

## The complaint

Mrs L complains that MotoNovo Finance Limited (MotoNovo) failed to complete adequate checks prior to approving a Hire Purchase agreement for her. She says had they done, the finance would've been declined.

## What happened

In October 2019, Mrs L acquired a used car financed through an agreement with MotoNovo. The cash price of the car was £7,990. Mrs L paid a cash deposit of £1,123.14 and part-exchanged her previous vehicle to the value of £2,600. Because the outstanding balance on Mrs L's previous vehicle exceeded the cash deposit and part-exchange combined, a total of £9,200 was provided as credit through the agreement.

The agreement required Mrs L to make 59 monthly repayments of £212.39, followed by a final repayment of £371.39. Mrs L struggled to meet her repayments at various times throughout the agreement which is still in place, and she currently remains in possession of the vehicle.

In November 2023 Mrs L complained to MotoNovo that their decision to lend to her was irresponsible, as they failed to conduct adequate checks on her finances and that the lending should not have been agreed. MotoNovo didn't think they'd done anything wrong and said based on what they knew about Mrs L's circumstances, they believe they acted fairly by accepting her application, so they didn't uphold her complaint.

MotoNovo said Mrs L informed them she was married, a tenant and employed earning an annual salary of £22,000 at the time. Alongside the information provided, MotoNovo said they completed a credit check which showed Mrs L's existing credit at the time and after being manually underwritten, the application was accepted.

Finally, MotoNovo said, after reviewing Mrs L's bank account statements as part of their investigation into her complaint, their calculations left her with a disposable income of around £800 a month - after accounting for the payment due for this agreement. Based on this, they deemed the agreement was affordable.

Mrs L remained unhappy, so she asked the Financial Ombudsman Service to look into her complaint.

One of our Investigator's looked into things. While he didn't think MotoNovo had completed proportionate checks to determine Mrs L's disposable income at the time, he was satisfied that if they'd done more, they would've still lent to her. He said based on Mrs L's essential expenditure; her disposable income would have been around £685 a month, therefore the agreement would've appeared to have been affordable.

Mrs L didn't agree with our Investigator's opinion saying her disposable income wasn't near the amount stated and had MotoNovo looked into her finances correctly and more in-depth, they would have seen this. Our Investigator's opinion remained unchanged. Because no agreement could be reached, this complaint has been passed to me to decide.

## 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, and I acknowledge it will come as a disappointment to Mrs L, I'm not upholding her complaint for broadly the same reasons as our Investigator. I'll explain why.

How we handle complaints about irresponsible and unaffordable lending is explained on our website. It's this approach I've used when deciding Mrs L's complaint. MotoNovo needed to ensure they didn't lend irresponsibly which in practice, means they needed to carry out proportionate checks to be able to understand whether any lending was affordable and sustainable for her before agreeing to provide the finance.

The rules that apply to credit agreements are set out in the FCA's consumer credit sourcebook (CONC). Section 5.2A of CONC is relevant here, as – among other things – it talks about the need for businesses like MotoNovo to complete reasonable and proportionate creditworthiness assessments before agreeing to lend someone money.

I've considered these rules by asking the following questions:

- 1) Did MotoNovo complete reasonable and proportionate checks to satisfy themselves Mrs L would be able to meet the repayments of the borrowing without experiencing significant adverse consequences?
  - If they did, was their decision to lend to Mrs L fair?
  - If they didn't, would reasonable and proportionate checks have shown that Mrs L could sustainably repay the borrowing?
- 2) Did MotoNovo act unfairly or unreasonably in some other way?

### Did MotoNovo complete reasonable and proportionate affordability checks?

What's considered reasonable and proportionate in terms of the checks a business undertakes will vary dependant on the details of the borrowing and the consumer's specific circumstances at the time.

MotoNovo said they completed a credit file check from which they understood Mrs L's existing financial circumstances, alongside gathering information from her such as her marital, residential and employment status including her income. They said Mrs L told them she was earning £22,000 per annum at the time.

CONC 5.2A.15 (2) says a business must take reasonable steps to determine the amount, or make a reasonable estimate, of a customer's current income. CONC 5.2A.17 (2) goes on to say a business must take reasonable steps to determine the amount, or make a reasonable estimate, of a customer's non-discretionary expenditure.

Aside from the credit check MotoNovo carried out, which showed Mrs L had a relatively high level of existing credit outstanding, I've seen no evidence of any further checks they completed, nor have they explained the considerations that led them to their decision.

