

Complaint

Mr H 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 2021, First Response provided Mr H with finance for a used car. The purchase price of the vehicle was £2,989.00. Mr H paid a deposit of £250 and entered into a 49-month hire-purchase agreement with First Response for the remaining £2,739.00.

The loan had interest charges of £2,838.67 and a 49-month term. This meant that the total amount to be repaid of £5,577.67 (not including Mr H’s deposit) was due to be repaid in 49 monthly instalments of £113.83.

Mr H 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 H’s complaint was considered by one of our investigators. She didn’t think that First Response hadn’t done anything wrong or treated Mr H unfairly. So she didn’t recommend that Mr H’s complaint should be upheld.

Mr H disagreed with our investigator and the complaint was passed to an ombudsman for a final decision.

My findings

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

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 H’s complaint.

Having carefully considered everything, I’ve decided not to uphold Mr H’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 H 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 H provided details of his monthly income and bank statements to support this. First Response says it also carried out credit searches on Mr H which did show some previous difficulties with credit in the form of a defaults and a county court judgment ("CCJ"). However, it most of Mr H's repayment difficulties historic.

In First Response's view, when the amount due on Mr H's existing credit commitments plus an estimated amount for Mr H's living expenses were deducted from his monthly income the monthly payments were still affordable. On the other hand, Mr H 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 H and First Response have said.

The first thing for me to say is that I don't think that it was reasonable for First Response to use living costs based on statistics for Mr H, given Mr H's previous difficulty with credit and the length of time this agreement ran for. So I've taken a look at the bank statements Mr H provided at the time with a view to getting an idea of what his regular living costs were.

Having done so, the information in the bank statements does appear to show that when Mr H's committed regular living expenses and existing credit commitments were deducted from what he received each month, he did have the funds, at the time at least, to sustainably make the repayments due under this agreement. Indeed the bank statements provided show that Mr H had the funds he required to make these payments left in his account.

I accept Mr H's actual circumstances at the time might have been worse than he let on – particularly as it's clear he would have wanted the vehicle at the time. I'm sorry to hear that he might have had difficulty making his payments. But the key thing here is that the information provided to First Response at the time, reasonably led it to conclude that Mr H did have enough to make his payments.

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 H given the information he provided suggested otherwise.

Overall and having carefully considered everything, I'm satisfied that First Response carried out reasonable and proportionate checks. And while it ought to have applied more scrutiny to the information gathered, I don't think that doing so would have shown it was unfair to provide these funds, or enter into this agreement with Mr H. I'm therefore satisfied that First Response didn't act unfairly towards Mr H when it agreed to provide the funds.

For these reasons, I don't think that First Response lent irresponsibly to Mr H or otherwise treated him unfairly in relation to this matter. I haven't seen anything to suggest that Section 140A Consumer Credit Act 1974 would, given the facts of this complaint, lead to a different outcome here. And I'm therefore not upholding this complaint.

I appreciate that this will be disappointing for Mr H. But I hope he'll understand the reasons for my decision and at least consider that his concerns have been listened to.

Although I'm not upholding Mr H's complaint, I would remind First Response of its obligation to exercise forbearance and due consideration given what Mr H has said during the course of this complaint and it be the case that he experiences difficulty making his payments going forward.

My final decision

My final decision is that I'm not upholding Mr H's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 29 July 2024.

Jeshen Narayanan
Ombudsman