

## **The complaint**

Ms T, who is represented by a third party, complains that MotoNovo Finance Limited ("MotoNovo") irresponsibly granted her a hire purchase agreement she couldn't afford to repay.

## **What happened**

In March 2016, Ms T acquired a used car financed by a hire purchase agreement from MotoNovo. Ms T was required to make 59 monthly repayments of £116.25, to start two months after the contract began, with a final payment due of £315.25. The total repayable under the agreement was £7,174. The agreement ended in November 2017.

Ms T says that MotoNovo didn't complete adequate affordability checks. She says if it had, it would have seen the agreement wasn't affordable and that she was struggling to pay debts at the time. MotoNovo didn't agree. It said that it carried out a thorough assessment which included relying on information Ms T had provided to the car dealership as well as reviewing her credit file.

At first our adjudicator didn't think the complaint should be upheld. But after Ms T sent her some more information about her income and committed expenditure, she thought MotoNovo ought to have realised the agreement wasn't affordable to Ms T.

As MotoNovo didn't agree, the complaint has been passed to me for a final 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.

MotoNovo will be familiar with all the rules, regulations and good industry practice we consider when looking at a complaint concerning unaffordable and irresponsible lending. So, I don't consider it necessary to set all of this out in this decision.

The credit check MotoNovo completed showed some details about Ms T's employment, bank account information and the existence of other credit commitments at the time. It also included information about missed payments and going above her limit on a credit card. I think all this ought to have indicated that Ms T was likely to have been experiencing some uncertainty in her work situation as well as potential financial difficulty. It therefore would have been proportionate for MotoNovo to have got a more thorough understanding of Ms T's financial circumstances before lending, so as to be sure she'd be able to meet the repayments for the agreement, particularly given that these would be made over a period of five years.

I also think it would have been proportionate for MotoNovo to have asked for details of Ms T's income in some way. Ms T had said at the time that she was doing occasional shift work rather than a full-time job. I've seen that the computerised notes relied upon by MotoNovo are unclear about her length of employment and the hours she worked. I've also

noted that she was receiving regular employment and support allowance payments as part of her income, amounting to around £230 every two weeks. This suggests she needed help with her living costs and/or support with getting back to work. I've also seen that her income from earnings was around £150-210 per month but not necessarily as a regular monthly income. This suggests that at best her income was no more than around £450 each month

I think this shows it's unlikely that Ms T would be able to afford to sustainably repay the new agreement as well as her existing commitments. I think MotoNovo would likely have found this out too if it had completed proportionate checks. Instead, I've seen that it assumed that she was working a 35-hour week and receiving the minimum wage, producing an estimated monthly income of £1,016.16. Given that this was likely to have been far in excess of the income Ms T was actually receiving, which proportionate checks would likely have shown, MotoNovo therefore didn't act fairly by approving the finance.

I also think it would have been proportionate for MotoNovo to have found out more about Ms T's committed expenditure. Ms T told MotoNovo at the time that she lived at home with her parents. Whilst typically this would mean that her overall living costs were lower, I can't be sure exactly what MotoNovo would have found out if it had asked. In the absence of anything else, however, I think it would be reasonable to place significant weight on the information contained in Ms T's bank statements as to what would most likely have been disclosed.

I've reviewed four months of bank statements leading up to the lending decision, as well for four months following the decision. These show that, although Ms T's regular outgoings were lower given that she was living at home at the time, she was still having to find money to meet credit card bills, mobile phone contracts and car expenses, in addition to making occasional cash withdrawals. That means she had regular committed outgoings which, although they may have been under £100, when added to her one-off expenses and daily living costs, would leave her with very little if any disposable income. It follows that I don't consider Ms T would have had enough available disposable income to sustainably be able to afford the addition monthly cost of £116.25 under the agreement. MotoNovo therefore didn't act fairly by approving the finance.

### **Putting things right – what MotoNovo needs to do**

As I don't think MotoNovo ought to have approved the lending, it should therefore refund all the payments Ms T has made, including any deposit. However, Ms T did have use of the car for around 20 months, so I think it's fair she pays for that use. But I'm not persuaded that monthly repayments of over £116 a month are a fair reflection of what fair usage would be. This is because a proportion of those repayments went towards repaying interest.

There isn't an exact formula for working out what a fair usage should be. In deciding what's fair and reasonable I've thought about the amount of interest charged on the agreement, Ms T's likely overall usage of the car and what her costs to stay mobile would likely have been if she didn't have the car. In doing so, I think a fair amount Ms T should pay is £90 for each month she had use of the car. This means MotoNovo can only ask her to repay a total of £1800. Anything Ms T has paid in excess of this amount should be treated as an overpayment.

To settle Ms T's complaint MotoNovo should do the following:

- End the agreement with nothing further to pay.
- Refund all the payments Ms T has made, less £1800 for fair usage.

- If Ms T has paid more than the fair usage figure, MotoNovo should refund any overpayments, adding 8% simple interest per year\* from the date of each overpayment to the date of settlement. Or;
  - If Ms T has paid less than the fair usage figure, MotoNovo should arrange an affordable and sustainable repayment plan for the outstanding balance.
- Once MotoNovo has received the fair usage amount, it should remove any adverse information recorded on Ms T's credit file regarding the agreement.

\*HM Revenue & Customs requires MotoNovo to take off tax from this interest. MotoNovo must give Ms T a certificate showing how much tax it's taken off if Ms T asks for one.

### **My final decision**

I uphold this complaint and direct MotoNovo Finance Limited to put things right in the manner set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms T to accept or reject my decision before 5 July 2022.

Michael Goldberg

**Ombudsman**