

## **The complaint**

Miss B complains about credit granted to her by First Response Finance Ltd.

## **What happened**

First Response agreed credit of £4,642 for Miss B in April 2018 in order for her to acquire a car. The cash price of the car was £4,942. The total amount owing under the agreement came to £9,052.32 including interest and charges. Miss B paid a cash deposit of £300 and the remaining £8,752.32 was to be repaid by 48 instalments of £182.34.

The credit was granted under a hire purchase agreement meaning First Response was the owner and Miss B was, in essence, paying for the use of the car. I can see from the account history that Miss B had a returned direct debit payment a few months into the agreement. Miss B continued to miss several payments each year and wasn't managing to clear her arrears. She's now in a repayment plan to clear the debt.

Miss B said that First Response didn't sufficiently check her finances or her personal circumstances before lending to her. She says at the time of application she was working part time, was borrowing from short term lenders and had recently entered a Debt Relief Order. Miss B also shared that she had a mental health condition which she'd told First Response about when she applied for credit.

First Response said that it carried out sufficient checks when Miss B applied for credit. It said it verified Miss B's income and expenditure and checked her credit file. It found the credit would be affordable for her and so it hadn't been irresponsible to lend. First Response also confirmed that Miss B had disclosed her mental health condition when she applied for credit and that it dealt appropriately with this information which didn't impact on her application. First Response didn't uphold Miss B's complaint.

Miss B referred her complaint to us and one of our investigator's looked into it. They found that First Response should have carried out a more comprehensive affordability assessment than it did before entering into an agreement with Miss B. They also found that further checks were likely to have shown that credit would be unaffordable for her and so recommended that her complaint be upheld.

First Response didn't agree with this recommendation. It asked for the complaint to come to an ombudsman for a review and it came to me. I issued a provisional decision on 9 May explaining why I planned to uphold Miss B's complaint and setting out my proposals for putting things right for her. Miss B accepted my decision but First Response didn't.

## **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 considered everything again, including what First Response said in response to my provisional decision, I've remain of the view that Miss B's complaint should be upheld. I

appreciate that this will be very disappointing for First Response. I'll set out my reasons for upholding again in this final decision and will refer to its comments where appropriate.

The Financial Conduct Authority (FCA) was the regulator when First Response lent to Miss B. Its rules and guidance said that before agreeing credit for her, First Response needed to check that she could afford to meet her repayments sustainably. In other words without incurring or increasing problem indebtedness, without having to borrow further, and while meeting her other debt payments and other normal outgoings. These checks needed to be proportionate to the nature of the credit (the amount and term, for example) and to Miss B's particular circumstances.

Ultimately, First Response needed to treat Miss B fairly and take full account of her interests when making its lending decision. It would not be lending fairly if "it targeted customers with regulated credit agreements which are unsuitable for them, by virtue of their indebtedness, poor credit history, age, health, disability or any other reason."

With this in mind, my main considerations are did First Response complete reasonable and proportionate checks when assessing Miss B's application to satisfy itself that she would be able to make her repayments sustainably? If not, what would reasonable and proportionate checks have shown? Did First Response make a fair lending decision?

First Response said that it carried out sufficient affordability checks before agreeing credit for Miss B. It recorded Miss B's net monthly income as £2,196 and verified this with her payslips, and benefit and bank statements. Miss B's payslip confirmed she worked full time with net monthly pay of £942 in March and £1,029 in April 2018. She was in receipt of state benefits of about £1,160 a month and had dependents. The bank account information is a screen shot of deposits and doesn't show any payments. First Response estimated Miss B's living costs came to £520, based on national statistical data, and recorded her rent and council tax as £450 and her existing debt repayments as £399. It estimated that Miss B had disposable income of over £800 a month, which would leave her with enough money to afford her repayments of £182.

First Response knew Miss B was having some problems with her finances as it saw from her credit record that she had three accounts in default, including a utilities account. First Response said that it wouldn't automatically decline to lend to someone due to their historic financial issues and that it discussed Miss B's finances with her in detail at the time. It noted that she'd had set up repayment plans to manage her debts and that some of her debts were almost fully repaid. Miss B told First Response at the time that although she'd had some problems she felt confident she could manage a long-term commitment.

I think these checks would be proportionate in some circumstances but having considered this point carefully, I can't say that they were in this case. Agreeing further credit for Miss B potentially committed her to spending close on 30% of her total income on debt in any one month, and she'd need to meet her repayments for the car for four years. I think it would have been appropriate for First Response to do more than rely on statistical datasets, which might not have been representative of Miss B's spending, and take steps to check that she didn't have ongoing financial problems and could afford to meet her repayments in a sustainable manner.

