish to make it clear that MotoNovo Finance was not required to review any of Mrs L's bank statements, let alone a number of months' worth, prior to lending. For reasons that will become important further on, I think that this is an important point for me to make.

To start with I think that the bank statements provided do appear to show that when Mrs L's committed regular living expenses are added to what MotoNovo Finance knew about her existing credit commitments and then deducted from the funds going into her account, there were sufficient funds left over, at the time at least, for her to sustainably make the repayments due under this agreement.

I appreciate that Mrs L says that she didn't have the disposable income to make the payments to this agreement. However, the figures being put forward now are from an expenditure assessment conducted from bank statements. This is a more granular assessment capturing Mrs L's total income and expenditure rather than a likely indication of what a proportionate check is more likely than not to have captured.

In reaching my conclusions, I've noted that Mrs L's actual circumstances at the time were actually worse than what MotoNovo finding out more about her committed living expenses is more likely than not to have shown. I can see that there are significant amounts of gambling transactions. I accept that it is possible – but by no means certain – that if MotoNovo Finance had seen what Mrs L has provided now, it may have made a different decision on whether to lend.

However, MotoNovo Finance wasn't aware of Mrs L's gambling. Equally, I also need to keep in mind that this was a first agreement and Mrs L was being provided with a car, which she would not be able to gamble, rather than cash.

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

I also have to consider the Mrs 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, Mrs 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.

Therefore, I think that it is unlikely – and certainly less likely than not – that Mrs L would have disclosed any gambling at the time, or more importantly that MotoNovo Finance would have been in a position to know about this had it carried out proportionate checks.

So I'm satisfied that the available information makes it appear, at least, as though proportionate checks would have shown that Mrs L 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 Finance would have declined to lend if it had found out the further information that I think it needed to here. As this is the case, I've not been persuaded that it was unfair for MotoNovo Finance to lend to Mrs L.

In these circumstances, I don't find that the lending relationship between Mrs L and MotoNovo Finance was unfair to Mrs L. I've not been persuaded that MotoNovo Finance created unfairness in its relationship with Mrs 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 Mrs L unfairly in any other way either.

Overall and having considered everything, while I can understand Mrs 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 Mrs 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 Mrs L's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs L to accept or reject my decision before 4 August 2025.

Jeshen Narayanan
Ombudsman