

The complaint

Miss M is complaining about FirstRand Bank Limited trading as Motonovo Finance's decision to lend to her – she says the loan was unaffordable.

What happened

In April 2018, Miss M took out a hire purchase agreement with MotoNovo, via a broker, to finance the purchase of a car. She borrowed £11,200 over a 60-month term, with monthly repayments of £263.43. Miss M first missed a payment in August 2018 and then continued to struggle with payments over the remainder of the agreement.

In September 2022 Miss M complained to MotoNovo, saying she didn't understand how she was accepted for the loan and noting that she wasn't accepted for a phone contract in the same year. She said she'd told the business she was paying for a wedding and felt she was mis-sold as she's struggled to make payments right from the start of the loan. In addition Miss M said she'd paid a deposit of £600 which didn't show on the hire purchase agreement.

In response, MotoNovo said Miss M had declared that she was employed in a full-time capacity and working as a manager. They said they'd carried out a credit search and although Miss M had an active and defaulted creditor she didn't fall outside of their lending and risk criteria.

MotoNovo added that they'd reviewed Miss M's statements in addressing her complaint and their view was that the hire purchase agreement was affordable for her at the time. They said they were aware she'd started to miss payments but assumed this was due to a change in her financial circumstances.

In relation to the deposit, MotoNovo said this was between Miss M and the dealer. They said the dealer had told them the cash price was £11,200, which matched the amount they'd lent to Miss M.

Miss M wasn't happy with MotoNovo's response so she brought her complaint to our service. She said she wasn't properly told about the amount of interest she'd be paying on top of the amount she was borrowing. She said the dealer took very little information over the phone, and the form filled in said she was single with no children and a manager when in fact she wasn't a manager, was getting married, and had a child. Miss M added that she'd paid a deposit of £600 but neither the dealer nor MotoNovo can tell her where that went. Since taking out the agreement she says she's had to go without essentials some months to pay it and is still in arrears. Miss M said MotoNovo hadn't helped her at all when she'd told them she was in financial difficulties.

Our investigator looked into things and didn't uphold the complaint – she said although she didn't think MotoNovo had carried out proportionate checks, it's likely that if they had done, the agreement would have appeared to be affordable for Miss M. Miss M didn't agree with our investigator's view and asked for an ombudsman's decision – and the complaint came to me.

My view was different from that of our investigator so I issued a provisional decision. In that I said:

“The Financial Conduct Authority (FCA) sets out in a part of its handbook known as CONC what lenders must do when deciding whether or not to lend to a consumer. In summary, a firm must consider a customer’s ability to make repayments under the agreement without having to borrow further to meet repayments or default on other obligations, and without the repayments having a significant adverse impact on the customer’s financial situation.

CONC says a firm must carry out checks which are proportionate to the individual circumstances of each case.

Did MotoNovo carry out proportionate checks?

MotoNovo’s checks were very limited. They did a credit search which they said showed Miss M had one active and one defaulted creditor. Miss M’s application said she had a gross income of £20,000 per year and lived with her parents but I’ve seen no evidence that MotoNovo considered Miss M’s circumstances when deciding to lend to her. Even if they did take her income and residential status into account, CONC 5.3.1.(4)(b) says a firm shouldn’t rely on a statement of income from a customer.

In short, I’m satisfied MotoNovo did not carry out proportionate checks when deciding to lend to Miss M. They were lending her a significant amount of money which required payments over a five-year period. And Miss M’s credit file showed limited experience of managing credit and a default on one of the few lines of credit she did have. I’ve seen nothing to suggest MotoNovo considered Miss M’s ability to sustainably make repayments under the agreement.

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

A proportionate check would have involved MotoNovo finding out more about Miss M’s income and expenditure to determine whether she would be able to make repayments in a sustainable way.

I’ve looked at statements for Miss M’s bank account for the three months preceding her application to MotoNovo – January, February and March 2018. I’m not saying MotoNovo needed to obtain bank statements as part of their lending checks. But in the absence of other information, bank statements provide a good indication of Miss M’s financial circumstances at the time the lending decision was made.

During the period I reviewed, Miss M was planning a wedding with her partner who lived and worked away. So there are large sums of money going into and out of her account for this. I haven’t taken these transactions into account when considering Miss M’s sustainable disposable income. In addition Miss M and her partner frequently sent each other money too, but I’ve discounted these amounts because there’s no indication Miss M’s partner was contributing towards her normal expenditure on a regular basis – on balance it seems that excluding the wedding funds, Miss M sent her partner more than she received from him.

The bank statements show that Miss M’s net income from earnings, tax credits, child benefit and housing benefit averaged around £1,675 per month. The statements also show Miss M paid rent of £560 per month. From correspondence with Miss M and looking at her bank statements I’ve been able to establish that her outgoings on other essentials

and financial commitments were around £940 per month. It seems her disposable income was therefore only around £175 per month.

It's also clear from the bank statements that Miss M was struggling to stay on top of her finances at the time – there were unpaid direct debits in January and March, and an unpaid standing order in February. This is consistent with what Miss M's told us – she said she had to borrow money to pay her bills, both from family members and from payday loans. And, aside from the wedding, I've seen limited evidence of discretionary expenditure in Miss M's statements.

In summary, I'm inclined to say Miss M had disposable income of around £175 per month at the time MotoNovo decided to lend to her. But the repayments necessary under the loan agreement were £263.43 per month. So I don't think the agreement was affordable for Miss M.

Did MotoNovo treat Miss M unfairly in any other way?

Part of Miss M's complaint is that she didn't know at the outset how much interest she'd be paying, or the total amount she'd need to pay MotoNovo under the agreement. And she's said she paid a £600 deposit on the car which isn't shown on the agreement.

The hire purchase agreement was arranged by the dealer who sold Miss M the car, acting as a credit intermediary, or broker. It was their responsibility to explain the terms and conditions of the loan to Miss M so I can't say MotoNovo treated Miss M unfairly in this respect. In addition, I've seen the application sent from the dealer to MotoNovo and this says there was no deposit. So I also can't hold MotoNovo responsible for any missing deposit."

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.

Miss M accepted my provisional decision and MotoNovo didn't provide any further comments or evidence – so my decision is unchanged. I'm upholding Miss M's complaint for the reasons set out in my provisional decision and copied above.

Putting things right

As I don't think MotoNovo should have approved the lending, it's not fair for them to charge any interest or other charges under the agreement. Miss M should only have to pay the original cash price of the car, being £11,200 according to the hire purchase agreement. Anything Miss M has paid in excess of that amount should be refunded as an overpayment.

To settle Miss M's complaint, MotoNovo should do the following:

- Refund any payments Miss M has made in excess of £11,200, representing the original cash price of the car. They should add 8% simple interest per year from the date of each overpayment to the date of settlement.
- Remove any adverse information recorded on Miss M's credit file regarding the agreement.

If MotoNovo consider tax should be deducted from the interest element of my award they should provide Miss M a certificate showing how much they've taken off so that Miss M can reclaim that amount, assuming she is eligible to do so.

My final decision

As I've explained above, I'm upholding Miss M's complaint. FirstRand Bank Limited trading as Motonovo Finance need to take the steps I've outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 24 October 2023.

Clare King
Ombudsman