DRN-4358783

The complaint

Mr M complains that First Response Finance Ltd (First Response) irresponsibly granted him a hire purchase agreement that he couldn't afford to repay.

What happened

In February 2018 Mr M acquired a vehicle financed by a hire purchase agreement from First Response. Mr M was required to make 42 monthly repayments of £213.98. The total amount repayable under the agreement was £8,987.16. Mr M believes First Response failed to complete adequate affordability checks. Mr M says that if it had it would've been clear the agreement wasn't affordable at the time.

First Response disagreed. It said it carried out an adequate assessment which included a full credit search, income verification via payslips, statistical estimation of his non-discretionary expenditure and an income and expenditure check. Mr M confirmed that he was living with his parents, working full time as a recruitment consultant and had no committed expenditure apart from his existing credit. First Response said its searches showed Mr M's existing borrowing levels were minimal and that he had very little in the way of committed expenditure. It assessed his net disposable income as £854.20 a month when factoring in an ongoing wage advance repayment and felt that the agreement was affordable as his outgoings were estimated as £363.

Our Investigator didn't recommend that the complaint should be upheld. They thought First Response's checks were proportionate (bar one piece of information) and none of the information it gathered suggested that the lending shouldn't have been approved.

Mr M and his representative didn't agree. His representative provided bank statements but provided no further comments as to why they disagreed with the opinion. They asked for an Ombudsman to issue a final decision on the matter.

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.

Where evidence is incomplete, inconsistent, or contradictory, I reach my decision on the balance of probabilities – in other words, what I consider most likely to have happened in light of the available evidence and wider circumstances.

We explain how we handle complaints about irresponsible and unaffordable lending on our website. I've used this approach to help me decide Mr M's complaint. First Response needed to ensure that it didn't lend irresponsibly as per the rules set out in the FCA's Consumer Credit Sourcebook (CONC). In practice, what this means is that First Response needed to carry out proportionate checks to be able to understand whether any lending was affordable for Mr M before providing it.

In this case, there are two overarching questions that I need to answer to fairly and reasonably decide Mr M's complaint. These two questions are:

1. Did First Response complete reasonable and proportionate checks to satisfy itself that Mr M would be able to repay his loan without experiencing significant adverse consequences?
   - If so, did it make a fair lending decision?
   - If not, would those checks have shown that Mr M would've been able to do so?

2. Did First Response act unfairly or unreasonably in some other way?

Did First Response complete a reasonable and proportionate affordability check?

The Financial Conduct Authority (FCA) was the regulator when Mr M took out his agreement with First Response. Its rules and guidance obliged First Response to lend responsibly. First Response needed to take reasonable and proportionate steps to assess whether a borrower could afford to meet its repayments in a sustainable manner over the lifetime of the agreement. This was set out in its Consumer Credit Sourcebook (CONC).

CONC 5.3.1(G) stated that:

1. *In making the creditworthiness assessment or the assessment required by CONC 5.2.2.2R (1), a firm should take into account more than assessing the customer's ability to repay the credit.*
2. *The creditworthiness assessment and the assessment required by CONC 5.2.2R (1) should include the firm taking reasonable steps to assess the customer's ability to meet repayments under a regulated credit agreement in a sustainable manner without the customer incurring financial difficulties or experiencing significant adverse consequences.*

Repaying debt in a sustainable manner meant being able to meet repayments without undue difficulty - using regular income, avoiding further borrowing to meet payments and making timely repayments over the life of the agreement without having to realise security or assets (CONC 5.3.1G (6)).

The FCA didn't specify what exact level of detail was needed to carry out an appropriate assessment. But it did say that the level of detail depended on the type of credit, the amount of credit being granted and the associated risk to the borrower relative to the borrower's financial situation (CONC 5.2.4G (2)).

So, I'd expect a lender to require more assurance the greater the potential risk to the borrower of not being able to repay the credit in a sustainable way. I'd expect a lender to seek more assurance the lower a person's income, the higher the amount of credit being applied for and the longer the term of the agreement.

First Response says that Mr M's application underwent credit and underwriting checks, and these didn't raise any concerns. Mr M declared his income as £1300 a month. His income was verified further via payslips, and First Response acted conservatively when interpreting this data – choosing to state that his income was £854.20 instead of the quoted £1300 due to an existing wage advance repayment that was in place for a three-month period. It also combined Office for National Statistics (ONS) data with Mr M's own account of his expenditure.

