

Complaint

Miss M complains that FirstRand Bank Limited (trading as “MotoNovo” Finance) unfairly entered into a hire-purchase agreement with her. She’s said the payments to her agreement were unaffordable.

Background

In May 2016, MotoNovo provided Miss M with finance for a used car. The cash price of the vehicle was £12,000.00. Miss M paid a deposit of £1,200.00 and entered into a 48-month Personal Contract Purchase (“PCP”) hire-purchase agreement with MotoNovo to cover the remaining £10,800.00 she needed to complete her purchase.

The loan had interest, fees and total charges of £3,025.75 (comprising of interest of £2,677.44, an admin fee A of £149, an admin fee B of £189 and an option to purchase fee of £10) and the total amount to be repaid of £13,825.74 (not including Miss M’s deposit) was due to be repaid in 47 monthly instalments of £188.92 followed by an option final payment of £4,946.50 which Miss M only had to pay if she wished to keep the car.

Miss M’s complaint was considered by one of our investigators. She didn’t think that MotoNovo had done anything wrong or treated Miss M unfairly. So she didn’t recommend that Miss M’s complaint should be upheld.

Miss M 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.

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 Miss M’s complaint.

Having carefully thought about everything I’ve been provided with, I’m not upholding Miss M’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 MotoNovo needed to carry out proportionate checks to be able to understand whether Miss M 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.

MotoNovo agreed to this application after it asked Miss M to provide details of her employment and it decided to carry out credit searches on Miss M. The credit searches showed up that Miss M had some existing credit but this was for low amounts and being relatively well maintained. MotoNovo says that the information it had at the time indicated that the monthly payments on this agreement were affordable for Miss M.

On the other hand, Miss M says that she couldn't have afforded this.

I've thought about what Miss M and MotoNovo have said.

The first thing for me to say is that MotoNovo's income checks appear to be limited to Miss M's employer and role. I can't see anything to show that it obtained Miss M's income at this stage. So much like our investigator, I don't think that the checks MotoNovo carried out did go far enough.

In my view, MotoNovo needed to take further steps to ascertain Miss M's actual living costs as well her income, given it won't have known whether it would have been reasonable to rely on Miss M to meet her living expenses given it would not have known how much she'd have left over after her credit commitments were deducted from her income.

I've not seen anything to indicate that MotoNovo did do this. So, in these circumstances, I don't think that it carried out reasonable and proportionate checks, in accordance with the regulator's rules and guidance, before deciding to lend to Miss M.

However, just because I don't think that MotoNovo did enough to establish whether the repayments to this agreement were affordable, this doesn't on its own mean that Miss M's complaint should be upheld. This is because I would usually only go on to uphold a complaint in circumstances where I am 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.

So I've gone on to decide what I think MotoNovo is more likely than not to have seen had it obtained further information from Miss M. As I've explained, bearing in mind the circumstances here, I would have expected MotoNovo to have had a reasonable understanding about Miss M's regular living expenses as well as her income and existing credit commitments.

To be clear I'm not going to carry out a forensic analysis of whether the loan payments were affordable. I'm simply going to consider what MotoNovo is likely to have done if it obtained the missing information I think it should have done here. I say this because this information provided does appear to show that when Miss M's committed regular living expenses are added to her credit commitments and then deducted from the funds she received, she could sustainably make the repayments due under this agreement.

I know that Miss M has said that some of her income was made up of benefits and this wasn't guaranteed to continue for the whole period of the agreement. This may be the case, but I wouldn't consider it fair and reasonable for a lender to automatically decline an application from an applicant simply because some or all of their income might be made up of benefits. This is particularly as an applicant who is employed isn't guaranteed to be employed for the whole of an agreement either.

What I would expect a lender to do, in these circumstances, is to have a reasonable understanding of whether the payments were affordable. I accept that MotoNovo did not have such an understanding at the time. Nonetheless, the information and evidence provided persuades me that if MotoNovo had carried out reasonable and proportionate checks, it is more likely than not to have concluded that the monthly payments were affordable.

So overall and having carefully considered everything, while I don't think that MotoNovo's checks before entering into this hire purchase agreement with Miss M did go far enough, I'm satisfied that carrying out reasonable and proportionate checks won't have prevented MotoNovo from providing these funds, or entering into this hire-purchase agreement with her.

In reaching this conclusion I've also considered whether the lending relationship between MotoNovo and Miss M might have been unfair to Miss M under section 140A of the Consumer Credit Act 1974 ("CCA").

However, for the reasons I've explained, I don't think MotoNovo irresponsibly lent to Miss M or otherwise treated her unfairly in relation to this matter. And I haven't seen anything to suggest that section 140A CCA or anything else would, given the facts of this complaint, lead to a different outcome here. So I'm not upholding this complaint.

I appreciate that this will be very disappointing for Miss M. 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 Miss M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 12 August 2024.

Jeshen Narayanan
Ombudsman