

The complaint

Mr L says First Response Finance Ltd, ('First Response') irresponsibly lent to him. He says he already had a vehicle on finance, and he was in arrears and defaults with other companies. He says he didn't have any spare money to pay for the car when his other outgoings were considered.

What happened

This complaint is about a hire purchase agreement that Mr L took out to purchase a car in November 2022. The vehicle had a retail price of £7,250 and Mr L borrowed the full amount. This agreement was to be repaid through 36 monthly instalments of £290.78. If Mr L made repayments in line with the credit agreement, he would need to repay a total of £10,468.08. Based on the statement of account an outstanding balance remains due. And I can see that Mr L has been paying for the finance weekly in line with his pay periods.

Mr L complained to First Response saying that it was irresponsible in lending him the money to purchase a vehicle.

First Response considered this complaint, and it didn't uphold it. It thought it'd done adequate checks, which showed that Mr L could afford the lending. It did note that Mr L had some problems repaying his existing credit in the past but, as a specialist lender in this kind of situation, it still thought it was reasonable to lend.

Mr L didn't agree with this and brought his complaint to the Financial Ombudsman Service. Our Investigator didn't uphold Mr L's complaint. She thought that First Response should have made better checks as Mr L had some credit repayment problems in the past. But if First Response had made more in-depth checks then it still would have been right to approve the lending. This is because the loan would have still looked to be affordable for Mr L. She didn't think First Response had done anything wrong when it granted the finance.

Mr L didn't agree with the Investigator. There was some further correspondence and Mr L said that he didn't think that his income was correctly assessed as he barely worked some weeks. And he also thought that his expenditures were underestimated as he paid some of his bills in cash, and these were not shown on his bank account. He said he was missing payments to his bills and borrowing from friends to make ends meet.

Because Mr L didn't agree, this matter has been passed to me to make a final decision.

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.

When someone complains about irresponsible and/or unaffordable lending, there are two overarching questions I need to consider when deciding what's fair and reasonable in all of the circumstances of the complaint. These are:

1. Did First Response complete reasonable and proportionate checks to satisfy itself that Mr L would be able to repay the credit in a sustainable way?
 - a. if so, did First Response make a fair lending decision?
 - b. if not, would reasonable and proportionate checks have shown that Mr L could sustainably repay the borrowing?
2. Did First Response act unfairly or unreasonably in some other way?

And, if I determine that First Response didn't act fairly and reasonably when considering Mr L's application, I'll also consider what I think is a fair way to put things right.

Did First Response complete reasonable and proportionate checks to satisfy itself that Mr L would be able to repay the credit in a sustainable way?

There's no set list for what reasonable and proportionate checks are, but I'd expect lenders to consider things such as the amount, duration, and payments of the finance being applied for, as well as the borrowers' personal circumstances at the time of each application.

First Response has explained that it checked if Mr L was employed. It asked Mr L what his income was, and he said that it was around £1,700 a month. First Response says that it looked at a payslip to confirm his income. This showed his pay for that week and the year to date (up to November). So, it was aware of what Mr L had coming in over a reasonably long period of time.

And Mr L supplied some information about his expenditures on First Response's online portal. He provided some information about his living and housing costs. And First Response also used some information from the Office of National Statistics ('ONS') to check if these were reasonable and estimate his other living costs. It is in the regulators rules that a business can consider statistical data unless it is clear that their expenditures would be significantly different to the estimates.

First Response also checked Mr L's credit file and it has supplied the information that it obtained from this. Mr L did have some problems repaying his credit in 2020 and he defaulted on some credit at this time. There were also two more recent defaults (within the last year), but First Response didn't think the balances that Mr L owed on these was significant.

When it had done all these checks it thought that the loan was likely to be affordable for Mr L.

But Mr L would need to repay the new finance over three years. And he'd had some credit problems in the past and there were some signs that he may be having problems again. So, I think it would have been important for First Response to ensure that he could afford the repayments to the new loan. And I think it would have been proportionate to have asked more questions about Mr L's expenditure rather than, in the main, relying on averages for this and the information contained in the credit report.

So, I'm not persuaded that the checks First Response did were reasonable and proportionate. I think First Response could have checked in more detail that this further lending wasn't likely to cause him a problem going forward.

Would reasonable and proportionate checks have shown that Mr L would be able to repay the credit in a sustainable way?

I've gone on to consider what First Response would likely have found had reasonable and proportionate checks been carried out.

As I've said above, Mr L did provide some information about his expenditure, and First Response also estimated his other expenditures using ONS data. This showed that the loan would likely to be affordable for him. Because of this, I think to uphold this complaint I would need to see that any further information provided was likely to show that Mr L was having problems. Or that the expenditure amounts First Response used were very different from what Mr L spent. I've looked to see if this was the case.

As I said above, First Response did look at one of Mr L's payslips so I think it's reasonable to say the information about what he had coming in was accurate. Mr L said he was paid a lower amount some weeks but the payslip did show what he had been paid for the years so far so this was taken into account.

First Response also looked at some information from Mr L's credit report. Based on this it's clear that Mr L had some historic arrears and defaults and he'd had problems repaying two accounts more recently. However, I wouldn't have expected First Response to decline this application just because Mr L had some repayment problems. As it has said the amounts that he owed at the present time were relatively modest and he was mostly up to date with the credit he had, including the other car finance. But I would have expected First Response to take these into consideration when making their lending decision as it seems to have done.

Mr L has also provided copies of his bank statements for the period from August 2022 to October 2022 for two of his bank accounts. While I wouldn't have expected First Response to have asked Mr L for copies of these, I'm satisfied that these statements would give a good indication of what First Response would likely have taken into consideration had it asked Mr L to verify, or provide more information about, his expenditure during that specific period.

It's clear from these that Mr L is making repayments to the credit that he has. And this does include another hire purchase arrangement. But this doesn't seem to be more than the approximately £500 that First Response used in its assessment and that was shown in his credit file data. Similarly, some of his other expenditures are shown on the bank account but again these don't seem to be too far away from what was recorded in the affordability assessments First Response did.

Mr L says that this is because some of his bills were paid in cash (via his partner) and so they wouldn't necessarily have shown on his bank account. Whilst I can accept that this is the case it does mean that I'm not persuaded it would be reasonable to have expected First Response to know about these. Especially given that Mr L did have the opportunity to give more detailed information via the online portal but didn't do so.

There is some evidence that Mr L was finding his finances difficult at times. There are some missed direct debits, a modest amount of short term and high-cost credit repayments. And he does give and receive money to other parties. He says this was to repay some borrowing he'd made earlier, possibly for a car part.

But Mr L seems to be largely on top of most of his credit and bill payments, as the credit report showed. So even if I accept what Mr L now says then I don't think I can reasonably say that First Response would have been able to see this if it did a proportionate check. I don't think this is clear from the bank statements and other information provided and so I don't think that it would be right for me to say that First Response should have seen this and not lent.

So, and while I appreciate this will come as a disappointment to Mr L, I'm satisfied that, had First Response carried out reasonable and proportionate checks, I think that it's likely that would have found the finance to be sustainably affordable. And it's for this reason why I won't be asking them to refund all, or part of the payments Mr L paid, or of any interest and fees he may have been charged.

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

I haven't seen anything to make me think First Response acted unfairly or unreasonably in some other way.

My final decision

For the reasons explained above I don't uphold Mr L's complaint about First Response Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 14 November 2024.

Andy Burlinson
Ombudsman