

## **The complaint**

Mr H complains First Response Finance Ltd (First Response) didn't complete appropriate checks when lending to him.

Mr H is represented in this complaint by a claims management company but, for ease, I'll refer to Mr H directly throughout my decision.

## **What happened**

In June 2021, Mr H acquired a motorcycle financed through a hire purchase agreement with First Response. The cash price of the motorcycle was £4,799. Mr H paid a cash deposit of £1 with the balance of £4,798 provided as credit through the agreement.

The agreement required Mr H to make 59 monthly repayments of £170.70. Shortly after the agreement commenced Mr H says he initially had to take out additional borrowing in order to meet the repayments, but then he handed the motorcycle back as he was unable to afford it.

In July 2023 Mr H complained to First Response that their decision to lend to him was agreed without appropriate checks being carried out. First Response didn't think they'd done anything wrong and said based on what they knew, they believe they acted fairly and reasonably when providing the finance.

First Response said they completed reasonable and proportionate checks to satisfy themselves of Mr H's ability to repay the agreement in a sustainable way. The checks included completing a credit file search, a detailed income and expenditure check and income verification prior to agreeing the finance.

Because Mr H remained unhappy, he asked the Financial Ombudsman Service to look into his complaint.

One of our Investigators looked into things and thought the checks First Response had carried out were proportionate. And because these checks showed Mr H had enough disposable income to be able to sustainably afford the monthly repayments, he didn't think they'd done anything wrong by agreeing the finance.

Mr H disagreed with our Investigator saying he'd recently started with his employer at the time and his salary included a bonus which was limited and had to be clawed back due to being over paid. He also said council tax and housing benefit arrears weren't taken into consideration when the lending was agreed. In summary Mr H said historical defaults on his credit file should have prompted First Response to have carried out further checks.

Our Investigator explained that Mr H had been with his employer for six years at the time of this specific application and that any debts owed in relation to council tax or housing benefits weren't visible on Mr H's credit file. Our Investigator also said the defaults were reasonably low and historical, so his opinion remained First Response hadn't done anything wrong.

Because no resolution could be reached, this case 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.

Having done so, I'm not upholding it. I realise this will be a disappointment to Mr H, so I'll explain why.

How we handle complaints about irresponsible and unaffordable lending is explained on our website. It's this approach I've used when deciding Mr H's complaint. First Response needed to ensure that they didn't lend irresponsibly, which in practice means they needed to carry out proportionate checks to be able to understand whether any lending was affordable for him before agreeing to provide the finance.

The rules that apply to credit agreements are set out in the FCA's consumer credit sourcebook (CONC). Section 5.2A of CONC is relevant here, as – among other things – it talks about the need for businesses like First Response to complete reasonable and proportionate creditworthiness assessments before agreeing to lend someone money.

I've considered these rules by asking the following questions:

- Did First Response complete reasonable and proportionate checks to satisfy themselves Mr H would be able to meet the repayments of the borrowing without experiencing significant adverse impact on his financial situation?
- If they did, was their decision to lend to Mr H fair?
- If they didn't, would reasonable and proportionate checks have shown that Mr H could sustainably repay the borrowing?

### Did First Response complete reasonable and proportionate affordability checks?

What's considered reasonable and proportionate in terms of the checks a business undertakes will vary depending on the details of the borrowing and the consumer's specific circumstances at the time.

Here, the total amount repayable under the agreement was around £10,000, with Mr H committing to make 59 monthly repayments of £170.70. This was therefore a relatively lengthy credit commitment for someone to enter into, so my starting point is that I'd expect to see First Response to have completed a thorough affordability check.

Mr H provided First Response a payslip for the month prior to the agreement which confirmed to them he was earning around £2,600 a month and they say he told them he'd worked for the same employer for six years at the time. Whilst Mr H told our service this wasn't the case our Investigator explained that Mr H's change in employment referred to when he'd taken out another unrelated agreement (which he's raised a separate complaint about). Mr H hasn't disputed this further.

First Response also completed a credit check to help them understand how Mr H managed both his current and existing finances. This showed them that whilst he'd found himself in some difficulties in re-paying credit in the past, the most recent default he'd had recorded against him was for a public utility around two years prior to the agreement. Before that, the next most recent default was four years prior to the agreement.

The credit check also showed First Response Mr H's credit commitments from October 2019

until the time of the agreement showed an improvement in the management of his finances since the historic defaults they saw were recorded.

First Response also completed an income and expenditure assessment using a range of data including information gathered from Mr H, the credit check results and statistical data.

First Response took into consideration Mr H's existing credit commitments, specific housing and council tax costs confirmed by Mr H and used statistical data to estimate his other cost of living expenses. While I understand statistical data might not have given First Response Mr H's exact essential expenditure, they also added a prudence buffer of around £240 a month before calculating his disposable income.

I wouldn't expect First Response to do more in the circumstances and having looked through the results from the credit check, I've not seen anything there to suggest the affordability check completed wasn't reasonable and proportionate.

Overall, I think First Response completed reasonable and proportionate checks and from all the evidence and information they gathered, I'm satisfied what they saw allowed them to assess whether the agreement was affordable and sustainable to Mr H. This doesn't however automatically mean First Response made a fair lending decision – it's this I'll look at next.

#### Did First Response make a fair lending decision?

First Response were aware Mr H earned around £2,600 for the month before the agreement starting. I can also see from the year-to-date figures on the payslip provided to First Response, Mr H's income that month was consistent with his earnings for the month prior.

First Response found Mr H had monthly expenses of around £1,650 which left a disposable monthly income of around £950. In addition, First Response then included a prudence payment of around £240 and concluded the maximum agreement amount affordable to be around £700 a month. But I can see the finance they went on to agree needed him to make much lower repayments of £170.70.

I understand Mr H has pointed to council tax and housing arrears he owed prior to the lending being agreed. But as I'm satisfied First Response completed reasonable and proportionate checks at the time, I can only consider the results of those – and they didn't raise any concerns regarding these arrears. In addition, I've seen nothing to suggest First Response were told about the arrears, so I can't fairly say they should have been aware of them.

In summary, while I don't doubt Mr H found himself under some financial pressure around the time and I'm sorry to hear this, based on the evidence provided, I'm satisfied First Response's checks were reasonable and proportionate. I'm also satisfied they made a fair lending decision based on the outcome of those checks so I'm not upholding this complaint.

#### **My final decision**

For the reasons I've explained above, my decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 31 January 2024.

Sean Pyke-Milne

**Ombudsman**