

Complaint

Mr R complains that First Response Finance Limited (“First Response”) unfairly entered into a hire-purchase agreement with him. He’s said he shouldn’t have been lent to given his previous credit history and he was struggling with a gambling addiction.

Background

In September 2024, First Response provided Mr R with finance for a used car. The cash price of the vehicle was £7,498.00. Mr R paid a deposit of £250 and borrowed the remaining £7,248.00 he required to complete his purchase by entering into a 49-month hire-purchase agreement with First Response.

The agreement had interest, fees and total charges of £3,725.55 and the total amount to be repaid of £10,973.55 (which does not include Mr R’s deposit) was due to be repaid by 49 monthly instalments of £223.95.

In October 2024, Mr R complained that the agreement was unaffordable and so First Response should never have entered into it with 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. Nonetheless, as Mr R had made it aware of his gambling it was prepared to unwind the agreement as long as Mr R agreed to the car being returned within 30 days of the final response. Mr R remained dissatisfied and referred his complaint to our service.

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

Mr R 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 R’s complaint.

Having carefully thought about everything I’ve been provided with, I’m not upholding Mr R’s complaint. I’d like to 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 R 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 R provided details of his monthly income, which it verified against a copy of a payslip¹. It says it also carried out credit searches on Mr R which it accepts had adverse information but wouldn't have been concerning as it provides credit to customers who previously have had difficulty.

Furthermore, it says that the credit search also showed Mr R's more recent credit commitments were being more reasonably maintained. In its view, when reasonable repayments to the amount owing plus a reasonable amount for Mr R's living expenses based on statistical data, were deducted from his monthly income, it considered that the monthly payments were affordable for him.

On the other hand, Mr R says he shouldn't have been lent to given his previous credit history and he was struggling with a gambling addiction.

I've thought about what Mr R and First Response have said.

The first thing for me to say is that much like our investigator, I don't think it was reasonable for First Response to have relied on assumptions that Mr R would be able to meet his living costs simply because he lived at home with parents. In my view, given Mr R's previous difficulty with credit, the cost of this credit and the term of the agreement, I think that First Response needed to take further steps to find out more about Mr R's actual living costs. As I can't see that First Response did this, I don't think that First Response's checks did go far enough.

As First Response didn't carry out sufficient checks, 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 Mr R. As I've explained, bearing in mind the length of time of the agreement and the amount of the monthly payment, I would have expected First Response to have had a reasonable understanding about Mr R's regular living expenses as well as his income and existing credit commitments. I've therefore considered the information Mr R has provided to get an idea of what First Response is likely to have found out had it done further checks.

I wish to be clear in saying that I'm not going to use the information Mr R has provided to carry out a forensic analysis of whether the repayments to his agreement were affordable. I say this particularly as Mr R's most recent submissions are being made in support of a claim for compensation and I need to keep in mind that any explanations he would have provided at the time are more likely to have been with a view to persuading First Response to lend, rather than highlighting any unaffordability.

Equally, what First Response needed to do was supplement the information it had on Mr R's credit commitments, with some further information on his actual living costs rather than assume Mr R would have sufficient funds left over to meet them. The information Mr R has provided does appear to show that when his committed regular living expenses and existing

¹ First Response hasn't provided a copy of the payslip it obtained. However, the information Mr R has provided shows that his income was around the amount First Response believed it to be.

credit commitments were deducted from his monthly income, he did have the funds, at the time at least, to sustainably make the repayments due under this agreement.

I accept that Mr R's actual circumstances at the time were worse than what the information about his committed living costs and existing commitments to credit shows. For example, having looked at the copies of the bank statements Mr R has provided us with now, I can see significant gambling. First Response has said that had it seen this it wouldn't have lent to Mr R and as he disclosed shortly after taking out the agreement, it offered to take the car back.

However, what I need to think about here is what were Mr R's actual committed living costs and what were his existing regular credit commitments? – given this was a first agreement and Mr R was being provided with a car, which he would not be able to gamble, rather than cash.

