DRN-5454453

The complaint

Mrs B, through her representative, complains that FIRST RESPONSE FINANCE LIMITED ("First Response") lent to her by approving a car finance agreement she could not afford. Mrs B said that it did not carry out proportionate checks and if it had it would not have approved the car finance for her.

What happened

Mrs B took a hire purchase agreement from First Response on 6 September 2020. The capital sum was for £9,288.99 and the deposit paid was £788.99. The amount of credit was £8,500 and the total to repay was £15,145.50 with repayments of £292.99 for 49 months. For ease of reading, I will round the figures up or down in the decision itself. I understand that the finance was paid off and Mrs B retained possession of the car.

After Mrs B had complained and received the final response from First Response in July 2024, her complaint was referred to the Financial Ombudsman. One of our investigators explained why she considered First Response carried out proportionate checks and was not going to ask it to do anything further.

The unresolved complaint was passed to me to decide as Mrs B disagreed with our investigator.

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.

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 B's complaint. Having carefully thought about everything I've been provided with; I'm not upholding Mrs B's complaint.

First Response needed to make sure that it didn't lend irresponsibly. In practice, what this means is that it needed to carry out proportionate checks to be able to understand whether any lending was sustainable for Mrs B 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 has explained what it did to verify Mrs B's income when she applied - it obtained a payslip dated 30 July 2020. That payslip shows she was receiving sick pay and had deductions for unpaid sick leave and unpaid leave. This was during the Covid 19 pandemic and in my view was one alert First Response ought to have noted. This may have been cleared up on the subsequent telephone calls it had with Mrs B before any agreement was signed. I do not know.

That payslip showed her net income after tax and deductions was £1,152, and her gross pay was shown as £1,518. Her benefits came to £101 from the document I have been sent as part of First Response's file. I've cross referenced with the documents from Mrs B's representative to be clear that her salary received in July 2020 was £1,152, and the benefit figure was £111 and paid to her each two weeks which would have been the equivalent of around £240 each month. And those documents show me that her net salary was around £1,200 a month on average for June and July 2020 but less for August 2020.

But First Response's submissions to us indicate that it used an income figure – given to it by Mrs B – of £1,835. This may have linked with a note where I can see Mrs B had said she'd taken on some additional agency work. So, being prudent and looking to the regulatory obligation to ensure that these repayments were sustainable over the term of the agreement – here 49 months – then I consider using that higher income figure of £1,835 when her net salary for July 2020 had been £1,152 was inappropriate. I think her salary including benefits was more like £1,500 each month.

First Response has said it used statistical data for the general expenditure Mrs B was likely to face. That would have been a proportionate approach if its other information about her had all been satisfactory. But I don't think it was. I've already made some observations surrounding the income levels Mrs B was one and that it seems First Response may have used too high a figure for her net and regular salary.

In addition, I have a copy of the credit search First Response obtained which showed Mrs B had had 11 defaulted accounts in 2018 and 2019 one of which had been a utility company. The most recently defaulted account had been in March 2019 and had been a credit card. That was about 18 months before Mrs B had applied to First Response.

I have seen from the account notes that it had spoken to Mrs B more than once during the relatively lengthy application process before approving the finance. Mrs B had explained that her defaulted accounts from two years before had stemmed from a period of unemployment but her financial situation had improved since then.

The credit file First Response obtained (plus its notes) showed that at the time of the search in September 2020 Mrs B had open two unsecured loans, two current accounts and a communications account (likely a phone) which Mrs B had explained had always been one month in arrears since her unemployed episode. The notes First Response had made listed seven defaulted accounts for which various small repayment sums were noted next to them. This was confirmed by Mrs B in one of the calls it had with her. All these it had in one column which added up to around £454 a month. This is the figure it used for Mrs B's monthly credit commitment costs.

As mentioned in the previous paragraph, First Response also had made some additional notes from one of those calls which show Mrs B was paying down four of the defaulted accounts through debt collectors at £5 a month each (£20 in total) plus £25 to a credit union loan. Mrs B had told First Response she had a high cost instalment loan and so it knew about that loan because Mrs B had told it.

