DRN-5181788

## The complaint

Mr W complains First Response Finance Ltd (First Response) irresponsibly entered into a hire purchase agreement with him because it didn't carry out reasonable and proportionate checks to ensure the agreement was affordable for him.

## What happened

Mr W took out the hire purchase agreement with First Response in June 2020 in order to acquire a used car. The cash price of the vehicle was £7,427 and Mr W paid a cash deposit of £500. The total amount payable under the agreement was £10,991.39 (including the deposit). Mr W was to pay 61 monthly instalments of £171.99.

Mr W is represented in his complaint, but for ease of reading I'll simply refer to Mr W throughout this decision.

Mr W complained to First Response about its lending decision and First Response provided its response in July 2023. It said it felt the checks carried out were reasonable and proportionate. Also, that it made a fair lending decision based on the information it obtained. Therefore, it didn't uphold the complaint. Mr W remained unhappy and asked our service to investigate.

On 16 October 2024, I issued a provisional decision. I said:

> *We explain how we handle complaints about irresponsible and unaffordable lending on our website. I've used this approach to help me decide Mr W's complaint. First Response needed to ensure that it didn't lend irresponsibly as set out in 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 Mr W before providing it.*
>
> *In this case, there are two overarching questions that I need to answer to fairly and reasonably decide Mr W's complaint. These two questions are:*
>
> 1. *Did First Response complete reasonable and proportionate checks to satisfy itself Mr W would be able to repay the agreement in a sustainable way?*
>     - *If so, did it make a fair lending decision?*
>     - *If not, would reasonable and proportionate checks have shown Mr W would have been able to do so?*
> 2. *Did First Response act unfairly in some other way?*
>
> *<u>Did First Response complete reasonable and proportionate checks?</u>*
>
> *The rules don't set out specific checks which must be completed by lenders to assess creditworthiness. But while it is down to the firm to decide what specific checks it wishes to carry out, these should be reasonable and proportionate taking*

*into consideration the circumstances. These circumstances include (but are not limited to): the type and amount of credit being provided, the frequency and amount of repayments, the total cost of the credit and what it knew about the consumer at the time.*

*First Response have provided evidence of the checks it completed at the point of entering the agreement. It said Mr W was employed full time in a permanent role earning £1,186 after tax each month. It said it verified this using Mr W's bank statements and payslips.*

*It said he was living with his partner at the time and used 50% of her estimated income within the affordability calculation. It also said it used data from the Office of National Statistics (ONS) to estimate household spend. It calculated household disposable income of £584 and removed 25% of this to cover any unknown loss and gave a final affordability capacity of £438. It also noted he had three financial dependents.*

*First Response also completed a credit check and have provided evidence of the search carried out. It said it noted an issue with one of Mr W's credit accounts, but First Response explained when it interviewed Mr W, he said the account was being disputed. So, it didn't feel it was a cause for concern. It noted there had been defaults on accounts held by Mr W in 2017. The copy of the search it has provided doesn't show these defaults. First Response have said the defaults were settled.*

*I haven't seen evidence of other missed payments or arrears for the other credit Mr W had at the time. The active credit included four store/credit cards, two fixed term credit agreements, a current account with an overdraft and a mail order account. The revolving credit balance was around £7,219 and the non-revolving credit balance was around £13,689.*

*Overall, I think First Response obtained sufficient information to be able to assess whether Mr W would be able to repay the loan without experiencing adverse consequences. However, this doesn't necessarily mean it made a fair lending decision.*

*<u>Did First Response make a fair lending decision?</u>*

*Firstly, I note First Response obtained bank statement information which showed Mr W's expenditure. I understand it was obtained through open banking. However, it seems First Response only used this information to verify Mr W's income. I think it ought to have more fully considered this information as it was information it held about Mr W.*

*Additionally, these statements did show some of Mr W's expenditure and it would have been appropriate to review this rather than relying on the ONS data to estimate household spend. In saying this, I'm mindful of Mr W's net monthly income and I've thought about this compared to the size and duration of the loan, the size of the monthly repayments and his other credit commitments.*

*Having looked at the statements, it does seem this agreement was affordable for Mr W based on the income and outgoing commitments. Mr W had income from his salary and there were also universal credit payments from the Department of Work and Pensions. The statements show, after making the repayments Mr W would have been left with around £250 disposable income.*

