

The complaint

Miss S complains that FirstRand Bank Limited trading as MotoNovo Finance (MotoNovo) irresponsibly granted her a hire purchase agreement that she couldn't afford to repay.

What happened

In March 2019 Miss S acquired a vehicle financed by a hire purchase agreement from MotoNovo. Miss S paid a deposit of £300 and was required to make 59 monthly repayments of £314.67 and a final payment of £315.67. The total amount repayable under the agreement was £19,181.20. Miss S believes MotoNovo failed to complete adequate affordability checks. Miss S says that if it had it would've been clear the agreement wasn't affordable.

MotoNovo disagreed. It said it carried out an adequate assessment which included a full credit search. It said this showed her accounts were being well managed and there was no record of defaults or county court judgements on her file.

Our Investigator didn't recommend that the complaint should be upheld. They thought MotoNovo's checks weren't proportionate but that had it completed proportionate checks it would've still found the lending was affordable.

Miss S didn't agree. She reiterated that MotoNovo hadn't completed adequate checks at the point of sale. Miss S felt it wasn't fair to include overtime payments and regular payments from her partner at the time in any income calculations. Miss S said that her income and expenditure hadn't been fairly calculated, and it should have been clear the agreement was not affordable for her circumstances. She asked for an Ombudsman to issue a final decision on the matter.

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.

Where evidence is incomplete, inconsistent, or contradictory, I reach my decision on the balance of probabilities – in other words, what I consider most likely to have happened in light of the available evidence and wider circumstances.

We explain how we handle complaints about irresponsible and unaffordable lending on our website. I've used this approach to help me decide Miss S's complaint. MotoNovo needed to ensure that it didn't lend irresponsibly as per the rules set out in the FCA's Consumer Credit Sourcebook (CONC). In practice, what this means is that MotoNovo needed to carry out proportionate checks to be able to understand whether any lending was affordable for Miss S before providing it.

In this case, there are two overarching questions that I need to answer to fairly and reasonably decide Miss S's complaint. These two questions are:

1. Did MotoNovo complete reasonable and proportionate checks to satisfy itself that

Miss S would be able to repay her loan without experiencing significant adverse consequences?

- If so, did it make a fair lending decision?
- If not, would those checks have shown that Miss S would've been able to do so?

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

Did MotoNovo complete a reasonable and proportionate affordability check?

MotoNovo was required to ensure it carried out adequate checks on Miss S's ability to sustainably afford the agreement. These checks had to be borrower-focussed and proportionate (see CONC 5.2A). What is considered proportionate will vary depending on the circumstances, such as (but not limited to): the total amount repayable, the size of the monthly repayments, the term of the agreement (CONC 5.2A.20 R), and the consumer's specific circumstances.

I'm not satisfied that MotoNovo gathered a reasonable amount of information from Miss S about her income and expenditure prior to approving the finance. I understand MotoNovo made the decision to lend on the basis that her accounts were being managed well and found the risk this posed to itself as acceptable. But I'm not satisfied enough consideration was given to the personal risk posed to Miss S.

MotoNovo says that Miss S's application underwent credit and underwriting checks, and these didn't raise concerns. MotoNovo hasn't provided a copy of the credit check it completed. So, I've relied on a copy of the credit file supplied by Miss S and I think this gives a good indication of what MotoNovo would likely have seen.

At the time of the application it shows that Miss S had other outstanding credit commitments but that she was managing them well. So, I don't find that the credit search alone would have raised concerns that meant the lending shouldn't have been provided or that additional checks were needed.

However, I haven't seen evidence of MotoNovo gathering adequate income and expenditure information from Miss S before the agreement was provided. MotoNovo's second final response letter to Miss S also acknowledges this fact. Given the size and duration of the agreement as well as the repayment amounts, it would have been reasonable and proportionate in the circumstances for MotoNovo to have asked Miss S about her income and expenditure before the agreement was provided. Without knowing what her income and regular committed expenditure was, MotoNovo wouldn't have got a reasonable understanding of whether the agreement was affordable for her.

