

Complaint

Mr P 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 September 2021, First Response provided Mr P with finance for a used car. The purchase price of the vehicle was £9,669.93. Mr P didn’t pay a deposit and entered into a 54-month hire-purchase agreement with First Response for the entire purchase amount.

The loan had interest charges of £4,587.45 and a 54-month term. This meant that the total amount to be repaid of £14,257.08 was due to be repaid in 54 monthly instalments of £264.02.

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

Mr P 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 P’s complaint.

Having carefully considered everything, I’ve decided not to uphold Mr P’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 P 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 P provided details of his monthly income and payslips to support this. First Response says it also carried out credit searches on Mr P which did show some previous difficulties with credit in the form of a defaults and a county court judgment ("CCJ").

However, in First Response's view, when reasonable repayments to Mr P's existing credit commitments plus an estimated amount for Mr P's living expenses were deducted from his monthly income the monthly payments for this agreement were still affordable. On the other hand, Mr P 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 P and First Response have said.

The first thing for me to say is that I don't think that it was reasonable for First Response to use living costs based on statistics for Mr P, given Mr P's previous difficulty with credit and the length of time this agreement ran for. So I've taken a look at the bank statements Mr P has provided to us with a view to getting an idea of what his regular living costs were at the time he applied for this agreement.

Having done so, the information in the bank statements does appear to show that when Mr P's committed regular living expenses and the credit commitments First Response knew about were deducted from what he received each month, he did have the funds, at the time at least, to sustainably make the repayments due under this agreement.

I accept Mr P'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. I'm also mindful that there were payments to a debt management company on his bank statements. I've asked Mr P what these payments were for, whether he has any further information on them and whether he can provide a copy of his credit file so I can see whether First Response ought to have been aware of any existing financial difficulty.

However, despite having been provided with an extended period, Mr P has not only been unable to provide me with a copy of his credit file, he's also said that he doesn't have any information on the payments to the debt management company and he's not told me anything about these payments either.

In these circumstances, it's difficult for me to agree that any of this made the payments unaffordable or agree that the payments to the debt management company ought reasonably to have led to First Response taking a different decision on lending to Mr P either.

Overall and having carefully considered everything, while I'm not persuaded that First Response carried out reasonable and proportionate checks, I don't think that carrying out further checks would have shown it that it was unfair to provide these funds, or enter into this agreement with Mr P. I'm therefore satisfied that First Response didn't act unfairly towards Mr P when it entered into this agreement with him.

In reaching this conclusion I've also considered whether the lending relationship between First Response and Mr P might have been unfair to Mr P under section 140A of the Consumer Credit Act 1974 ("CCA").

However, for the reasons I've explained, I don't think First Response irresponsibly lent to Mr P or otherwise treated him unfairly in relation to this matter. And I haven't seen anything to suggest that section 140A CCA or anything else would, given the facts of this complaint, lead to a different outcome here.

I appreciate that this will be disappointing for Mr P. 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 P's complaint.

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

Jeshen Narayanan
Ombudsman