Ultimately, Mrs L was taking out an agreement with a term of 60 months and with monthly repayments of just over £200, so I'm not satisfied MotoNovo's checks were proportionate.

But as I've explained above, that doesn't necessarily mean I can uphold Mrs L's complaint – I now need to consider whether they'd have been able to fairly decide to lend to her if they had done proportionate checks.

If MotoNovo had done proportionate checks, what would they have found?

A proportionate check would have involved MotoNovo finding out more about Mrs L's income and overall non-discretionary expenditure to determine whether she'd be able to afford the repayments in a sustainable way.

I've looked at statements for two of Mrs L's bank accounts for the three months leading up to her application with MotoNovo being approved. I'm not saying MotoNovo needed to obtain bank statements as part of their credit worthiness checks. But in the absence of other information, I think bank statements provide me a good indication of both Mrs L's income and expenditure at the time the lending decision was made.

I think it's important at this point to say I'm aware Mrs L mentions her use of payday lending to help cover costs in the months following the loan being taken out, but I can only focus on what MotoNovo would likely have seen prior to agreeing the finance, had they completed a proportionate check.

The bank statements show Mrs L's income was consistent across the three-month period, receiving an average of £1,250 a month from her employer. In addition, Mrs L received a combined average of around £560 a month from child tax credits, child benefit and child support.

Mrs L received an amount from a relative in July 2019 which on the face of it increased her income that month. Mrs L's since explained this amount was the proceeds of a guarantor loan taken out on her behalf. I've not included this amount when calculating her average income. So, had MotoNovo found out more about Mrs L's income, I'm satisfied they'd likely have calculated her monthly income to be on average around £1,810.

Mrs L's credit report shows that at the time of her application she had three active credit cards with combined balances of around £670 and three active loans with combined monthly repayments totalling around £540. She also had three active mail order accounts with total outstanding balances of around £1,680 and two hire purchase agreements with a combined monthly commitment of £297, however one of these with a committed repayment of £207 was to be replaced by the new agreement with MotoNovo. This meant Mrs L had existing credit commitments of around £910 a month at the time of taking out the agreement.

Mrs L's statements show average costs of around £142 per month towards car insurance and costs relating to a caravan, around £35 for pet insurance and healthcare, and around £28 for water.

While I can see little by the way of payments towards rent, council tax or other utilities on Mrs L's statements, she's told us her husband had to solely cover these and I can see a payment each month from Mrs L to contribute at least in some part towards those bills. Mrs L also made a one-off card payment towards utility bills for £15 during the three-month period.

Whilst in July 2019 Mrs L's contribution was higher, this was likely due to the increased income into her account which I've not considered, therefore neither have I considered this higher contribution. For the remaining two months Mrs L contributed an average of around £80 a month.

In addition, Mrs L was spending on average around £345 per month on food and fuel –

whilst not committed expenditure, I'd consider this essential spending. So, in total, the statements and credit report together suggest Mrs L's non-discretionary and committed outgoings amounted to around £1,540 per month.

I think if MotoNovo had used the figures I've set out above, they'd have calculated Mrs L's monthly disposable income as being around £270 – from which to make the payments under the agreement of £212. However, MotoNovo were aware the agreement was to replace an existing agreement to which Mrs L was committed to repaying £207 a month, so this would have left Mrs L with around £265 to cover any emergency and discretionary spending – which suggests the agreement was affordable for her.

I'm aware Mrs L has told us how her finances didn't stretch to cover her priority bills at the time. But I couldn't see evidence of any additional bills being paid from the accounts I've reviewed, and I think it's reasonable to think it's more likely than not that her husband was responsible for paying some of these priority bills. And while I may not have included those additional bills here, neither have I considered any income from Mrs L's husband when reaching the figures I have.

In summary, I'm satisfied MotoNovo could have fairly decided Mrs L was left with enough disposable income for non-essential and emergency spending and therefore that the agreement was affordable for her. So, I'm not upholding the complaint.

Did MotoNovo act unfairly or unreasonably in some other way?

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

However, for the reasons I've already given above, I don't think MotoNovo lent irresponsibly to Mrs L or otherwise treated her unfairly. I haven't seen anything to suggest that Section 140A or anything else would, given the facts of this complaint, lead to a different outcome here.

**My final decision**

For the reasons I've explained above, my decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs L to accept or reject my decision before 7 August 2024.

Sean Pyke-Milne  
**Ombudsman**