

The complaint

Mr D and Miss P complain that First Response Finance Ltd (“First Response”) unfairly entered into a hire purchase agreement (“agreement”) with them. They say that the monthly payments to this agreement were unaffordable given their circumstances at the time and they shouldn’t have been lent to.

What happened

In August 2021 Mr D and Miss P entered into an agreement with First Response for a used car costing £11,000. Under the terms of the agreement, everything else being equal, Mr D and Miss P undertook to pay a deposit of £2,500 followed by 61 monthly payments of £246.73 making a total repayable of £17,550.53 at an APR of 27.9%.

Mr D complained that the agreement was unaffordable and so should never have been provided to him and Miss P. First Response didn’t uphold the complaint. It said that it completed reasonable and proportionate checks before agreeing to lend.

Mr D and Miss P’s complaint was considered by one of our investigators. He came to the view that First Response had done nothing wrong and hadn’t treated Mr D and Miss P unfairly. So he didn’t recommend that Mr D and Miss P’s complaint should be upheld.

Mr D disagreed with our investigator’s view and so his and Miss P’s complaint has been passed to me for review and decision.

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.

In this decision I’ve focussed on what I think are the key issues. Our rules allow me to do this and these rules reflect the informal nature of our service as a free alternative to the courts. If there’s something I’ve not mentioned, it isn’t because I’ve ignored it. I haven’t. I’m satisfied I don’t need to comment on every individual argument to be able to reach what I think is the right outcome. I will, however, refer to those crucial aspects which impact my decision.

I would also add I've not carried out a form of compliance check or sought to enforce any rules or guidance. What I've done is looked at everything provided and decided whether Mr D and Miss P have lost out due to First Response failing to act fairly and reasonably in its dealings with them.

I would also like to make it clear that I've only considered in this decision Mr D's and Miss P's complaint about the agreement they entered into in August 2021, not any other complaint they might have, including but not restricted to any other agreement they might have entered into with First Response.

I can see that as part of their submissions Mr D and Miss P have provided evidence that a complaint that Mr D had against another lender, for irresponsible lending in respect of an agreement entered into in January 2020, was upheld by that business (in August 2023). But this doesn't mean that this complaint (for irresponsible lending) should be upheld. This is because our role is to consider cases on their own individual facts and merits which naturally vary from case to case.

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 D and Miss P's complaint.

Having carefully considered everything, I've decided not to uphold Mr D and Miss P's complaint. I'll explain why in a little 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 D and Miss P 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 said it agreed to lend to Mr D and Miss P after it had calculated they had an 'affordability capacity' of £1,252.71, calculated as follows:

• monthly net income for Mr D (*1)	£1,710.79
• monthly net income for Miss P (*2)	£2,037.94
• credit payments (*3), housing costs (*4) and living expenses (*5)	(£2,078.45)
• disposable income	£1,670.28
• allowance for unknown/unexpected costs (*6)	(£417.57)
• affordability capacity	£1,252.71

(*1) verified to bank statements

(*2) confirmed by Miss P

(*3) based on credit file information

(*4) confirmed by Mr D and deemed to be reasonable

(*5) based on ONS data

(*6) 25% of calculated disposable income of £1,670.28

...and after it had regards to what its credit and IVA searches showed, which was the following information:

- 2 current accounts held, neither of which were recorded as ever being overdrawn
- borrowing on several accounts totalling circa £10,500
- borrowing on a hire purchase agreement of circa £13,000
- 6 defaults registered in the name of Miss P totalling circa £5,200
- no county court judgements
- 2 IVAs (1 in respect of Mr D and 1 in respect of Miss P) which were marked as satisfied in May 2019

Now I appreciate Mr D disagrees. But having regard to what Mr D and Miss P declared about their personal and financial circumstances in August 2021, what the credit searches carried out showed, the enquiries and verification undertaken, the size of the deposit and the terms of the agreement entered into I'm satisfied that the checks undertaken by First Response were fair, reasonable and proportionate.

And for the avoidance of doubt, in coming to the above finding, I've had regards to:

- the hire purchase agreement, with an outstanding balance of circa £13,000, was settled on the commencement of the agreement subject to this complaint
- Miss P, based on bank statements provided to our service, was indeed receiving a monthly income of £2,037.94 as declared by her
- Miss P had reduced the default balances of circa £5,200 by a third (circa £1,700) on the commencement of the agreement subject to this complaint
- the date the two IVAs were recorded as being settled, this being more than two years before the commencement of the agreement subject to this complaint.
- First Response wouldn't have been aware, nor should it have been aware, that on 21 August 2021 Mr D entered into a (second) IVA

Furthermore, whilst this isn't always indicative that a loan was affordable at the outset, it's my understanding that Mr D and Miss P never missed any of the monthly agreement payments required of them and settled their agreement debt early. And this isn't normally consistent with a borrower (or borrowers) being unable to afford the monthly repayments.

So in summary, having carefully considered everything, I'm satisfied that First Response's checks before entering into this hire purchase agreement with Mr D and Miss P went far enough. And as the checks showed that the payments were affordable, I'm satisfied that it wasn't unreasonable for First Response to provide these funds, or enter into this agreement with Mr D and Miss P.

This means I don't think that First Response acted unfairly or unreasonably towards Mr D and Miss P and I'm not upholding this complaint. I appreciate that this will be disappointing for Mr D and Miss P. But I hope they'll understand the reasons for my decision and at least consider that their concerns have been listened to.

My final decision

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

My final decision concludes this service's consideration of this complaint, which means I'll not be engaging in any further consideration or discussion of the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D and Miss P to accept or reject my decision before 6 June 2024.

Peter Cook
Ombudsman