

Complaint

Mr N 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 December 2019, First Response provided Mr N with finance for a used car. The purchase price of the vehicle was £6,295.00. Mr N didn't pay a deposit and entered into a hire-purchase agreement with First Response for the entire purchase amount.

The loan had interest charges of £3,835.04 and a 36-month term. This meant that the total amount to be repaid of £10,130.04 was due to be repaid in 36 monthly instalments of £281.39.

Mr N 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 N's complaint was considered by one of our investigators. He didn't think that First Response hadn't done anything wrong or treated Mr N unfairly. So he didn't recommend that Mr N's complaint should be upheld.

Mr N 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 N's complaint.

Having carefully considered everything, I've decided not to uphold Mr N'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 N 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 N provided details of his monthly income, a payslip and access to open banking data in order to support this. First Response says it also carried out credit searches on Mr N which did show some previous difficulties with credit in the form of a historic defaults and a county court judgment ("CCJ"). However, it also says the rest of Mr N's accounts were relatively well maintained so he'd demonstrated an improvement in his payment performance since his repayment difficulties.

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

The first thing for me to say is that while Mr N has said that there was more adverse data on his credit file that wasn't taken into account, despite having been provided with ample opportunity to do so, he hasn't provided anything to support this. So it is difficult for me to take this into account. In any event, the key thing here is that First Response is entitled to rely on what it saw on its searches.

I accept that there is a reasonable argument for saying that it was unreasonable for First Response to use living costs based on statistics for Mr N, given Mr N's previous difficulty with credit and the length of time this agreement ran for.

However, I've not been provided with anything that appears to show that when Mr N's committed regular living expenses are combined with the existing credit commitments that First Response knew about are deducted from what he received each month, he did not have the funds, at the time at least, to sustainably make the repayments due under this agreement.

I do accept Mr N's actual circumstances at the time might have been worse than he let on – particularly as he chose to buy a vehicle at the time and it's clear he would have wanted the finance to do so. I'm sorry to hear about what he has said. But the key thing here is that the information provided to First Response at the time (as well as what I've seen since) reasonably led it to conclude that Mr N 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 N given the information I've seen now doesn't clearly show that this to be the case.

Overall and having carefully considered everything, I'm satisfied that reasonable and proportionate checks won't have shown First Response that it was unfair to provide these funds, or enter into this agreement with Mr N.

So while I've considered everything that Mr N 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 N. But I hope he'll understand the reasons for my decision and at least consider that his concerns have been listened to.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 27 May 2024.

Jeshen Narayanan
Ombudsman