

The complaint

Ms M complains through a representative that First Response Finance Ltd ("First Response") provided her with a hire purchase agreement that wasn't affordable.

What happened

In March 2021, First Response provided Ms M with a hire purchase agreement for a used car. The retail price of the vehicle was £4,695 and Ms M paid a £295 deposit. This led to her financing the remaining £4,400 which was to be repaid over 48 monthly repayments of £165.07. The agreement had interest and charges of £3,523.36 and if Ms M repaid the finance in line with the credit agreement, she would've repaid a total of £8,218.36. The agreement was repaid in March 2023.

First Response didn't uphold the complaint because its checks showed the loan to be affordable. Ms M's representative then referred the complaint to the Financial Ombudsman. Ms M's complaint was then considered by an investigator, who didn't uphold the complaint saying proportionate checks had been carried out which showed the loan to be affordable.

Ms M's representative didn't agree saying the Debt Relief Order (DRO) Ms M had been in ought to have led to further checks and had further checks been conducted First Response wouldn't have lent to Ms M.

These comments didn't change the investigator's assessment and so the complaint has been passed to me for a decision. I then issued a provisional decision explaining the reasons why I was intending to uphold Ms M's complaint. Both parties were asked to provide any further submissions as soon as possible, but in any event, no later than 30 April 2025.

Ms M through her representative agreed with the provisional findings and didn't have any further submissions to make. First Response didn't agree with the provisional findings saying;

- As a specialist lender it isn't unusual for there to be some adverse payment information in a credit check.
- The DRO was historic and so wasn't enough of a concern to have prompted further checks or to have declined the application.
- As a result of being in a DRO the accounts impacted by it were no longer an issue.
- The bank statements provided showed no returned direct debits or anything else to suggest that Ms M wasn't managing her finances.
- Ms M applied for a personal loan with First Response in July 2022, and the credit search carried out at that time, showed the agreement didn't lead to further indebtedness.

An extract of the provisional findings follows this in smaller font and forms part of this final decision.

What I said in my provisional decision:

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 upholding Ms M'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 Ms M 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.

I'm sorry to hear of the mental health problems that Ms M has experienced and the recent information she has disclosed about her health. I do hope she is getting the help and support that she needs. First Response knew Ms M was in receipt of benefits and received £1,293 each month. This information was confirmed by Ms M on a telephone call, plus First Response collected a benefits award notice as well as a bank statement showing the benefits being received into her account. I'm satisfied the checks into Ms M's income were proportionate and reasonable.

First Response also made some enquires about what Ms M was paying for rent towards a housing association as well as her council tax payments. For the remaining living costs First Response utilities data from the Office of National Statistics. After carrying out this check, it believed Ms M had around £544 per month in disposable income. First Response then built in a buffer of 25% of it used a final figure was £408. The finance therefore appeared affordable.

As part of First Response's assessment, it carried out a credit search and it has provided a summary of the results that it received. The summary shows the only active accounts Ms M had were for electric, gas and a mail order account – and these were up to date.

However, Ms M's representative raised the DRO and to be clear, I'm satisfied First Response was fully aware of it when it granted the finance. Ultimately, it has concluded that the debts included with the DRO had been written off and so didn't need to be repaid. And as her active accounts were up to date, there weren't any prompts to look into Ms M's details more closely. Although, it did say, to add an extra layer of checking it spoke to Ms M over the phone about her application.

Whereas, Ms M's representative says the DRO ought to have prompted further checks. I've thought about both of these arguments, and I am, in the circumstances of the complaint, satisfied that the DRO ought to have prompted further checks by First Response because this was clearly impaired credit history which ought to have facilitated a closer look at Ms M's outgoings especially because it knew she was on a fixed income.

The DRO was completed in November 2018 – so just over two years before the finance was granted. And while, as First Response has pointed out, Ms M's active accounts may well have been well maintained the DRO would've had significant impact on Ms M's ability to obtain any other credit and as a result of the DRO finishing Ms M would've had some debt written off.

First Response was in effect, lending to a customer, who it knew was on a limited and fixed income and who had previously completed a DRO and had had some debt written off. This adverse payment information ought to have prompted First Response to take a closer look at Ms M's non-discretionary outgoings.

First Response could've gone about looking at Ms M's outgoings in more detail a number of ways: it could've, asked for evidence from Ms M about her bills, or any other documentation it felt it may have needed. Or, as I've done here reviewed the bank statements Ms M has provided. This didn't, and doesn't mean that, First Response had to undertake a full financial review of Ms M's circumstances, merely it just needed to obtain a better idea of what her living costs were.

I accept had First Response conducted proportionate checks it may not have seen all the information that I have seen. But, in the absence of First Response conducting a proportionate check I do think it's fair and reasonable to consider the bank statements that I now have access to.

It is also worth saying here that First Response already had a fairly good idea of her income because this was checked with a bank statement and a benefit notice. So, I don't think First Response needed to look at or review these any closer. And, First Response was told, by the credit reference agencies that Ms M had very few active accounts.