*However, this isn't enough in itself to show it was responsible to lend because the agreement also needed to be sustainable. And I think there were clear indicators Mr W might not be able to sustainably make the repayments. Notably, the statements showed a significant spend on gambling in the months leading up to the agreement. Mr W spent around £1,274 in March 2020, £742 in April 2020 and £252 in May 2020.*

*I appreciate the gambling transactions did reduce in the period leading up to the agreement and I also note Mr W had some winnings in March 2020 and April 2020 which arguably might have led to a higher spend. However, I'm conscious Mr W was in his overdraft whilst continuing to spend a significant amount on gambling. I note at the time of entering the agreement, the credit search carried out by First Response showed high utilisation for the overdraft. Therefore, there were signs Mr W was beginning to rely on credit to gamble, which put him at risk of not being able to repay further credit in a sustainable manner.*

*Overall, I don't think First Response ought to have lent to Mr W. Although I think First Response obtained sufficient information to assess whether Mr W could sustainably afford the repayments under the agreement, I don't think it made a fair lending decision. This is because I can't say it gave suitable and appropriate consideration to Mr W's financial circumstances as demonstrated by the statements. And there would have been clear indicators the agreement might not be sustainable had it done so.*

*First Response have said Mr W has been able to sustainably make the repayments under the agreement because he has kept up to date with them. In the questionnaire submitted by Mr W's representatives, Mr W confirmed he struggled to meet bills and commitments and had to borrow money from friends and family. I have reviewed his credit file and I can see he missed payments between November 2020 and March 2021 for an unsecured loan. He also had a credit card in which he exceeded the credit limit in November 2020, December 2020 and January 2021. He had other credit cards with increased utilisation (nearing the credit limit). Therefore, I'm satisfied there is evidence to show this agreement impacted Mr W's ability to meet his financial commitments and First Response should take steps to put things right.*

<u>*Did First Response act unfairly in some other way?*</u>

*Having considered the file, I'm not persuaded First Response acted unfairly in some other way. I've also considered whether the relationship might have been unfair under Section 140A of the Consumer Credit Act 1974. However, I'm satisfied the redress I have directed below results in fair compensation for Mr W in the circumstances of his complaint. I'm satisfied, based on what I've seen, that no additional award would be appropriate in this case.*

I gave both parties the opportunity to respond. Mr W accepted my provisional decision. However, First Response didn't. In summary, it said:

- Mr W has continued to repay this agreement without issue, and just last week made a partial settlement payment of £1,000. It argues this is unusual given Mr W said he was lent to irresponsibly.

- The provisional decision agrees the lending was affordable, but just not sustainable based on his predicted gambling habits. It says this was discretionary spending, but proposes it was the gambling, as opposed to the lending, that might have caused some issues in the later years. He needed this vehicle for day to day living.

- It had no reason to believe Mr W had an addiction to gambling, whereby he wasn't able to stop spending. It said this would have been quite an assumption to make solely based on the fact that he was using his overdraft facility.

- Mr W could have increased his gambling whilst he didn't have a commitment to a hire purchase agreement, and based on his credit history, it would assume he would reduce the gambling and choose to pay his hire purchase instead. His credit history at the time of application supported his excellent intent and commitment to repay credit.

- First Response are specialist lenders, so it is not unusual to see consumers utilizing the overdraft facility (as long as it is being used within its terms).

As both parties have now had the opportunity to comment, I have proceeded 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.

Having done so, I see no reason to depart from the conclusion I reached in my provisional decision.

I want to note First Response have updated the submission it made to our service with regards to the information it had from Mr W's application information and the checks it carried out. For example, First Response explained Mr W actually declared income of £1,695.29 after tax each month and they calculated a final affordability capacity of £399.09. I have considered the information submitted, and I'm satisfied it doesn't change the overall outcome. This is because I also had other evidence, such as the agreement itself and the open banking, which I relied on in my provisional decision.

