

The complaint

Miss R complains FirstRand Bank Ltd trading as Motonovo Finance (Motonovo) irresponsibly entered into a hire purchase agreement with her because it wasn't affordable for her based on her financial situation at the time.

What happened

Miss R entered into the hire purchase agreement with Motonovo in October 2015 for a used car. This was a refinancing of a previous hire purchase agreement which still had a balance of £3,419.31. After part exchanging the previous vehicle, the total amount of credit under the new agreement was £11,006.07. The total amount repayable under the agreement was £16,258.80 and this included admin fees, interest and an option to purchase. Miss R was to pay one initial monthly payment of £415.98, followed by 58 monthly payments of £265.98 and a final monthly payment of £415.98.

Miss R complained in March 2023 because she felt Motonovo should never have entered into the finance agreement. She said she couldn't afford to make the repayments without further borrowing.

Motonovo responded to the complaint and explained why it felt it hadn't been irresponsible when entering into the finance agreement. It said Miss R had confirmed she was employed and living at home at the time. It said it used her historical credit history which showed Miss R was maintaining payments successfully. It also said Miss R had provided a signed declaration to confirm the agreement was affordable.

Motonovo consented for our service to investigate the complaint. Our Investigator issued a view explaining why they felt the complaint shouldn't be upheld. They felt Motonovo should have done more checks, but had it done such checks they would have shown the agreement was affordable.

Miss R didn't agree with our Investigator's view. She said if the bank statements had been reviewed properly then it would have been noted she was continuously in her overdraft. She didn't have the money to clear the overdraft and says she was left in a cycle of borrowing. Our Investigator explained they wouldn't have expected Motonovo to be aware of the overdraft because it wasn't necessary to check the bank statements.

As Miss R didn't agree, the complaint has been passed to me 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 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 complete reasonable and proportionate checks to satisfy itself that Miss R would be able to repay the agreement in a sustainable way?

Motonovo have said during the application Miss R confirmed she was living with her parents and employed. It said the application was manually underwritten and a query was raised about Miss R's employment history. Motonovo also said Miss R signed the finance documents confirming the agreement was affordable. But I'm not satisfied this meant it discharged its obligations to complete reasonable and proportionate checks under CONC.

Motonovo completed a credit search to identify Miss R's credit score to see if it met its lending criteria. In respect of Miss R's existing credit, Motonovo have provided a copy of its system notes. It confirmed this was pulled from credit reference agencies. It showed a loan with a balance of £93 remaining and monthly repayments of £23 and a second loan with a balance of £4,855 and monthly repayments of £245. It also showed two credit cards with an overall balance of £1,927 and a mail order account with a balance of £1,695. Furthermore, it showed Miss M's current account with a balance of £269 (showing she was utilising her overdraft).

Our service requested a copy of the original search and a copy of Miss R's credit file. We haven't been provided with the original credit search and, given the time which has passed, Miss R's credit file no longer shows her credit commitments at the time of the agreement. However, I have her bank statements and I have seen payments leaving her account which generally seem to be consistent with Motonovo's system notes.

Having considered the checks carried out, I think Motonovo should have done more to understand Miss R's specific financial circumstances. I don't think it did enough to verify Miss R's income and expenditure to determine whether she could sustainably afford the repayments. For example, Miss R's specific non-discretionary expenditure such as contributions towards the household bills. I say this with the size and duration of the loan agreement in mind because it was a significant sum to be repaid over a five-year period. For these reasons, I'm of the view Motonovo didn't carry out reasonable and proportionate checks to show Miss R could repay the agreement in a sustainable way.

Would reasonable and proportionate checks have shown that Miss R would be able to repay the agreement in a sustainable way?

As I've found Motonovo didn't complete reasonable and proportionate checks, I've considered what such checks were likely to have shown. To do this, I've considered Miss R's bank statements from the three-month period leading up to the date of the agreement. To be clear, I'm not saying Motonovo needed to obtain bank statements to complete reasonable and proportionate checks at the time. However, the bank statements show the information Motonovo were likely to have obtained had they completed appropriate checks.

I've reviewed the income Miss R received over the period and can see she received an average income of around £1,214. I do recognise she received a payment from a previous employer during this period, but I haven't included it as I'm satisfied it doesn't amount to regular income.

I've also thought about her general cost of living which is demonstrated on her statements. I can see payments for car insurance, food, phone bill and gym membership as well as things such as petrol. These are the regular payments which are demonstrated by the statements. I note there are no regular payments over the three-month period which show contributions towards rent, council tax or utilities. However, I understand she was living at home at the time and so this isn't necessarily unusual.

Additionally, I've thought about her credit commitments which included payments towards her credit cards and loan repayments. There were also some overdraft charges. She paid towards a separate car finance agreement, but I haven't included this in my calculations because the new agreement was a refinancing. So, she wouldn't be required to make payments for both. Overall, the bank statements show her non-discretionary spend (including living costs and credit commitments) was around £834.

Therefore, taking into account her average monthly income she had around £380 disposable income. This was sufficient to meet the regular monthly repayments of £265.98 and so I think it's likely proportionate checks would have shown the agreement was affordable.

I appreciate Miss R was concerned the statements show she was consistently within her overdraft. However, utilising the overdraft and having other credit commitments doesn't necessarily mean the agreement was unaffordable. Ultimately, Motonovo would have needed to ensure Miss R could sustainably repay the agreement whilst also meeting other credit commitments. Having considered Miss R's income and expenditure at the time, it does seem she had sufficient funds to sustainably repay the overdraft within a reasonable period of time. I've also included an estimate of such repayments within my calculations of her non-discretionary spend.

I appreciate my decision will be considerably disappointing for Miss R and I want to assure her I've thought carefully about what she's said and the evidence I've seen. Having done so, I'm satisfied reasonable and proportionate checks were likely to have shown the agreement was affordable. Therefore, I won't be asking Motonovo to do anything to resolve this complaint.

My final decision

For the reasons outlined above, I'm not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss R to accept or reject my decision before 4 January 2024.

Laura Dean
Ombudsman