The bank statements show that Ms M had a number of regular direct debits each month including for her rent, utilities including gas, electric and water, TV licence as well as payments for and connected to a TV subscription service. The costs varied but in the months before the finance was granted these came to no more than £450 per month.

So, a cursory glance may have led First Response was affordable. However, Ms M clearly had problems managing and making these commitments. In December 2020, all of the regular payments – were returned as unpaid – including her rent and it took more than a week for Ms M to make up all her payments, in January 2021 she missed her gas and electricity – both were returned as unpaid payment and in February 2021 a payment connected to her TV subscriptions service was returned as unpaid.

In my view, these missed payments had happened each month and were at times for priority debts means that it does appear that when Ms M entered into the agreement she was already experiencing financial difficulties – and this is confirmed by the definition that can be found in CONC 1.3. Ms M was already struggling to make her existing payments I don't think the payments for this agreement were or could be affordable.

In addition to this, there are, gambling / betting transactions through the statements – in the month before – February 2021 Ms M spends more than £400 on such transactions which given her monthly income isn't an insignificant amount. That couple with just her direct debit payments – which Ms M was showing she wasn't able to fully manage and her loan payment means I have come to the conclusion the finance was neither affordable nor sustainable for her.

I am therefore upholding the complaint and I've set out the redress that First Response will need to pay below in order to put things right for Ms M.

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.

I've considered what First Response has said but I've come to the same outcome that I did in the provisional decision for broadly the same reasons, I've explained why below.

I'm satisfied that First Response was aware of the DRO before it agreed to lend to Ms M but what I have to consider is to what extent that ought to have impacted the checks it carried out. But I do want to be clear that I didn't uphold the complaint solely because of the of the DRO record.

But I did and do think, that knowing about the DRO ought to have led to further checks. First Response, disagreed saying the DRO was historic, the accounts subject to the DRO would no longer be a problem.

I've carefully thought about these arguments, but I don't agree. A DRO is a significant type of debt relief order and showed that in the not too distant past. Due to Ms M's debt, income and assets she met the criteria for the DRO – and this after a year would've meant any accounts caught by the DRO would be written off.

I also don't think it's unreasonable to say that a lender needs to react to the sight of impaired credit history – but different types of credit history could lead to a different reaction. For example, a missed payment will be looked at differently to a default which will be considered differently to a DRO or other types of insolvency.

By the time Ms M applied for her loan she had only been out of the DRO 17 months – and while for some adverse payment markers that maybe sufficient to think that there were no other problems the very nature of the DRO – which led to debt being written off - coupled with Ms M's circumstances for example knowing she was on benefits, ought to have prompted First Response to do more.

But I want to be clear that the sight of the DRO didn't mean that First Response couldn't lend to Ms M. Merely, it ought to have considered whether it knew enough about her – and with such significant, recent impaired credit history it wasn't fair or reasonable to have relied on ONS data – First Response's checks needed to go further.

Of course, just because the checks needed to go further that doesn't mean the complaint would be upheld. After all it's perfectly possible that further checks would've led First Response to conclude the agreement was affordable and sustainable for Ms M.

I'm not sure what bank statements First Response saw, but the ones that have been provided to me – which belong to Ms M do show a number of missed and returned direct debits – indicating Ms M was already struggling to keep on top of her existing payments. That, and the reasons given in the provisional decision ought to have led First Response to not have lent to Ms M.

First Response says about a personal loan application that was made in 2022. But, I'm satisfied, for the reasons given above and for the reasons in the provisional decision that the DRO – being significant impaired credit history ought to have led to further checks. Had further checks been carried out, First Response would've likely realised the loan wasn't affordable or sustainable.

I therefore uphold Ms M's complaint, and I've set out below what First Response needs to do in order to put things right for Ms M.

I've also considered whether the relationship might have been unfair under s.140A of the Consumer Credit Act 1974. However, I'm satisfied the redress I have directed above results in fair compensation for Ms M in the circumstances of her complaint. I'm satisfied, based on what I've seen, that no additional award would be appropriate in this case.

Putting things right

Ms M made use of the loan First Response provided, and she purchased a car with this. So, it's fair that she pays the car price. However, as First Response shouldn't have approved her loan application, I don't think it's fair she should pay any interest and charges. So, First Response should refund these, with interest.

First Response should:

- refund anything Ms M paid above the cash price of the car of £4,695;
- it should then apply 8% simple yearly interest on the refund, calculated from the date Ms M made the overpayments to the date of the refund†;
- and remove all adverse entries relating to this agreement from Ms M's credit file.

†HM Revenue & Customs requires First Response to take off tax from this interest. It must give Ms M a certificate showing how much tax it has taken off if she asks for one.

My final decision

For the reasons I've explained above and in the provisional decision, I'm upholding Ms M's complaint.

First Response Finance Ltd should put things right for Ms M as directed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms M to accept or reject my decision before 6 June 2025.

Robert Walker
Ombudsman