Mr M told First Response that he had no housing costs, or utilities. It's credit search showed a minimal amount of lending, but some defaulted sums which were being repaid. From the information it had gathered I think its estimation of £43 a month towards his existing credit was reasonable, as was its estimation of £363 for total monthly costs when Mr M had already confirmed he lived with his parents and did not contribute to household bills.

This meant that First Response estimated Mr M had around £490 of disposable income before accounting for the agreement. However, it also applied a further 25% emergency cost buffer to this amount which meant it estimated around £368 disposable income. It ultimately decided on this basis that the agreement was affordable.

Given the size of the lending, the monthly repayments, the length of agreement, and the information in Mr M's credit file, I think at first consideration First Response's checks were proportionate. If later details had not come to light, I don't feel that any further checks would have been required once it had completed its income and expenditure and found an excess disposable income of around £270 (including the emergency buffer) was available after paying towards the finance.

However, there is one notable piece of information which Mr M provided which I feel meant that First Response should have made further enquiries. At the time Mr M informed First Response that he had an existing car finance agreement in place which did not show on his credit file and was not incorporated into its completed income and expenditure check.

It's not clear from the contact notes available whether First Response ever asked Mr M about this agreement in any detail. The finance agreement was initially denied once Mr M had clarified that he felt he could not afford both agreements at the same time. But Mr M returned shortly after confirming that he was now considering voluntary termination of the first agreement and was also satisfied that he could now afford both at the same time. The agreement appears to have then been approved on this basis.

I'm satisfied that this response would not have been sufficient to ensure that proportionate checks were completed in the circumstances. First Response should have asked for further details about this ongoing agreement and either confirmed outright that Mr M was ending the agreement or incorporated its cost into Mr M's income and expenditure check. I'm satisfied that proportionate checks would have led First Response to enquire further about this existing commitment and how it might impact the sustainable and affordable nature of the finance it was approving. Because of this I'm not satisfied that the checks completed were proportionate.

I'm satisfied First Response didn't complete proportionate affordability checks, but this doesn't automatically mean it failed to make a fair a lending decision.

Would reasonable and proportionate checks have shown that Mr M could sustainably repay the borrowing?

In this circumstance there is only one piece of information which First Response were missing in order to complete a proportionate check – namely the monthly outgoings for Mr M's existing agreement. So, whilst I appreciate Mr M's representative providing us with bank statements, I don't feel that a complete revisit of Mr M's income and expenditure should have been required at the time. First Response only needed to ask further questions about the ongoing car finance agreement, and so it is this information that I've taken from the statements provided.

I've considered what First Response would likely have found out if it had completed reasonable and proportionate affordability checks. As explained above, I think First Response requesting details about Mr M's original finance agreement would've been proportionate in the circumstances. The bank statements provided by Mr M show the agreement in question cost around £172 a month. So, I've looked at all the information First Response gathered at the point of sale and considered whether this figure should have made a difference to the lending decision.

Overall, I'm satisfied that the lending decision was still a fair one. I say this because the income and expenditure check First Response completed was conservative. It factored in a wage advance that was at the point of ending and an additional 25% buffer beyond usual expenditure allowances. From my own calculations, if First Response had applied the income Mr M had expected to receive from his employer moving forward, he would've had £275 in disposable income once both car finance agreements had been factored in. I'm satisfied that this allowed enough for emergency or unexpected costs – and that the lending decision was fair even if Mr M had ultimately chosen not to voluntarily terminate his original car finance agreement.

Taking these figures into account, it appears to show the agreement was affordable for Mr M. For this reason, I'm not persuaded that First Response acted unfairly when approving the finance. I'm satisfied that if First Response had completed proportionate checks it would have likely revealed Mr M was able to sustainably afford the repayments owed under the agreement. So, it follows that I think First Response made a fair lending decision.

Did First Response act unfairly or unreasonably in some other way?

I'm not persuaded from the submissions made to date that First Response acted unfairly or unreasonably in some other way.

My final decision

My decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 22 December 2023.

Paul Clarke
Ombudsman