The complaint

Mr D complains that First Response Finance Ltd (FRFL) irresponsibly entered into a hire purchase agreement with him. He says he was struggling financially at the time and couldn't afford the repayments.

Mr D has been represented by a third party. But for clarity, I've only referred to Mr D throughout this decision.

What happened

In June 2019 FRFL provided Mr D with finance to purchase a used car. The car cost £6,995 and Mr D entered into a hire purchase agreement to finance the full amount. After interest and charges the total amount due was £11,967.27, repayable in 49 monthly instalments of £244.23. Mr D settled the agreement in full in May 2020.

In November 2023, Mr D complained to FRFL saying that they didn't consider his application properly, and had they done so they would have seen he couldn't afford the monthly repayments.

FRFL didn't agree with Mr D's complaint. They said they carried out proportionate checks before agreeing to lend, including a full credit search, income verification, and a detailed income and expenditure check. FRFL felt their checks showed Mr D had enough disposable income after meeting all his commitments to be able to afford the monthly repayments.

Mr D disagreed and referred his complaint to the Financial Ombudsman Service, where it was considered by one of our investigators. Our investigator thought the complaint should be upheld. He didn't think FRFL's checks were proportionate in the circumstances and thought proportionate checks would have shown Mr D could not afford the monthly repayments.

FRFL asked for more information about our investigator's assessment of Mr D's income and expenditure. An impasse was reached, and FRFL asked for an Ombudsman to review the complaint.

Following a review of the file I shared the figures I'd used in my own calculation of Mr D's income and expenditure (which I'll include below) with FRFL and asked them if they had any additional comments. FRFL didn't have anything to add, other than to say it was worth noting that Mr D was purchasing a second car for the household, and so it was possible Mr D wouldn't bear the day-to-day cost of running the car.

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.

The Financial Conduct Authority (FCA) sets out in a part of its handbook known as CONC what lenders must do when deciding whether to lend to a consumer. In summary, a firm must consider a customer's ability to make repayments under the agreement without having to borrow further to meet repayments or default on other obligations, and without the repayments having a significant adverse impact on the customer's financial situation.

CONC says a firm must carry out checks which are proportionate to the individual circumstances of each case. What's proportionate depends on the specific circumstances of each application. We'd expect lenders to think about the nature of the credit (the amount repayable and the term, for example) and about the applicant's individual circumstances. I'd expect a lender to find out more about a prospective borrower's ability to repay if for example, a borrower's income was low, the amount lent was high, or the borrower's credit file reveals an impaired credit history.

Were FRFL's checks proportionate?

FRFL's records show that at the time of his application, Mr D was married with one dependent child. He'd been working for the British Army for over 12 years and was living in accommodation provided by his employer. His housing cost was deducted from his pay, and after that Mr D's net income was around £1,347 per month. FRFL verified this using Mr D's payslip. I'm satisfied FRFL's checks of Mr D's income from employment were reasonable and proportionate.

I note that FRFL included child benefit in their calculation of Mr D's income, at around £89 per month. This shows in the 'advised' column of their income calculation, which suggests it's information Mr D gave FRFL as part of his application. However, when looking at Mr D's bank statements I couldn't see child benefit credited to his account in the three months prior to the agreement.

I haven't seen any evidence to show FRFL verified this element of Mr D's income. I don't think they should have included it without having verified it – CONC says a firm shouldn't rely solely on a customer's own statement of their income. And so I don't think it was reasonable for FRFL to include the child benefit amount in their calculation of Mr D's income.

FRFL looked at Mr D's credit file and discussed the outcome of it in a telephone interview with him. They estimated Mr D's expenditure using a combination of statistical data. CONC allows lenders to use statistical data in certain circumstances. But here, I think FRFL needed to get a better understanding of Mr D's committed expenditure.

I say this because the information FRFL obtained as part of the credit search show Mr D was likely struggling financially. It showed:

- A credit card which was close to its credit limit. He'd missed two repayments in June and November 2018.
- Two unsecured loans, both with recent missed payments.
- Two store card accounts, both with recent missed payments
- A default recorded in the year leading up to Mr D's finance application.

FRFL said they identified the above and conducted a telephone interview with Mr D, who explained that the reason for the missed payments was because his wife became unemployed around Christmas. And I can see several missed payments were on or around that period. But Mr D also missed payments after that period, so it appears his wife's unemployment was still affecting the household finances negatively by the time of his application to FRFL.

Mr D also sent us a copy his credit report. This showed further adverse information, including defaults on two unsecured loans in December 2018 and March 2019. I can't be sure why this information didn't appear on FRFL's own check. However, the information they were able to see ought to have led FRFL to realise Mr D might be struggling financially.

In summary, for the reasons set out above I'm satisfied FRFL didn't carry out reasonable and proportionate affordability checks before lending.

If FRFL had carried out proportionate checks, what would they have shown?

A proportionate check would have involved finding out more about Mr D's committed expenditure. There are different ways a lender can go about checking a prospective borrower's committed expenditure. I can't be sure what FRFL would have done had they decided to conduct further checks, or what Mr D would have told them. In the absence of anything else, I've placed significant weight on the information contained in Mr D's bank statements for the three months leading up to his application as an indication of what would most likely have been disclosed.

The bank statements show Mr D was spending on average around £178 a month on food, £135 per month on gas and electricity, £208 for phone, TV and internet costs, and around £137 per month on insurance including motor insurance for his first car. He was also spending around £81 on petrol. Mr D's monthly credit commitments were around £363, which included the existing hire purchase agreement.

So, Mr D's non-discretionary and committed expenditure was around £1,102 per month. Adding on the repayments under this agreement means he would have needed to make payments of around £1,346 per month out of his verified income of £1,347. This wouldn't have left Mr D with spare disposable income to account for the cost of running the car and any unforeseen or emergency expenditure. FRFL suggested Mr D's wife might pay for the cost of running one of the cars, but I can see from the notes FRFL took during the application process that Mr D's wife wasn't planning on returning to work until later that year.

Overall, I'm satisfied proportionate checks would have shown Mr D couldn't make the required repayments under the agreement sustainably. It follows that I uphold this complaint.

Putting things right

As I don't think FRFL ought to have approved the lending, I don't think it's fair for them to be able to charge any interest or charges under the agreement. But Mr D's had use of the vehicle and it's fair he pays for that use.

Mr D has already paid more than the cash value of the vehicle to FRFL, having settled the finance in full in May 2020. To settle Mr D's complaint, FRFL should:

- Calculate how much has been paid in total under the agreement; including the deposit and final settlement.
- Deduct the cash price of the vehicle from the total paid.
- Pay Mr D the difference, adding 8% simple interest per year* from the date of each overpayment to the date of settlement.

*HM Revenue & Customs requires FRFL to take off tax from this interest. FRFL must give Mr D a certificate showing how much tax they've taken off if Mr D asks for one.

My final decision

For the reasons I've explained, I'm upholding this complaint. First Response Finance Ltd need to settle the complaint as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 11 July 2024.

Anja Gill
Ombudsman