Bearing in mind checking bank statements wasn't the only way for First Response to have found out more about Mr R's living costs – it could have obtained copies of bills or other evidence of payment etc – I don't think that proportionate checks would have extended into obtaining the bank statements which Mr R has now provided us with. The fact that some other lenders may have requested equivalent information and declined to lend to Mr R doesn't mean that all lenders were required to do this.

In my view, proportionate checks certainly wouldn't have gone into the level of granularity whereby First Response ought reasonably to have picked up on Mr R's gambling. Furthermore, I also think that First Response's offer to take back the car after it found out about Mr R's gambling was reasonable. Indeed, where the agreement is live (and especially when it is in the early stages) a lender is usually expected to recover the car financed rather than provide an interest free loan. This is especially where the customer says that they don't have the funds to make payments.

I know that Mr R has queried how it is possible for us not to uphold this complaint when he had a separate complaint upheld by an ombudsman just before he made this application to First Response. I can to some extent understand why Mr R might find it strange that he has a different outcome on this complaint from his other one.

But it's important for me to explain that we consider complaints on an individual basis and looking at the individual circumstances. And what will constitute a proportionate check will very much depend on the particular circumstances of the individual application. A proportionate check, even for the same customer, could look different for different applications.

Furthermore, what a lender would learn about a prospective borrower had proportionate checks been carried out would also be determined by what the lender can reasonably be expected to have found out about the borrower in the first place. So caution should be exercised when comparing cases.

It may also explain that I am not bound by the outcomes reached by ombudsmen on different cases. Ultimately, I'm required to consider the facts of a case and reach my own conclusion. So the final decision on Mr R's other case cannot and does not bind me into reaching the same conclusion on this case. That said, consistency is important and with a view to providing some clarity and reassurance to Mr R, it might help for me to explain that there are some key differences between this complaint and Mr R's other one.

Firstly, having looked at Mr R's other case, it's clear that complaint concerned an agreement taken out a number of years before this one therefore and much closer to the time he had

most of his previous difficulties repaying credit. These differing facts not only impacted on what it would have been proportionate for the lender to have checked in that case but also what it would have found out about his ability to make his payments in that case at the relevant time.

In this case, bearing in mind the circumstances and while noting that by this stage the vast majority of Mr R's previous difficulty with credit was historic, I've explained that First Response needed to find out more about Mr R's actual committed expenditure, rather than using estimates of this. Furthermore, I've also explained why Mr R's actual committed living expenses aren't the reason why he might have had difficulty meeting his monthly payments here.

Whereas in Mr R's other case, the deciding ombudsman determined the lender needed to obtain even more information given the proximity of Mr R's previous difficulty and that it obtaining the missing information, in that case, would more likely than not have resulted in it deciding against lending to the customer.

Therefore, while I'm not required to replicate the outcomes reached by our other ombudsmen, nonetheless I don't consider that my answer here is incompatible or inconsistent with the final decision Mr R received on his other case, notwithstanding the differing outcomes.

In reaching my conclusions, I've also considered whether the lending relationship between First Response and Mr R might have been unfair to Mr R 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 R 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.

Overall and having carefully considered everything, given what I think further enquiries into Mr R's living expenses are likely to have shown First Response, while I don't think that First Response's checks before entering into this hire purchase agreement with Mr R did go far enough, I'm satisfied that carrying out reasonable and proportionate checks won't have stopped First Response from providing these funds, or entering into this agreement with Mr R. So I'm not upholding this complaint.

I appreciate that this will be disappointing for Mr R. But I hope he'll understand the reasons for my decision and at least consider that his concerns have been listened to.

Although I'm not upholding this complaint, I'd like to remind First Response of its ongoing obligation to exercise forbearance and due consideration in relation to Mr R's account, notwithstanding the fact that he has rejected its offer to take back the car at no cost. While this doesn't preclude First Response from exercising its rights under the agreement, I'd add that Mr R may be able to complain to us – subject to any jurisdiction concerns – should he be unhappy with any actions in relation to exercising forbearance going forward.

My final decision

My final decision is that I'm not upholding Mr R's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 19 August 2025.

Jeshen Narayanan
Ombudsman