

The complaint

Ms F complains that FirstRand Bank Limited trading as Motonovo Finance (“Motonovo”) unfairly entered into a conditional sale agreement with her. She says that due to her personal and financial circumstances at the relevant time the agreement was unaffordable.

What happened

In May 2014 Ms F entered into an agreement with Motonovo for a used car costing £6,961. Under the terms of the agreement, everything else being equal, Ms F undertook to make 59 monthly payments of £179 followed by a final monthly payment of £358, making a total repayable of £10,919 at an APR of 20.8%.

The agreement was settled in July 2018. Ms F didn’t miss any payments required of her and incurred no late charges or fees.

Ms F says that Motonovo didn’t complete adequate affordability checks. She says if it had, it would have seen the agreement wasn’t affordable. Motonovo didn’t agree. It said that it undertook reasonable and proportionate checks before it agreed to lend to Ms F.

Our investigator came to the view that Motonovo didn’t make an unfair lending decision.

Ms F didn’t agree with our investigator’s view and so her complaint has been passed to me for review and 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.

In this decision I’ve focussed on what I think are the key issues. Our rules allow me to do this and these rules reflect the informal nature of our service as a free alternative to the courts. If there’s something I’ve not mentioned, it isn’t because I’ve ignored it. I haven’t. I’m satisfied I don’t need to comment on every individual argument to be able to reach what I think is the right outcome. I will, however, refer to those crucial aspects which impact my decision.

I would also add I’ve not carried out a form of compliance check or sought to enforce any rules or guidance. What I’ve done is looked at everything provided and decided whether Ms F has lost out due to Motonovo failing to act fairly and reasonably in its dealings with her.

Finally, I would like to make it clear that I’ve only considered in this decision Ms F’s complaint about the agreement she entered into in May 2014, not any other complaint she might have, including but not restricted to any other agreement she might have entered into with Motonovo.

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 Ms F’s complaint.

Having carefully thought about everything I've been provided with I'm not upholding Ms F's complaint. I'd like to explain why in a little more detail.

Motonovo needed to make sure that it didn't lend irresponsibly. In practice, what this means is that it needed to carry out proportionate checks to be able to understand whether Ms F could make her payments in a sustainable manner before agreeing to lend to her. And if the checks Motonovo carried out weren't sufficient, I then need to consider what reasonable and proportionate checks are likely to have shown.

Our website sets out what we typically think about when deciding whether a lender's checks were proportionate. 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 the lender needed to know more about a prospective borrower's ability to repay.

The first thing for me to say is that like the investigator I'm not persuaded that the checks Motonovo carried out went far enough. In my view, I think Motonovo should have carried out further checks into Ms F's actual circumstances.

Ordinarily, where a business failed to carry out reasonable and proportionate checks before providing credit to a customer, I'd usually go on to recreate reasonable and proportionate checks in order to get an indication of what such checks would more likely than not have shown.

However, and understandably in the circumstances, Ms F has been unable to provide our service with sufficient information that clearly shows that further information on her actual living costs at the time would have shown that she couldn't have afforded to make her payments. And I've not been provided with anything which clearly contradicts the information Motonovo says it used before agreeing to lend.

In these circumstances, I can't reasonably conclude that Motonovo would have made a different decision on lending even if it had asked Ms F for more information. In reaching this conclusion I accept that it's possible Ms F's position might have been worse than what it looked like to Motonovo, or that it might have worsened after Motonovo lent to her. But it wouldn't be fair and reasonable for me to use hindsight here or say that Motonovo should have known this was the case when the information and evidence provided simply doesn't support it being the case that the payments were unaffordable. I say this particularly as the agreement was settled early and Ms F never missed a payment under it.

So overall and having carefully considered everything, while I don't think that Motonovo's checks before entering into this conditional-sale agreement with Ms F did go far enough, I've not been satisfied that doing more would have prevented it from providing these funds or entering into this agreement with her.

Overall I'm therefore satisfied that Motonovo didn't act unfairly towards Ms F when it lent to her and I'm not upholding Ms F's complaint. I appreciate that this will be very disappointing for Ms F. 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 I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms F to accept or reject my decision before 5 June 2024.

Peter Cook
Ombudsman