

Complaint

Mrs W complains that MotoNovo Finance Limited ("MotoNovo") unfairly entered into a hire-purchase agreement with her. She's said the payments to her agreement were unaffordable and this resulted in her parents having to pay the agreement and take the vehicle.

Background

In May 2014, MotoNovo provided Mrs W with finance for a used car. The cash price of the vehicle was £10,782.98. Mrs W received a part-exchange value of £500 and entered into a hire-purchase agreement with MotoNovo to cover the remaining £10,282.98.

The loan had interest, fees and total charges of £5,026.02 (comprising of interest of £4,726.02, an administration fee of £150 and an option to purchase fee of £150), and the total amount to be repaid of £15,309.00 (not including Mrs W's part-exchange value) was due to be repaid in 59 monthly instalments of £252.65 and 1 final monthly instalment of £402.65.

Mrs W's complaint was considered by one of our investigators. He didn't think that MotoNovo had done anything wrong or treated Mrs W unfairly. So he didn't recommend that Mrs W's complaint should be upheld.

Mrs W 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 Mrs W's complaint.

Having carefully thought about everything I've been provided with, I'm not upholding Mrs W'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 Mrs W could make him payments in a sustainable manner before agreeing to lend to him. 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.

Given the length of time has passed MotoNovo, quite understandably in the circumstances, can't provide the data to demonstrate what its checks showed at the time of this application. Nonetheless it says it would only have agreed to this application after its systems completed an income and expenditure assessment on Mrs W. During this assessment, its systems would have considered information from credit reference agencies and must have concluded that Mrs W could meet the payments as the agreement was approved.

On the other hand, Mrs W says that she couldn't have afforded this agreement and shouldn't have been provided with it.

I've thought about what Mrs W and MotoNovo have said.

The first thing for me to say is that I don't have any records at all of what MotoNovo's credit search is likely to have shown. I say this as Mrs W hasn't been able to provide a copy of her credit file from this time either. I appreciate that credit reports only tend to go back six years. But it wouldn't be fair and reasonable for me to draw adverse inferences against MotoNovo in circumstances where Mrs W complained at a time where it is no longer required to hold this information.

Nonetheless and regardless of the lack of evidence on the checks, much like our investigator, I don't think that what MotoNovo has described did go far enough. In my view, MotoNovo would have needed to get an understanding of Mrs W's actual living costs, given the amount lent, the total cost of the agreement and the monthly payments. What it has described doesn't suggest that it obtained this.

As MotoNovo is unlikely to have carried out sufficient checks, I've gone on to decide what I think MotoNovo is more likely than not to have seen had it obtained further information from Mrs W based on the information that Mrs W has now provided. As I've explained bearing in mind the circumstances here, I would have expected MotoNovo to have had a reasonable understanding about Mrs W'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 Mrs W's bank statements to establish whether the loan payments were affordable for her. I'm simply going to try and recreate what MotoNovo is likely to have done if it had an idea of Mrs W's living expenses bearing in mind that bank statements weren't the only way for it to find out this information. I say this because this information provided does appear to show that when Mrs W's committed regular living expenses and credit commitments are deducted from the funds she received, it looks like she had the funds to make the repayments.

Mrs W has referred to her overdraft usage. But it's clear that her discretionary spend, which MotoNovo wouldn't have been expected to take account of, is in part responsible for this too. So, in my view, MotoNovo was more likely than not to have concluded that Mrs W could sustainably make the repayments due under this agreement.

I accept it's possible that Mrs W's actual circumstances at the time might have been worse than what the information she's provided shows. I know that she says that she felt pressured to buy this car as her previous one had to be returned to the dealer as faulty. But that doesn't explain the cost of her subsequent vehicle and the amount of her purchase. And, in any event, MotoNovo would simply have assessed whether the payments were affordable

not what happened with Mrs W's previous car. If Mrs W is unhappy with the quality of her previous vehicle this is a matter she needs to take up with the dealer and it is not relevant to the affordability of this agreement.

For the sake of completeness, it's probably also worth me explaining that even though I don't agree that MotoNovo did do anything wrong here, as Mrs W says her parents took over the payments for the agreement as well as custody of the vehicle, it's difficult for me to see what loss Mrs W suffered here. I say this because we are a number of years since the agreement was taken and Mrs W says that her parents made the payments because she could not do so. Given I'm required to compensate for a customer's loss, should a firm have done something wrong, I don't see what loss I would compensate Mrs W for here. Ultimately based on what Mrs W says another party ended up making payments not Mrs W.

Having considered everything, I'm satisfied that the available information indicates that MotoNovo is likely to conclude that Mrs W did have sufficient funds left over, once her regular living expenses and discernible committed expenditure was deducted from her monthly income, to make her monthly payments in a sustainable manner. As this is the case, I'm not persuaded that MotoNovo didn't act fairly and reasonably towards Mrs W here.

Overall and having carefully considered everything, while I'm not necessarily satisfied that MotoNovo's checks before entering into this hire purchase agreement with Mrs W did go far enough, nonetheless what has been provided leads me to think MotoNovo carrying out reasonable and proportionate checks won't have prevented it from providing these funds, or entering into this hire-purchase agreement with Mrs W.

So I'm not upholding this complaint. I appreciate that this will be very disappointing for Mrs W. But I hope she'll understand the reasons for my decision and that she'll at least feel her concerns have been listened to even though I've ultimately not agreed with them.

My final decision

My final decision is that I'm not upholding Mrs W's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 9 January 2024.

Jeshen Narayanan
Ombudsman