DRN-4794302

The complaint

Mrs H complains that First Response Finance Ltd (First Response) irresponsibly granted her a hire purchase agreement that she couldn't afford to repay.

What happened

In March 2023 Mrs H acquired a vehicle financed by a hire purchase agreement from First Response. Mrs H was required to make 60 monthly repayments of £260.21. The total amount repayable under the agreement was £15,612.60. Mrs H believes First Response failed to complete adequate affordability checks. Mrs H says that if it had it would've been clear the agreement wasn't affordable at the time.

First Response disagreed. It said it carried out an adequate assessment which included a full credit search, income verification and income and expenditure checks. First Response said its searches showed Mrs H had enough disposable income left after her committed costs to afford the agreement. It assessed her net income as £2,583 a month and felt that the agreement was affordable as her outgoings were £1,893.42 at the time.

Our Investigator didn't recommend that the complaint should be upheld. They thought First Response's checks were proportionate and that none of the information it gathered at the time suggested that the lending shouldn't have been approved.

Mrs H didn't agree. She felt that there was no option for her to disclose to First Response that her income at the time was partly made up of temporary overtime payments. And that those overtime payments were no longer sustainable due to personal factors. She asked for an Ombudsman to issue a final decision on the matter.

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.

Where evidence is incomplete, inconsistent, or contradictory, I reach my decision on the balance of probabilities – in other words, what I consider most likely to have happened in light of the available evidence and wider circumstances.

We explain how we handle complaints about irresponsible and unaffordable lending on our website. I've used this approach to help me decide Mrs H's complaint. First Response needed to ensure that it didn't lend irresponsibly as per the rules set out in the FCA's Consumer Credit Sourcebook (CONC). In practice, what this means is that First Response needed to carry out proportionate checks to be able to understand whether any lending was affordable for Mrs H before providing it.

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

1. Did First Response complete reasonable and proportionate checks to satisfy itself

that Mrs H would be able to repay her loan without experiencing significant adverse consequences?
- If so, did it make a fair lending decision?
- If not, would those checks have shown that Mrs H would've been able to do so?

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

Did First Response complete a reasonable and proportionate affordability check?

First Response was required to ensure it carried out adequate checks on Mrs H's ability to sustainably afford the agreement. These checks had to be borrower-focussed and proportionate (see CONC 5.2A). What is considered proportionate will vary depending on the circumstances, such as (but not limited to): the total amount repayable, the size of the monthly repayments, the term of the agreement (CONC 5.2A.20 R), and the consumer's specific circumstances.

First Response says that Mrs H's application underwent credit and underwriting checks, which showed no defaults or County Court Judgments (CCJs) but did show six accounts in payment arrangement plans. Mrs H declared her income as £2,583 a month and First Response then verified this using credit bureau data. It also combined Office for National Statistics (ONS) data with Mrs H's own account of her expenditure for rent and council tax commitments. It subsequently completed an income and expenditure check using this data.

From the information it had gathered I think its estimation of Mrs H's disposable income was reasonable. I say this because it had taken specific costings of her existing credit commitments from her credit file and had asked her directly for details regarding her rent and council tax. This meant that First Response estimated Mrs H had around £689 of disposable income before accounting for the agreement. However, it also applied a 30% emergency cost buffer to this amount which meant it estimated Mrs H had £482.71 disposable income remaining. It ultimately decided on this basis that the agreement was affordable.

Given the size of the lending, the monthly repayments, the length of agreement, and the information in Mrs H's credit file, I think at first consideration First Response's checks were proportionate. I acknowledge that its initial searches contained indicators of financial difficulty – the payment arrangements previously mentioned. But it then completed an income and expenditure check to ensure the agreement was affordable, and as this check showed that Mrs H had enough disposable income to afford the agreement I'm satisfied that its results did not prompt the requirement of any further checks.

I understand Mrs H's concern about the inability to inform First Response about part of her overall income being temporary overtime payments. And I've thought about this carefully. I would only expect First Response to be aware of something if it was either directly informed about it, or if the checks that it performed surfaced evidence of a discrepancy or warranted further checks that would ultimately reveal it. I can't say that First Response ought to have been aware of the overtime payments – Mrs H declared her income directly, and it was verified by a third party to be accurate. So, I wouldn't have expected First Response to have enquired further about the matter.

Mrs H has explained that shortly after the agreement was signed she unfortunately became unwell to the point that she was unable to benefit from overtime payments. I'm sorry to hear this – and have thought carefully about this factor as well. In doing so I have to recognise that if Mrs H wasn't aware that she'd stop benefiting from overtime until after the agreement was signed, I couldn't reasonably expect Final Response to have been aware. It also follows that if Mrs H was aware that she'd no longer be receiving the additional payments in her salary prior to signing the agreement than I would have expected her to mention this when declaring her own salary.

I appreciate her point that there wasn't a specific area to declare on the application what proportion of her income consisted of overtime payments. But if Mrs H anticipated that she may no longer receive the same amount I wouldn't expect the same monthly income to have been included in her own calculation. The full monthly income amount (including overtime) was disclosed by Mrs H, and the verification checks understandably showed this amount was accurate as she'd only just recently been paid the same amount.

It's worth noting that even if First Response was made aware of the overtime payments, it wouldn't necessarily mean that it should have disregarded them. So long as the payments appeared to be a regular and reliable form of income it would be reasonable to factor them into any affordability considerations. So in summary, I don't think I'd expect First Response to have done more around its consideration of Mrs H's income.

I also can't reasonably expect First Response to be aware of any of Mrs H's health concerns if they weren't disclosed to it at the time, and I've seen no evidence to suggest that a disclosure had been made.

As such, I'm satisfied First Response completed proportionate affordability checks, but this doesn't automatically mean it made a fair lending decision.

Did First Response make a fair lending decision?

Overall, I'm satisfied that the lending decision was a fair one. I say this because the income and expenditure check First Response completed was conservative. It factored in an additional 30% buffer beyond normal expenditure allowances. After including the agreement payments this meant that Mrs H had roughly £220 per month left for emergency costs. I'm satisfied that this allowed enough for emergency or unexpected costs – and that the lending decision was fair for Mrs H's known circumstances at the point of sale.

Again, I do understand that Mrs H's own testimony explains she went on to receive significantly less in income due to her inability to work overtime moving forward. But I can't say that First Response should have been aware of this based on the checks that it did complete, and I'm satisfied that the checks it did complete were reasonable for the circumstances that its proportionate checks revealed. So, it follows that I think First Response made a fair lending decision.

Did First Response act unfairly or unreasonably in some other way?

I'm not persuaded from the submissions made to date that First Response acted unfairly or unreasonably in some other way.

My final decision

My decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 26 June 2024.

Paul Clarke
Ombudsman