Miss B provided us with her bank statements from the time and I've reviewed these. To be clear I'm not suggesting that this is the information First Response should have sought but I think it's reasonable to rely on these to understand what a proportionate check might have revealed about Miss B's finances. These show that Miss B's usual expenses, including her housing costs, were higher than the figures First Response relied on. They also show significant levels of gambling, upwards of £500 a month. Altogether, it seems to

me that there was a risk Miss B wouldn't be able to meet her repayments for the credit in a sustainable manner. I think it's likely First Response would have learnt this through a proportionate check and would have declined to lend to Miss B on this occasion.

First Response said in response to my provisional decision that I hadn't shown that Miss B didn't have the capacity to afford this loan from the beginning, and that it was reasonable for her to spend an increased proportion of her income on what was an essential asset. First Response said that relying on statistical data was perfectly acceptable under its regulatory obligations, and the income and expenditure ultimately showed that Miss B had the capacity to afford the repayments.

First Response also said that even if Miss B was gambling at the time, she could have stopped in order to prioritise her credit repayments and it would not have used this as a sole reason to decline an application. There was no suggestion that Miss B has or had a gambling addiction, which is an entirely different circumstance and this was an unfair reason to contribute towards upholding this complaint.

To be clear, I didn't make a provisional finding that Miss B had the capacity to meet her repayments at the outset, but rather I found that the information First Response relied on showed that she would have. As I explained above, I thought it wasn't sufficient in this case to rely on this information. The bank statements First Response provided to us show all the deposits into Miss B's account over March and April 2018 which does include money from a gaming account and a returned direct debit.

I can identify most of Miss B's costs on the bank statements she provided including insurances, motor tax, mobile and media payments, child related costs (sports expenses and school costs via parent pay) and food and petrol. I didn't consider any other likely child-related costs such as clothing or entertainment. Miss B told us she paid some expenses in cash for example, child care costs and electricity and gas. These last costs seem plausible to me and I can see cash withdrawals on the statements.

I didn't investigate these costs further with Miss B because I could also see on the bank statements that she was regularly spending relatively large sums on gambling to the extent that she was spending more than she had coming in, rendering the credit unaffordable. I described this spend as upwards of £500 in my provisional decision - for March 2018 it came to £546, for the two weeks of statements I've seen from each of February and April it was £290 and £348 respectively. These were small frequent transactions indicating a pattern of spending which was likely to continue, and I can see that it did into May for example with over £650 worth of transactions.

Altogether, I've concluded that First Response was irresponsible when it agreed this credit for Miss B and it now needs to take steps to put things right for her.

### **Putting things right**

In line with our usual approach, I don't think it's fair that First Response should be able to charge any interest or fees owed under the agreement. I understand that Miss B has been charged £8,986.32 which is £8,752.32 plus £234 of charges applied in November 2021 and January 2022. The balance on the account as of the 29 March 2023 was £2,395.13. This means Miss B has paid an amount of £6,591.19 at least to First Response, in addition to her £300 deposit.

Miss B has repaid the cash price of the car. In this case I think it's fair that the car remains with her and that ownership of the car is transferred to her.

In order to resolve Miss B's complaint, First Response should:

- End the agreement with nothing further for Miss B to pay; and
- Transfer ownership of the car to her; and
- Refund to Miss B any payments she has made over £4,942 (being the cash price of the car); and
- Add 8% simple interest per year\* from the date of each overpayment to the date of settlement; and
- Remove any adverse information it has recorded on Miss B's credit file regarding the agreement.

\*HM Revenue & Customs requires First Response to take off tax from this interest. First Response must give Miss B a certificate showing how much tax it's taken off if she asks for one.

As mentioned, First Response applied for a court order for an attachment of earnings in early 2022. This was awarded for an amount of £2,845.13. Miss B said she didn't dispute the court order as the first letter she received was after the judgement had been awarded. So I don't think the court considered whether or not the credit was irresponsibly agreed or that Miss B could have raised this argument at the time. Miss B said she asked the court to defer the order, which it did on the condition that she paid £50 a month to First Response to clear the debt.

The court made a decision that Miss B should pay First Response an amount of £2,845.13. I can't now decide that this order should be set aside so this debt remains, should First Response decide to pursue it. It is up to Miss B to decide whether she uses this refund to repay the debt.

A simpler alternative resolution to Miss B's complaint may be for First Response to waive the outstanding balance on the account and consider it settled, should both parties agree.

### **My final decision**

For the reasons I've explained above I'm upholding Miss B's complaint about First Response Finance Ltd. It now needs to take the above steps to put things right for her.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 10 July 2023.

Michelle Boundy  
**Ombudsman**