I have thought about First Response's submissions surrounding it catering for the sub-prime market and that applicants with adverse credit history would not necessarily be refused car finance. But I have balanced that with the fact that dealing in that market it would have been on notice as to individuals who were finding it difficult to manage. And the evidence I have seen which was obtained by First Response leads me to think that in Mrs B's situation there was too much adverse history and too much in the way of alerts for me to be satisfied that it carried out proportionate checks – even with the telephone calls. No call recordings have been supplied to us. And I doubt that it would have retained copies of those calls from almost five years ago.

One way to have checked the situation and to have gained further details of her financial circumstances was to have obtained bank account statements. It's not the only way but it's a convenient method.

But having reviewed the ones sent to me from Mrs B's representative I am satisfied that had First Response reviewed them in 2020 it would have concluded that Mrs B was able to afford the payments of just under £293 each month.

Reading Mrs B's representative's responses to our investigator's view then I've answered the points here:

- I've addressed the point about the high cost instalment loan earlier and that First Response had factored that into its figures surrounding her credit commitment cost each month. So, I consider that answers that point raised by Mrs B's representative.
- I've addressed my views on the defaulted accounts earlier in the decision.
- Mrs B's representative's point relating to her partner at the time lending to her after she'd taken out the finance is not of relevance to me when I am being asked to assess the situation in the lead up to the finance agreement being signed.
- Mrs B's representative has said: her expenditure was greater than her income in the months leading up to the finance agreement: I have reviewed her bank account statements to consider this.

What I have done is look to see if Mrs B's receipt of monies was enough to have covered the monthly credit commitment figure of £454, plus the car cost and living expenses. And I consider that had First Response looked at them it would have thought that she did.

First Response would have seen that Mrs B had additional salary sums which it would have been reasonable for it to have viewed as being income from the Agency work she'd told them about. For example (and this is not a complete list – just examples): £840 on 12 June 2020, cash on 15 June 2020 of £150, wages on 31July 2020 for £90 and again wages 7 August 2020 for £274.

Mrs B had an additional £381 a week regularly coming into her account as well. £381 a week is a further £1,651 a month.

In fairness to Mrs B, I'll set out a few lines from her representative's letter of complaint to First Response in 2024 which included:

> '*Please note that our client received regular payments from* [S Ltd] *however, this was their uncle's income as he was and still lives in the same household and did not have a bank account until recently in 2024. Our client would withdraw this money for their uncle.'*

Since then, we've received no additional information to substantiate this explanation and although Mrs B's representative has said the payments into the account did not constitute income for her, First Response can't reasonably have been expected to have known that. In the circumstances it would have been reasonable for it to have assumed at the time of deciding to lend to Mrs B that those payments into the account were income.

Without any further explanation or proof, then I consider it highly likely that First Response would have counted it as part of her income.

And to further demonstrate that I am not persuaded that the money was someone else's to whom she passed it on, is because I cannot see that Mrs B regularly paid that money over to the other person, as her cash withdrawals do not coincide with the weekly payments from S Ltd, either in amounts or in timing. And although I accept that First Response would not have seen any bank transactions in October 2020, because the bank statements have been sent to me, I *did* look forward to October 2020 to see if that pattern of payments continued. I have seen that S Ltd paid Mrs B over £3,000 and no cash withdrawal was made to pay that to the person to whom Mrs B's representative says it ought to have been paid. Mrs B appears to have spent the money.

So, I consider that even if First Response had carried out additional checks - over and above the telephone calls to Mrs B – still it would have been satisfied that she could afford the car. And I do take account of the fact that Mrs B was acquiring an asset – this was not a cash loan. Likely she needed the car to facilitate her lifestyle and her work.

I've also considered whether First Response acted unfairly or unreasonably in some other way given what Mrs B has complained about, including whether its relationship with Mrs B might have been unfair under Section140A Mrs B Credit Act 1974.

However, for the reasons I've already given, I don't think it lent irresponsibly to Mrs B or otherwise treated her unfairly in relation to this matter. I haven't seen anything to suggest that Section 140A would, given the facts of this complaint, lead to a different outcome here.

My final decision

My final decision is that I do not uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 1 September 2025.

Rachael Williams
Ombudsman