DRN-4454721

Complaint

Mr T complains that First Response Finance Ltd ("First Response") unfairly entered into a hire-purchase agreement with him. He's said that the monthly payments to this agreement were unaffordable given his circumstances at the time and so he shouldn't have been lent to.

Background

In May 2017, First Response provided Mr T with finance for a used car. The purchase price of the vehicle was £5,995.00. Mr T paid a deposit of £1,800.00 and entered into a hire-purchase agreement with First Response for the remaining £4,195.00.

The loan had interest charges of £2,192.00 and a 30-month term. This meant that the total amount to be repaid of £6,387.00 (not including Mr T's deposit) was due to be repaid in 30 monthly instalments of £212.90.

Mr T complained that the agreement was unaffordable and so should never have been provided to him. First Response didn't uphold the complaint. It said that its checks confirmed that the finance was affordable and so it was reasonable to lend.

Mr T's complaint was considered by one of our investigators. She reached the conclusion that although First Response's checks were reasonable and proportionate, this information should have shown it that it shouldn't have lent to Mr T. So she recommended that Mr T's complaint should be upheld.

First Response disagreed with our investigator and the complaint was passed to an ombudsman for review.

My provisional decision of 26 February 2024

I issued a provisional decision – on 26 February 2024 - setting out why I was not intending to uphold Mr T's complaint.

In summary, I wasn't intending to uphold Mr T's complaint because I was satisfied that First Response carried out reasonable and proportionate checks before lending and these showed that the monthly payments to this agreement were likely to be affordable for Mr T.

Responses to my provisional decision

Neither First Response nor Mr T responded to my provisional decision or provided anything further for me to consider.

My findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

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We've explained how we handle complaints about irresponsible and unaffordable lending on our website. And I've used this approach to help me decide Mr T's complaint.

Having carefully considered everything, and in the absence of any further representations to my provisional decision, I'm still not upholding Mr T's complaint. I'll explain why this is the case in a little bit more detail.

First Response needed to make sure that it didn't lend irresponsibly. In practice, what this means is that First Response needed to carry out proportionate checks to be able to understand whether any lending was sustainable for Mr T before providing it.

Our website sets out what we typically think about when deciding whether a lender's checks were proportionate. Generally, we think it's reasonable for a lender's checks to be less thorough – in terms of how much information it gathers and what it does to verify that information – in the early stages of a lending relationship.

But we might think it needed to do more if, for example, a borrower's income was low, the amount lent was high, or the information the lender had – such as a significantly impaired credit history – suggested the lender needed to know more about a prospective borrower's ability to repay.

First Response says it agreed to this application after Mr T provided details of his monthly income together with copies of payslips and his P60 to support this. First Response says it also carried out credit searches on Mr T which did show historic difficulties with credit from around four years prior to this application. However, it also says that Mr T's finances were much improved since then and so he'd demonstrated an improvement in his payment performance since his repayment difficulties.

In First Response's view, when the amount due on Mr T's existing credit commitments plus an estimated amount for some of Mr T's living expenses and actual figures for others – such as council tax and bills - were deducted from his monthly income the monthly payments were for this agreement were affordable. On the other hand, Mr T says that these payments were unaffordable and there was no way he was going to be able to maintain them.

I've thought about what Mr T and First Response have said. The first thing for me to say is that all parties appear to agree that the checks that First Response carried out here were reasonable and proportionate. The reason for disagreement lies more with the interpretation of some of this information, rather than First Response did enough to find out about Mr T's ability to repay.

First Response says that it concluded Mr T had a disposable income of £451.27 based once his committed expenditure was deducted from his income. However, our investigator concluded that Mr T's disposable income was less than this as his income was only £1,506.37 a month.

I don't know the reason for the discrepancy. It's possible that First Response averaged what the information in Mr T's P60 showed, rather than relied on the payslip alone. But the important thing here is that even though a salary figure of £1,506.37 was used in the assessment, Mr T presented around £250 of child benefit payments in his declaration of his income. And given the circumstances here (Mr T was being provided with an asset that the whole household was likely to benefit from), I don't think that it was unreasonable for First Response to include this in Mr T's income.

Furthermore, there doesn't appear to be any dispute the monthly expenditure arrived at for Mr T is correct. When this deducted from what he received each month, although it's close, Mr T appears to have sufficient funds left over to make the payments here. I'd also suggest that while this in itself is not determinative of the payments being affordable, I do think Mr T making his payments on time and settling the finance early is an indication of this here.

I accept Mr T's actual circumstances at the time might have been worse than he let on – particularly as it's clear he wanted the vehicle at the time. I'm sorry to hear about what he has said. But as previously explained Mr T was being provided with an asset that was likely to benefit his household, rather than just him. And it's also not unreasonable to conclude that his wife's contribution to the family expenditure could flex up and down where necessary to take into account the payments to this agreement that Mr T would now be responsible for.

Equally, it's only fair and reasonable for me to uphold a complaint in circumstances where a lender did something wrong. And I don't think that First Response could possibly be expected to have realised that this agreement might have been unaffordable for Mr T, given the reasonable and proportionate checks it carried out at the time don't clearly show me that this was the case.

Overall and having carefully considered everything, I'm satisfied that First Response carried out reasonable checks before entering into this agreement with Mr T and that this showed the monthly repayments to be affordable. And it follows that I'm also satisfied that First Response didn't act unfairly towards Mr T when it agreed to provide the funds.

So while I've considered everything that Mr T has said, I'm not persuaded that First Response acted unfairly or unreasonably towards him. And I'm not upholding this complaint. I appreciate that this will be disappointing for Mr T – particularly as the investigator initially thought that Mr T's complaint should be upheld. But I hope he'll understand the reasons for my decision and at least consider that his concerns have been listened to.

My final decision

For the reasons I've set out above and in my provisional decision of 26 February 2024, I'm not upholding Mr T's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 15 April 2024.

Jeshen Narayanan
Ombudsman