Based on First Response's submission, I can appreciate it doesn't accept my conclusion that there were indicators this agreement was likely to be unsustainable for Mr W. I appreciate First Response's comments about the gambling transactions and Mr W's wider financial circumstances. And I note it's not unusual for gambling transactions to be considered discretionary spend or for consumers to be utilising their overdrafts. I appreciate its argument that it could expect Mr W to reduce his gambling spend once he entered into the hire purchase agreement taking into consideration his credit accounts were being maintained at the time.

I've thought carefully about First Response's submission. However, I remain satisfied there were indicators the agreement was unlikely to be sustainable taking into account all of Mr W's circumstances at the time. This is largely for the same reasons I explained in my provisional decision. I understand the credit was provided so Mr W could acquire a car, but such lending must still be affordable and sustainable. Whilst I have noted the agreement might have seemed affordable based on outgoings such as rent, bills, and food, it is the sustainability of the agreement which is significant to the outcome of this decision.

Notably, in the months leading up to the agreement Mr W had a significant number of gambling transactions and was utilising his overdraft. In addition to this, I note he had other active credit including credit cards and store cards and was paying towards an unsecured loan. Whilst he wasn't utilising all of his available credit balance, the credit search showed Mr W had a revolving credit balance of around £7,219.

As mentioned in my provisional decision, I have given thought to the pattern of Mr W's gambling spend and note First Response had information about the significant gambling transactions in the period leading up to the lending. Not only this but First Response could see from the information it had that Mr W was in his overdraft whilst gambling. I agree it isn't unusual to see gambling transactions or for consumers to be utilising their overdraft. But I think all the information First Response had about Mr W's financial situation suggested Mr W had a problem controlling his gambling spend.

Mr W received financial support in respect of universal credit to supplement his lower income. The statement information showed Mr W was in his overdraft with increased usage around times of significant gambling spend. There were numerous transactions which were clearly for gambling and for a significant sum which persisted throughout the months. Due consideration of this information would have indicated Mr W was relying on credit in order to support his gambling spend.

Thinking about all of the circumstances, First Response had statement information before agreeing to lend and I think this contained clear signs Mr W had a problem controlling his gambling spend which was likely to impact his ability to sustainably meet the repayments. Whilst I acknowledge Mr W was keeping up with repayments on his credit commitments as shown by the credit search, this doesn't mean there wasn't a problem. I'm satisfied the problem was notable from the statement information First Response had at the time. So, I remain satisfied there were clear indicators this agreement was unlikely to be sustainable for Mr W.

I also acknowledge Mr W has recently made a partial settlement of £1,000. I must consider whether the lending decision was a fair one based on the information First Response had at the time. Additionally in my provisional decision, I set out the adverse information I had seen on Mr W's credit file after he entered the agreement. It's not unusual for consumers to prioritise repayments towards a car finance agreement. Whilst I acknowledge Mr W might recently have paid a partial settlement, I don't think First Response should have lent to Mr W and his credit file shows he did experience difficulties meeting his financial commitments.

Therefore, I see no reason to depart from the conclusion I reached in my provisional decision. I remain of the view First Response did not make a fair lending decision because there were clear indicators the agreement was likely to be unsustainable for Mr W.

**Putting things right**

As First Response shouldn't have approved the lending, I don't think it's fair for it to be able to charge any interest or charges under the agreement. Mr W should therefore only have to pay the original cash price of the car, being £7,427. Anything which has been paid in excess of that amount should be refunded as an overpayment.

In the outcome issued by our Investigator, they said the deposit should be refunded. For clarity, the deposit should be treated as a payment towards the agreement. In this sense, it does not need to be refunded separately providing it is accounted for by First Response when it considers the overall amount which has been paid towards the agreement.

Therefore, to put things right First Response Finance Ltd should:

- End the agreement with nothing further to pay and, as the purchase price of the car has already been paid, transfer ownership of the car to Mr W.

- Refund any payments paid towards the agreement in excess of £7,427, representing the original cash price of the car. It should add 8% simple interest per year* from the date of each overpayment to the date of settlement.

- Remove any adverse information recorded on Mr W's credit file regarding the agreement.

*If First Response considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr W how much it's taken off. It should also give Mr W a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

## My final decision

I'm upholding this complaint and First Response Finance Ltd should put things right in the way outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 17 January 2025.

Laura Dean
**Ombudsman**