

## **The complaint**

Mr M is complaining about First Response Finance Ltd. He says they acted irresponsibly in lending to him because of his credit history. Mr M's complaint has been brought to us by a representative but for ease I've written as if we've dealt directly with him.

## **What happened**

In June 2019, Mr M took out a hire purchase agreement with First Response to finance the purchase of a vehicle. He borrowed £4,995 – the cash price of the vehicle. The agreement required Mr M to make 36 monthly repayments of £225.34. Although a couple of direct debits bounced, Mr M made up these payments within the following days and didn't run into arrears at any time.

In August 2021, Mr M settled the first agreement and took out a second hire purchase agreement, also with First Response. This time, he borrowed £5,999.93 – again, this was the cash price of the vehicle. The agreement required Mr M to make 36 monthly repayments of £268.20. At the time of his complaint, Mr M had made all of his repayments on time on this agreement.

In February 2023, Mr M complained to First Response. He said they'd provided loans at times that he was experiencing financial difficulties, and therefore the loans were unaffordable.

In response, First Response reviewed both their lending decisions. In respect of the first decision they said they'd assessed Mr M's income and expenditure before deciding to lend to him. To do so, they'd checked Mr M's income to a pay slip, taken into account all outgoing payments from his credit file, and asked Mr M how much he was paying for his housing and council tax. They made general assumptions about his other expenses using Office for National Statistics (ONS) data and calculated an overall monthly disposable income of around £590. They deducted 25% for unknown or unexpected expenditure and arrived at an affordability capacity of £442. The monthly payment was £225. And there were no foreseeable changes that might suggest the repayments might become unsustainable. They added that although Mr M's credit file demonstrated difficulties in paying for credit in 2017, this improved during the two years that followed.

In respect of the second decision, First Response said they'd carried out the same checks they'd done previously. At this stage Mr M's earnings had increased and they calculated an affordability capacity of £627. They said Mr M's credit file showed he'd had some difficulties in maintaining payments to creditors in 2020 but when questioned he'd said this was due to the pandemic and they were satisfied he'd taken responsible actions to resolve this.

In summary, First Response said they'd carried out appropriate checks before lending to Mr M and were satisfied the repayments were affordable for him. They also hadn't seen any evidence that Mr M had encountered financial difficulties throughout the term of the agreements.

Mr M remained unhappy so brought his complaint to our service and one of our investigators looked into it. He said thought First Response should have done more to check Mr M's expenditure but if they had, they'd have found the loans were affordable for him. So he didn't think Mr M's complaint should be upheld. Mr M replied to say even though he agreed the loans were affordable he still felt First Response had acted irresponsibly in lending to him

because of his credit status at the time. He said he'd applied to several other car finance companies at the time and been declined. He asked for a decision – and it's come to me.

### **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'm not upholding Mr M's complaint – for broadly the same reasons as our investigator. I'll explain why below.

Mr M hasn't disputed the affordability of the loan. Even in response to our investigator's view he said he could afford it. Instead he thinks First Response shouldn't have lent to him because of his credit history. But taking this position would mean denying credit to anyone who is rebuilding their financial standing, which wouldn't be fair.

Instead, the Financial Conduct Authority (FCA) sets out in a part of its handbook known as CONC what lenders must do when deciding whether or not to lend to a consumer. In summary, a firm must consider a customer's ability to make repayments under the agreement without having to borrow further to meet repayments or default on other obligations, and without the repayments having a significant adverse impact on the customer's financial situation. In effect this means considering whether a customer is likely to be able to meet their financial commitments (including the repayments under the proposed agreement) and their non-discretionary expenditure out of their income each month.

CONC says a firm must carry out checks which are proportionate to the individual circumstances of each case – so it's not always necessary to carry out a full income and expenditure analysis – it will depend on the circumstances.

#### *Did First Response carry out proportionate checks?*

In relation to both loans First Response said they carried out the following checks:

- reviewed Mr M's credit file; and
- checked Mr M's payslips to verify his income;
- spoke to Mr M to discuss his credit file and his housing costs;
- carried out an income and expenditure assessment to assess his disposable income.

Whether or not these checks were proportionate depends on factors such as the size and term of the loan, the cost of credit, and what First Response found in the process of doing the checks. In both cases, the loans were relatively small, and they were for three years, so not long term. However, the cost of credit was high, and when First Response looked at Mr M's credit file they found he'd struggled with previous credit on both occasions.

But First Response checked Mr M's income, and they spoke to him to discuss his credit commitments and his housing costs – which are for most people the most significant monthly costs. They also obtained Mr M's monthly credit payments from his credit file. And they used ONS data to estimate Mr M's other expenditure. CONC allows firms to use statistical data unless they have reasonable cause to suspect that a customer's non-discretionary expenditure is significantly higher than what's shown in the data. When First Response asked Mr M about the adverse indicators in his credit report he told them he'd not managed his money well before he got married. And, in respect of the later lending decision, he'd struggled for a short time because of the pandemic. I haven't seen enough to say First

Response shouldn't have relied on statistical data, particularly as they used Mr M's own estimates of his housing costs.

When First Response put all this information into their income and expenditure analysis, they arrived at a monthly disposable income figure of around £589 at the time of the first loan, and about £836 at the time of the second loan. Both times, First Response deducted 25% to allow for unforeseen expenditure, leaving them with net figures of £442 and £627 respectively. The monthly repayments Mr M needed to make still left him with a surplus of well over £200 and then over £350 each month for any additional emergency, unforeseen and discretionary spending.

Taking all this together I'm satisfied First Response's checks were proportionate. They carried out a careful and substantiated analysis of Mr M's income and expenditure and obtained explanations for his previous credit history. I can't say they should have done anything further.

*Did First Response make a fair lending decision?*

As I've set out above, First Response's analysis showed Mr M's income significantly exceeded his non-discretionary and committed expenditure. Once the new agreements were taken into account, they expected Mr M would be left with a monthly surplus of £200 after the first agreement, and £350 after the second agreement. On that basis I'm satisfied First Response made a fair lending decision.

### **My final decision**

As I've explained above, I'm not upholding Mr M's complaint about First Response Finance Ltd.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 7 December 2023.

Clare King  
**Ombudsman**