

Complaint

Mr E complains that First Response Finance Ltd (“First Response”) unfairly entered into a hire-purchase agreement with him. He’s effectively 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 August 2022, First Response provided Mr E with finance for a used car. The purchase price of the vehicle was £9,900.00. Mr E paid a cash deposit of £400, received a part-exchange of £1,500.00 for his existing vehicle and entered into a hire-purchase agreement with First Response for the remaining £8,000.00.

The loan had interest charges of £5,861.61 and a 49-month term. This meant that the total amount to be repaid of £13,861.61 (not including Mr E’s deposit and part-exchange) was due to be repaid in 49 monthly instalments of £282.89.

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

Having carefully considered everything, I’ve decided not to uphold Mr E’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 E 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 E provided details of his monthly income and it validated this against funds going into Mr E's account. First Response says it also carried out credit searches on Mr E which did show historic county court judgements ("CCJ") but these were settled and some other historic difficulties with credit in the form of defaults and some missed payments. However, it also says Mr E demonstrated an improvement in his payment performance since his repayment difficulties.

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

The first thing for me to say is that I don't think that the checks First Response carried out did go far enough. I don't think it was reasonable to simply rely on Mr E's declaration of living costs given his previous difficulties with credit.

As First Response didn't carry out sufficient checks, I've gone on to decide what I think First Response is more likely than not to have seen had it obtained further information from Mr E. Bearing in mind, what it saw on the credit check, I would have expected First Response to have had a reasonable understanding about Mr E's regular living expenses as well as his income and existing credit commitments.

The information Mr E provided at the time does appear to show that when his committed regular living expenses and existing credit commitments were deducted from what he declared receiving each month, he did have the funds, at the time at least, to sustainably make the repayments due under this agreement.

I accept Mr E'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. In particular, I've seen he's said he was affected by the pandemic, wasn't working at the time and that the funds going into his account were his brother's earnings.

Although Mr E has been inconsistent about his actual employment position when he applied for the finance, during the course of his complaint, I've not ruled out the possibility of Mr E not being in employment at the time he entered into this agreement. However, what I need to consider here is even if Mr E wasn't working at the time, should First Response have known this. And the key thing here is that First Response didn't just rely on what Mr E had said for the income part of his assessment.

It took steps to check what Mr E had declared by cross-checking the funds going into Mr E's bank account. And as the funds going into Mr E's account were consistent with the declaration, I don't think it would have had any reason to conclude that Mr E was not working or that he was receiving funds on his brother's behalf, as he now says.

All First Response needed to do here was find out about Mr E's actual living expenses not, as Mr E now says, contact the employer declared. I think that if First Response had found out about Mr E's actual living costs and deducted this from his declared income, it would still

reasonably have concluded that Mr E did have enough to make the payments to this agreement.

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 E given proportionate checks won't show this to have been the case.

Overall and having carefully considered everything, while I don't think that First Response's checks before entering into this hire-purchase agreement with Mr E did go far enough, I'm satisfied that First Response doing more in this instance, won't have prevented it from providing these funds, or entering into this agreement. And I'm therefore satisfied that First Response didn't act unfairly towards Mr E when it agreed to provide the funds.

So while I've considered everything that Mr E has said, I don't think 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 E. 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 E's complaint, I would like to remind First Response of its obligation to exercise forbearance and due consideration, now that it has been told more about Mr E's financial position, in the event that Mr E has difficulty making his payments to the remaining balance going forwards.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 16 February 2024.

Jeshen Narayanan
Ombudsman