

## **The complaint**

Mr W is complaining about First Response Finance Ltd's (First Response) decision to lend to him.

## **What happened**

In February 2018, Mr W took out a hire purchase agreement with First Response to finance the purchase of a car. He paid a deposit of £50 and borrowed £6,825 over a 60-month term, with monthly repayments of £196.58. He says that at the time he was experiencing financial difficulty and the loan was unaffordable. So he thinks First Response shouldn't have lent to him and should repay the interest he paid them.

Mr W complained to First Response but they didn't uphold his complaint. They said Mr W's credit file at the time of his application showed a well-run current account, no overdraft and three credit cards with low balances and low credit limits, all of which were well paid. They said it also showed a well-paid credit facility with a low balance, a guarantor loan, and one unsecured loan of £395 which was being paid under an arrangement. They said Mr W had showed good intent in making an arrangement to pay this. So they were happy his credit file showed he'd paid well and with good intent. They added that all payments towards credit facilities were taken into account in calculating affordability.

First Response went on to explain how they'd calculated affordability – saying they'd used an income figure of £2,531.78 per month which was a total of Mr W's income and 50% of his partner's as Mr W's partner contributed towards the bills. They said they calculated monthly outgoings at the time of the application using Office of National Statistics (ONS) data.

In summary, they said, they'd carried out a credit file check and an income and expenditure check and obtained documentary evidence of Mr W's income at the time. So they felt they'd done reasonable and proportionate checks. And they said these had shown the agreement was affordable for Mr W.

First Response also noted the agreement was settled early in March 2020 and Mr W hadn't missed any payments or made any late payments. They'd seen no evidence that Mr W was experiencing financial difficulties and instead he'd repeatedly asked for settlement figures.

Mr W was unhappy with First Response's reply so he came to our service. He said First Response didn't do enough checks when they decided to lend to him. He disagreed with their figures for his net household income and was upset that they'd used national statistics to estimate his household bills. He said First Response should have done a proper income and expenditure assessment at the time of his application. He added that he didn't miss any payments on the hire purchase agreement because he'd taken out loans to cover it – and his mother also sent him money to help with the monthly payments.

Mr W brought his complaint to our service. Our investigator looked into things and said he didn't think First Response had carried out proportionate checks. But, he said, he hadn't seen enough evidence to know what proportionate checks would have shown. He wasn't persuaded First Response had made an unfair lending decision. Mr W didn't accept our investigator's view. He said he'd had week after week of payday loans. He didn't think First

Response should have included his partner's income in the affordability checks. And he said he couldn't provide bank statements for his ex-partner's account. As Mr W and our investigator couldn't reach agreement, the complaint's been passed to me for a decision.

### **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.

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.

CONC says a firm must carry out checks which are proportionate to the individual circumstances of each case.

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

First Response looked at Mr W's credit file. They also checked his payslip to confirm his monthly income. They used ONS data to estimate his expenditure and they spoke with him over the phone to discuss his employment, household circumstances, and expenditure.

At first glance this might appear to be proportionate. But the hire purchase agreement required Mr W to pay First Response around £12,000 over five years. This was a significant commitment for him, particularly given that his net monthly income was around £1,500. So I've thought a bit more about the checks First Response did, and what they showed.

#### Credit file

I've looked at the credit report obtained by First Response. This shows that Mr W was up to date with most of his payments and in general had good payment history in recent years. The credit report shows a couple of defaults but these were five years prior to the lending decision. And it shows three payday loans but again these had ended well before the lending decision – all of them over four years prior.

The credit report showed that Mr W had three active credit cards – all with the balance within the limit, two unsecured loans, and a fixed term credit sale. Of these, one of the unsecured loans indicated some payment difficulties. I can see First Response asked Mr W about this and noted that he'd changed banks and not sorted the direct debit. Whilst Mr W's said the payment arrangement arose because of administrative errors, the credit report also shows the actual payment (£20) being significantly lower than the suggested payment (£70) which wouldn't be explained by an administrative error. And, because the arrangement to pay is an indicator of financial difficulties, I think this should have led First Response to carry out further checks on Mr W's credit commitments.

