

The complaint

Miss L complains that First Response Finance Ltd (FRF) unfairly agreed to a hire purchase agreement that she couldn't afford to repay.

What happened

In October 2019 Miss L acquired a car by entering into a hire purchase agreement with FRF. The cash price of the car was £4,818 and after interest and charges were applied the total amount repayable was £9,591.48 repayable in 54 monthly instalments of £177.62.

Miss L said she was on a low income and that FRF had assessed her ability to repay based on her getting overtime. She said she was already heavily indebted and if FRF had properly checked they would have seen that she couldn't sustain the repayments. Miss L complained to FRF.

FRF said they'd carried out proportionate checks and said that while these showed Miss L had struggled financially in the past the reasons for this were no longer present. And they'd assessed her income and expenditure which showed she'd sufficient disposable income to sustain her repayments after the new lending was factored in. They added that Miss L had maintained for repayments until late 2021 when she changed her job.

Miss L wasn't happy with FRF's response and referred her complaint to us.

Our investigator said the checks done by FRF weren't reasonable. But after checking Miss L's actual financial situation he said the lending was affordable for her.

Miss L said that without overtime she couldn't afford the repayments and so FRF shouldn't have lent to her. She asked for an ombudsman to decide.

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.

I can understand Miss L's frustration but having done so I'm not upholding this complaint, I'll explain why.

We explain how we handle complaints about irresponsible and unaffordable lending on our website. I've used this approach to help me decide Miss L's complaint. FRF needed to ensure that they didn't lend irresponsibly in accordance with the rules set out in the Financial Conduct Authority's (FCA) Consumer Credit Sourcebook (CONC). In practice, what this means is that FRF needed to carry out proportionate checks to be able to understand whether any lending was affordable for Miss L before they agreed to it.

In this case, there are two overarching questions that I need to answer to fairly and reasonably decide Miss L's complaint. These two questions are:

1. Did FRF complete reasonable and proportionate checks to satisfy themselves that Miss L

would be able to repay her loan without experiencing significant adverse consequences?

- If so, did they make a fair lending decision?
- If not, would those checks have shown that Miss L would've been able to do so?

2. Did FRF act unfairly or unreasonably in some other way?

FRF says that Miss L's application underwent credit and underwriting checks, and while they saw she'd previously defaulted on some of her accounts these were historic and that they didn't consider they posed a risk. FRF said they verified Miss L's income from her payslips and reviewed her credit report. FRF has provided a copy of the credit check they saw.

At the time of the application, it shows that Miss L had defaulted on several accounts around 2015, and that there's been a judgement made in 2017. While Miss L's accounts appear to have been managed well since that time, I can see that in early 2019 she'd struggled to make her repayments on a budget revolving account which appears to have defaulted.

The report also shows that Miss L was indebted on one of her utility accounts for £5,200. I can see that FRF questioned Miss L about this and was told that she was in a dispute about the amount.

The report showed Miss L had other outstanding credit commitments but that she was managing them well. These were for a home credit account for £882, and a credit and store card with £155 and £200 credit limits. FRF assessed Miss L's credit commitments for these to be £81.65, which seems reasonable.

I understand FRF made the decision to lend on the basis that her accounts were being managed well and found the risk this posed to them was acceptable. But I'm not satisfied enough consideration was given to the personal risk posed to Miss L.

In assessing Miss L's income and expenditure I can Miss L told FRF her weekly salary was £296, but from the payslips provided by her FRF assessed her actual income to be £338.15 a week which equated to £1465.32 a month. They used statistical data for cost of living - £370, assessed Miss L's council tax at £25 a week, housing costs at £110 a week, monthly credit commitments at £81.65 and for debt management £15 a week. Totalling £1,101.65 leaving Miss L with £363.67 before the new lending was factored in.

CONC 5.2A.19 allows for the use of statistical data but says:

"It is unlikely to be appropriate to place reliance on statistical data, for example, where the firm is aware, or has reasonable cause to be aware from information in its possession, thatthe level of the customer's existing indebtedness, differs significantly from that of the sample of persons on which the statistical data were based."

And I think given, although disputed, indebtedness of Miss L's utility debt. And the *default* that showed earlier in the year, I think FRF needed to check further to make sure they'd a reasonable understanding of whether the agreement was affordable for her.

While I'm satisfied FRF should have completed further checks, this doesn't automatically mean they failed to make a fair a lending decision. I've considered what FRF would likely have found out if they'd completed reasonable and proportionate affordability checks. I can't be certain what Miss L would have told FRF had they asked further about her income and regular expenditure. I don't think FRF necessarily needed to request bank statements but in the absence of anything else, I've placed significant weight on the information contained in

Miss L's statements from July to September 2019.

I understand Miss L feels it's unfair to include overtime in the affordability calculations as these payments aren't a guaranteed income for her. I've thought about this carefully and acknowledge that her payslips varied each week. Miss L told us her normal wage was around £290 but FRF had agreed to the lending based on a weekly income of £338. From the wage slips Miss L provided to FRF I can see that her salary for the year to date (about 26 weeks) was showing as £11,135.48 which would equate to a weekly salary of around £350.

I've looked at Miss L's bank statements and can see 13 weekly salary payments that equated to an average of £358.82 a week or £1,554.89 a month which is higher than the income FRF used in their assessment. Given Miss L's salary was consistently more than her basic salary over the year to date, I'm satisfied that at the time she entered into the credit agreement she'd a reasonable expectation of the option to regularly earn more than her basic salary. So, I think it's fair for FRF to have thought overtime was offered to Miss L on a regular basis and for them to have included it in any affordability calculations.

Her regular committed monthly expenditure at the time was around £1,150. In calculating these amounts I've included any applicable payments for her credit commitments, housing costs, council tax, utilities, food, fuel and other non-discretionary costs. So, I think Miss L would have had around £405 in disposable income which I consider sufficient to sustain her repayment for the new lending of £177.62.

I appreciate my decision will be a disappointment for Miss L. But I don't think FRF acted unfairly or unreasonably in agreeing to lend to her as I think the lending was affordable. I think Miss L's difficulties with the lending arose after her circumstances changed when she changed her job which appears to have affected her income.

CONC 7.3 provides guidance for the treatment of consumers in default or arrears and I'd expect FRF to adhere to this guidance and treat Miss L with forbearance and consideration to reach a workable solution for any outstanding balances.

My final decision

I don't uphold this complaint

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss L to accept or reject my decision before 23 April 2024.

Anne Scarr
Ombudsman