

Complaint

Ms M 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 May 2018, First Response provided Ms M with finance for a used car. The cash price of the vehicle was £7,000.00. Ms M paid a deposit of £2,000.00 and applied for finance to cover the remaining £5,000.00 she needed to complete her purchase.

As a result, she entered into a 36-month hire-purchase agreement with First Response. The loan had interest, fees and total charges of £2,672.32 and the balance to be repaid of £7,672.32 (which does not include Ms M’s deposit) was due to be repaid in 36 monthly instalments of £213.12.

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

Ms M 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 Ms M’s complaint.

Having carefully thought about everything I’ve been provided with, I’m not upholding Ms M’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've kept this in mind when deciding Ms M's complaint.

First Response says it agreed to this application after it completed an income and expenditure assessment on Ms M. During this assessment, Ms M provided details of her monthly income which it verified with copies of bank statements and benefit statements requested from Ms M.

First Response also says that it carried out credit searches on Ms M which did show she had had previous difficulties with credit in the form of what it considered to be historic defaults. 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 Ms M already owed plus a reasonable amount for Ms M'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, Ms M says she was already struggling at the time and that these payments were unaffordable.

I've thought about what Ms M 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 Ms M had had significant difficulties with credit. In my view, First Response needed to take further steps to ascertain Ms M's actual living costs, given what the credit search showed in order for its checks to have been proportionate. This is particularly as it had already requested copies of Ms M's bank statements and had them to hand.

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 Ms M.

Bearing in mind, the term of the agreement, Ms M'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 Ms M's regular living expenses as well as her income and existing credit commitments.

In order to get an idea of what First Response is likely to have found out had it done more here, I've considered what the bank statements Ms M provided to First Response at the time of her application showed. Having considered this information, I do have concerns about the sheer amount of payments to debt collection agencies that were going from Ms M's account.

However, the amount of Ms M's discretionary spend, the lack of CCJs recorded against her which suggests that she was able to pay more when she needed to and the fact that Ms M was paying a cash deposit of £2,000.00 are also factors that I need to consider here. In my view, these factors leave me of the view that this is a case of whether First Response was reasonably entitled to accept the credit risk Ms M's application presented, rather than it being the case that Ms M's situation was so obviously distressed that she shouldn't have been lent to.

I should also make it clear that it isn't for me to substitute my judgement for First Response's and determine whether I would have lent to Ms M based on all the information before me. In other words, it's not for me to re-underwrite Ms M's application. What I'm required to decide here is whether the decision that First Response took to lend to Ms M was unreasonable.

Having considered everything and weighed it up in the round, I think that First Response was reasonably entitled to accept the credit risk of Ms M's application. I don't think that it accepted an application that was obviously unaffordable, or that would cause significant harm, given Ms M was purchasing a car which she required. To be clear, I'm not making the finding that it always be the case that providing car finance to a customer with previous difficulty cannot and will not cause harm.

It's my finding that, in this case, First Response considered that it was prepared to accept the risk of lending to Ms M, notwithstanding the fact that she may not have repaid others, in circumstances where it looks like she could, on the face of things at least, paid more than she was had she wished to do so. Bearing this in mind and the fact that Ms M was paying a deposit equivalent to almost a years' worth of monthly payments, I'm just about persuaded that First Response's decision to lend wasn't unreasonable.

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

Overall and having carefully considered everything, while I don't think that First Response's checks before entering into this hire-purchase agreement with Ms M 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.

I've also thought about the fact that Ms M did end up having difficulty making her payments after the commencement of the pandemic. Having reviewed First Response's records of contact with Ms M, I can see that First Response entered into payment plans with Ms M as a result.

These payment plans were designed to bring Ms M's arrears up to date as she wished to keep the car. I can also see that First Response went through income and expenditure assessments with Ms M to ensure that the payments on these plans weren't too much or more than she could afford pay either.

The available information shows that this action had the desired effect as Ms M was able to repay the balance on the agreement in full and ahead of schedule after she received benefit back payments. So I'm satisfied that First Response did take action and offered some help

and support when Ms M got in touch to explain that she was having difficulty making her payments and this help allowed her to stay in the car as well as repay her agreement.

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms M to accept or reject my decision before 7 July 2025.

Jeshen Narayanan
Ombudsman