

The complaint

Mr T complains that FirstRand Bank Limited trading as MotoNovo Finance (MotoNovo) acted irresponsibly by agreeing to a Hire Purchase agreement he'd applied for.

What happened

In December 2013 Mr T acquired a car by entering into a Hire Purchase agreement with MotoNovo. The cash price of the car was £8,816.74, with added interest and charges the total repayable was £12,031 over 60 monthly instalments, one at £344.70, 58 at £194.70 and a final payment of £393.70.

Mr T said he struggled to maintain his repayments and had to take on further borrowing to keep up with them. He said this resulted in him entering an Individual Voluntary Arrangement (IVA) in 2019. Mr T said this agreement wasn't included in his IVA. And it was only after the agreement had been settled, while watching a television program in 2023 that he became aware he'd cause to complain about the lending. Mr T complained to MotoNovo.

MotoNovo said the checks they'd done at the time were reasonable and proportionate and they hadn't seen anything that caused them concern. They said he'd satisfied their lending criteria and so they'd agreed to lend to him. They asked Mr T to provide his bank statements from the time so that they could consider his complaint, but he hadn't been able to because of the passage of time. They also said Mr T had brought his complaint too late as it had been more than six years since the event and over three years since he'd entered his IVA when they said he ought to have been aware he'd cause to complain.

Mr T wasn't happy with MotoNovo's response and referred his complaint to us.

MotoNovo consented to us considering the merits of Mr T's complaint. Our investigator said that MotoNovo hadn't been able to show the checks they carried out at the time were proportionate. But on the evidence, she'd seen she didn't think MotoNovo's lending decision was unfair.

Mr T didn't agree he said if MotoNovo had checked properly they'd have seen he was struggling financially and regularly having to take out payday loans. He asked for an ombudsman 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.

The relevant guidance at the time of lending was the Office of Fair Trading (OFT) guidance. This said that when assessing whether the lending is affordable it should be "borrower-focussed", which means it shouldn't just be considered whether the lender will get their money back. But what the implications for the borrower are as to whether they could sustain the repayments without the borrower incurring (further) financial difficulties and/or experiencing adverse consequences.

The lender needed to take reasonable steps to assess a borrower's likely ability to be able to meet repayments under the credit agreement in a sustainable manner. The OFT regards 'in a sustainable manner' as meaning credit that can be repaid by the borrower:

- without undue difficulty – in particular without incurring or increasing problem indebtedness
- over the life of the credit agreement within a reasonable period of time
- out of income and/or available savings, without having to realise security or assets.

When someone complains about irresponsible and/or unaffordable lending, there are two overarching questions I need to consider in order to decide what's fair and reasonable in all of the circumstances of the complaint. These are:

1. Did MotoNovo complete reasonable and proportionate checks to satisfy itself that Mr T would be able to repay the credit in a sustainable way?

a. if so, did MotoNovo make a fair lending decision?

b. if not, would reasonable and proportionate checks have shown that Mr T could sustainably repay the borrowing?

2. Did MotoNovo act unfairly or unreasonably in some other way?

So I've considered the checks MotoNovo carried out to assess Mr T's ability to meet his repayments in a sustainable manner. Mr T entered into the agreement in December 2013 so with the passage of time it's not unusual for relevant information to no longer be available.

MotoNovo said Mr T's application had been manually underwritten. And that they'd based their lending decision on Mr T's credit score and having satisfied their lending criteria. They said their checks showed Mr T's income and that he'd a non-discretionary expenditure of £13.05 per month, so the lending was affordable.

Our investigator asked MotoNovo for Mr T's application details, but these are no longer available. As I can't see what MotoNovo knew of Mr T's circumstances to have an understanding of his living arrangements and day to day financial expenditure at the time of the loan I can't say their checks were proportionate or sufficient to assess Mr T's ability to meet his repayments in a sustainable manner.

This doesn't automatically mean MotoNovo shouldn't have lent to Mr T, as I need to consider whether further checks would have shown that the repayments were unaffordable to him – or in other words that he lost out because of MotoNovo's failure to complete proportionate checks.

I can't be sure exactly what MotoNovo would have found out if they'd asked. In the absence of anything else, I think it would be reasonable to place significant weight on the information set out in Mr T's bank statements. But again, with the passage of time these are no longer available. Mr T has provided his bank statements from 2014, but as this is after the lending was agreed I can't consider them in my assessment. And they don't provide any financial information showing Mr T's outgoings for his mobile phone or car insurance and car tax.

Mr T has provided his credit file from this time. And I can see that he'd a mobile phone, a credit card and store card. His credit file shows he was up to date with his payments for his credit card and store card and that he wasn't fully utilising the cards limits. There weren't any defaults or county court judgements, insolvencies or debt management programs in place. I

can see from the credit report screenshots provided by MototNovo that Mr T had an overdraft facility of £400 and that he'd used £45 of this.

Mr T's credit card had a limit of £1,750 which if fully utilised would have meant Mr T had a monthly outgoing of around £88. His store card had a limit of £230, which would mean a monthly outgoing of around £12 a month. And he'd have had his monthly mobile phone usage to pay. But this wouldn't show that on acquiring a car Mr T would now have the added expenditure of car insurance, car tax and petrol.

Mr T has said his car insurance was around £187 per month and car tax £9.62. But Mr T hasn't been able to provide any information in support of these figures. So, I've considered the average insurance and car tax for the vehicle acquired by Mr T in 2013 which would have been £547.90, around £46 per month. But given Mr T's age at the time of the lending I think a fair assumption of his motoring costs, for insurance would be around £100 with car tax and petrol I estimate his monthly motoring costs to be around £150 per month. Mr T said his monthly mobile phone bill was around £57 per month. Again, I've considered the average phone bill around this time was about £47 per month.

Mr T showed his annual income was £14,250 which MotoNovo equated to £1,117.45. He said he lived with his parents at the time of the lending and paid £500 per month for rent, food and utilities This meant after taking the above expenditure into account he'd disposable income after the new loan payment is taken of around £125 per month. Which I think shows Mr T could meet his repayments in a sustainable manner.

Mr T has said he was reliant on payday loans which is further evidence that the lending was unaffordable. And he's provided evidence of these. I can see that Mr T had utilised payday loans on the odd occasion over the previous 12 months, and in the three months prior to the lending (17 September 2013 to 17 December 2013), Mr T took out two payday loans totalling £125, repayable over periods of 11 days to 24 days. One was taken out in in September 2013 and one in November 2013, the last one being for £50. Both loans were repaid within the agreed timeframes. I don't think this shows Mr T was dependent on payday loans to manage his finances.

I know Mr T will be disappointed by my decision but taking everything into account I'm not persuaded that the lending was unaffordable for him, as I think he'd sufficient disposable income available after he'd paid his non-discretionary expenditure.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 26 December 2023.

Anne Scarr
Ombudsman