

Complaint

Mrs F complains that First Response Finance Ltd ("First Response") unfairly entered into a hire-purchase agreement with her. She's effectively said that the payments to the agreement were unaffordable and so it shouldn't have been provided to her.

Background

In August 2018, First Response provided Mrs F with finance for a used car. The cash price of the vehicle was £2,750.00. Mrs F received a part exchange value of £400 for her existing vehicle and applied for finance to cover the remaining £2,350.00 she needed to complete her purchase.

As a result she entered into a 42-month hire-purchase agreement with First Response. The loan had interest, fees and total charges of £2,161.64 and the total amount to be repaid of £4,511.64 (not including Mrs F's part exchange) was due to be repaid in 42 monthly instalments of £107.42.

Mrs F's complaint was considered by one of our investigators. She didn't think that First Response had done anything wrong or treated Mrs F unfairly. So she didn't recommend that Mrs F's complaint should be upheld.

Mrs F 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 Mrs F's complaint.

Having carefully thought about everything I've been provided with, I'm not upholding Mrs F's complaint. I'd like to explain why in a little more detail.

I think that it would be helpful for me to set out that we consider what a firm did in order to understand whether the repayments to any credit were affordable (asking it to evidence whatever checks it did) and determine whether this was enough for the lender to have made a reasonable decision on whether to lend.

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.

That said, I think that it is important for me to explain that our website does not provide a set list of mandated checks that a lender is expected to carry out on every occasion – indeed the regulator's rules and guidance did not and still do not mandate a list of checks to be used. It simply sets out the types of things that a lender could do. It is a for a lender to decide which checks it wishes to carry out, although we can form a view on whether we think what done was proportionate to the extent it allowed the lender to reasonably understand whether the borrower could make their payments.

Furthermore, if we don't think that the lender did enough to establish whether the repayments to a credit agreement were affordable, this doesn't on its own meant that a complaint should be upheld.

We would usually only go on to uphold a complaint in circumstances were we were able to recreate what reasonable and proportionate checks are likely to have shown – typically using information from the consumer – and most importantly this recreated check clearly shows that the repayments in question were unaffordable and had the potential to result in significant adverse consequences for the customer.

I kept this in mind when deciding Mrs F's complaint.

First Response says it agreed to this application after it completed an income and expenditure assessment on Mrs F. During this assessment, Mrs F provided details of her monthly income which it verified with payslips. It says that it also carried out credit searches on Mrs F which did show she had had previous difficulties with credit in the form of a, what it considered to be historic, default. But she didn't have much in way of active credit and what she did have was relatively well maintained.

In its view, when the amount Mrs F already owed plus a reasonable amount for Mrs F's living expenses, based on statistical data, were deducted from her monthly income it considered that the monthly payments were affordable. On the other hand, Mrs F says she was already struggling at the time and that these payments were unaffordable.

I've thought about what Mrs F and First Response have said.

The first thing for me to say is that I don't think that the checks First Response carried out did go far enough. First Response's searches showed that Mrs F had had significant difficulties with credit. In my view, First Response needed to take further steps to ascertain Mrs F's actual living costs, given what the credit search showed in order for its checks to have been proportionate.

As I've explained where a firm didn't carry out sufficient checks (such as First Response here), it does not automatically mean that a complaint should be upheld, as I still need to consider what reasonable and proportionate checks are likely to have shown. So I've gone on to decide what I think First Response is more likely than not to have seen had it obtained further information from Mrs F.

Bearing in mind, the term of the agreement, Mrs F's previous difficulty with credit and weighing these factors against the amount of the monthly payment here, I would have expected First Response to have had a reasonable understanding about Mrs F's regular living expenses as well as her income and existing credit commitments.

I've considered the information Mrs F has provided us with. And having done so, this information does appear to show that when Mrs F's committed regular living expenses and existing credit commitments are deducted from her monthly income at the time, she did have

the funds, at the time at least, to sustainably make the repayments due under this agreement.

As this is the case, I don't think that it would have been unfair for First Response to have concluded that Mrs F could make the payments to this agreement, notwithstanding her previous difficulty with credit, had it carried out further checks here.

I accept it's possible that Mrs F's actual circumstances at the time might have been worse than what the information she's provided shows. I know that Mrs F did go on to lose her job in 2019. But I don't think that this was something that First Response could have anticipated when it considered Mrs F's application in August 2018.

Overall and having carefully considered everything, while I don't think that First Response's checks before entering into this hire-purchase agreement with Mrs F did go far enough, I'm satisfied that carrying out reasonable and proportionate checks won't have prevented First Response from providing these funds, or entering into this agreement with her.

In reaching this conclusion I've also considered whether the lending relationship between First Response and Mrs F might have been unfair to Mrs F 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 Mrs F or otherwise treated her 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 very disappointing for Mrs F. But I hope she'll understand the reasons for my decision and that she'll at least feel her concerns have been listened to.

My final decision

My final decision is that I'm not upholding Mrs F's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs F to accept or reject my decision before 19 August 2024.

Jeshen Narayanan
Ombudsman