#### Income and expenditure

First Response checked Mr W's stated income to his payslip and adjusted it down a little to reflect the average net monthly income in the seven months he'd been with his employer. They had a conversation with Mr W during which he confirmed he'd passed probation and would be able to provide an employment contract and evidence of forthcoming pay rise if needed. I'm satisfied First Response did enough to verify Mr W's income.

But First Response also included half of Mr W's partner's income in their assessment of the affordability of the loan. They didn't check this income to any source, taking Mr W's word for

it. Whilst I appreciate First Response took a prudent approach in only including half of the stated amount, CONC 5.3.1G (4)(b) states that it's not generally sufficient to rely on a customer's statement of income and expenditure. I don't think First Response did enough to check this source of income.

When checking expenditure, First Response used ONS data for a two-adult household in combination with a conversation with Mr W. They adjusted the ONS total figure for housing and council tax up from £580 to £600 as a result of these conversations but didn't change the ONS figure for cost of living, which was £420. I don't think it was unreasonable for First Response to use these figures. Mr W had already confirmed the rent and council tax were broadly in line with the statistical data so there wasn't any reason to expect the household cost of living to be very different.

These figures were household figures which First Response deducted from the combined household income – but then First Response deducted credit commitments relating to Mr W but not those of his partner. So the final income and expenditure and disposable income figure wasn't an accurate representation of either the individual or the household position. I think First Response should have done more to consider either the household position, taking into account Mr W's partner's credit commitments, or Mr W's individual position.

In summary, taking into account the indicator of financial difficulties on Mr W's credit file and the discrepancies in the income and expenditure, it's fair to say First Response should have done more.

*What would First Response have found?*

A proportionate check would have involved First Response finding out more about Mr W's credit commitments, income and expenditure.

#### Credit commitments

Mr W says he had payday loans at the time of the lending decision, and in the months leading up to it. I can see from the evidence Mr W's sent to us that this was the case throughout most of 2017. However, these don't appear on the credit report that First Response obtained and I can't see Mr W told First Response about them. Although they'd likely have appeared on a report from a different credit reference agency, I don't think it'd be reasonable to say First Response should have checked more than one credit report for Mr W – the majority of lenders report to multiple credit reference agencies. So it's not reasonable to say First Response should have found out about Mr W's payday loans.

I would have expected First Response to ask for more information and documentation in respect of the loan for which Mr W had an arrangement to pay. But we've not been provided any documentation so I can't say what they'd have found in that respect.

The arrangement to pay was an indicator of financial difficulty so we asked for Mr W's bank statements in the three months leading up to the lending decision to give us a better understanding of the position he was in at the time. The account we've had statements for had a positive balance of well over £3,000 for the whole of that three-month period. So if First Response had done more checks they would have likely concluded that the arrangement to pay was due to an administrative error on Mr W's part rather than because of an inability to make payments against this £395 loan.

#### Income and expenditure

I don't think it was necessarily wrong for First Response to consider Mr W's household income and expenditure – Mr W told them he'd been living with his partner for three years by February 2018. But I do think that if that was the approach they were going to take they

should have verified Mr W's partner's income and looked at his credit commitments, as I've outlined above. Mr W and his partner at the time have since separated so that information isn't available to us and it's impossible to say what First Response would have found.

First Response could have instead looked at Mr W's income and credit commitments and used 50% of the household expenditure. If they'd done that, it wouldn't have been unreasonable to have used a monthly income figure of £1,460, living costs of £210, and rent and council tax of £300. Deducting payments towards credit commitments from this of £214 would have given an estimated monthly disposable income for Mr W of £736. First Credit say they also deduct a "prudence" payment of 25%, which would have reduced the £736 to £552. However, the repayment on the hire purchase agreement was less than £200. On that basis I think it would have been fair to say the lending was affordable for Mr W.

There are some inconsistencies in some of the information we've received. For example, Mr W told our investigator he paid £500 towards the rent and council tax, implying that this was his contribution, rather than the total rent being £500 which seems to be what he told First Response. I've seen no evidence to support this – the bank statements we've been able to obtain for Mr W show fairly small amounts being paid to his ex-partner with the net payment between them in the three months preceding the loan being just £13 from Mr W to his partner.

In summary, I've not seen enough evidence to think that First Response ought to have decided this hire purchase agreement was unaffordable for Mr W. It follows that I'm not persuaded First Response made an unfair lending decision.

### **My final decision**

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

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

Clare King  
**Ombudsman**