I'm satisfied MotoNovo didn't complete proportionate affordability checks, but this doesn't automatically mean it failed to make a fair a lending decision.

Did MotoNovo make a fair lending decision?

I've considered what MotoNovo would likely have found out if it had completed reasonable and proportionate affordability checks. I can't be certain what Miss S would have told MotoNovo had it asked about her income and regular expenditure. I don't think MotoNovo necessarily needed to request bank statements or payslips, but in the absence of anything else, I've placed significant weight on the information contained in Miss S's statements from January and February 2019 and payslips from December 2018 to February 2019 as an indication of what would most likely have been disclosed. I've mostly not included the statement submitted from March 2019, as I'm satisfied that much of its information wouldn't have been available when the agreement was entered into.

These statements show that Miss S was receiving an average of around £2,500 a month in income. This includes her salary, overtime payments made in February 2021 that amounted to around £400 and regular transfers from her partner at the time of £1,200 a month. Her regular committed monthly expenditure at the time was around £1,900. In calculating these amounts I've included any applicable payments for her credit commitments, housing costs, council tax, utilities, food, fuel and other ongoing costs. I'd like to highlight to Miss S that my calculations include the full £650 rental cost, not the half that MotoNovo used in its own calculations.

Taking these figures into account, it appears to show the agreement was affordable for Miss S. Altogether Miss S's income and expenditure at the time satisfies me that the agreement did not appear to be unaffordable – as on average she was left with around £280 of disposable income after taking into account the monthly payments for the agreement. For this reason, I'm not persuaded that MotoNovo acted unfairly when approving the finance.

Miss S has suggested that the calculations discussed to date have failed to consider another credit commitment which was also taken out in March 2019. Miss S has explained that she wouldn't have made her first payment towards this agreement until April, and I can see from her bank statements she only received the agreed funds into her account on 8 March 2019. At the point MotoNovo completed its checks I think it would've been far too recent for this other agreement to have shown on any credit file searches. But I agree that proportionate discussions about Miss S's income and expenditure most likely would have revealed this new commitment – and that it should have been considered. With all that said, the MotoNovo agreement still would've been affordable after including this additional expenditure as Miss S's average disposable income would have been around £120.

I understand Miss S also feels it's unfair to include overtime in the affordability calculations. Miss S has said that her overtime was extremely rare – and in fact is no longer available from her employer. I've thought about this carefully and acknowledge that her payslip from January 2019 shows no overtime pay at all. However, I also note she received a significant amount of overtime pay in her December 2018 and February 2019 payslips. Whilst not included in my calculations, her bank statement from March 2019 also shows she was paid substantially more than her basic salary. Whilst Miss S has said she no longer has the option of overtime available to her, I'm satisfied that at the time she entered into the credit agreement she had a reasonable expectation of the option to regularly earn more than her basic salary. So, I think it would have been fair for MotoNovo to have thought overtime was offered to Miss S on a regular basis and for it to have included it in any affordability calculations.

Miss S also feels it is unfair to include payments from her ex-partner as part of her income at the time. I appreciate that she feels not all the amount transferred went towards rental and bill costs – but I have to balance this with the fact that the same amount was sent to Miss S each month and was labelled "*house and bills*". It's fair for these amounts to also be included in any income calculations.

I'm satisfied from the information provided that at the time the agreement was taken Miss S had sufficient disposable income to meet her monthly repayments and have money left over each month for emergency or unexpected costs. If MotoNovo had completed proportionate checks they would have likely revealed Miss S was able to sustainably afford the repayments owed under the agreement. So, it follows that I think MotoNovo made a fair lending decision.

Did MotoNovo act unfairly or unreasonably in some other way?

I'm not persuaded from the submissions made to date that MotoNovo acted unfairly or unreasonably in some other way.

My final decision

My decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 1 September 2023.

Paul Clarke
Ombudsman