

The complaint

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

What happened

In February 2019, Mr M acquired a used car financed by a hire purchase agreement from Marsh Finance. Mr M paid a £100 deposit and was required to make 58 monthly repayments of £145, and a final payment of £155. The total repayable under the agreement was £8,795.

Mr M says that Marsh Finance didn't complete adequate affordability checks. He says if it had, it would have seen the agreement wasn't affordable. Marsh Finance didn't agree. It said that as the lending was for less than £15,000 bank statements weren't requested. It carried out a credit worthiness check which involved a full credit check and an assessment of Mr M's payslips. It said that Mr M's monthly income was around £1,500 and that the monthly repayments of £145 were affordable. It said that Mr M confirmed he had been given enough time to read through the terms and conditions on the validation call.

Our adjudicator recommended the complaint be upheld. He thought Marsh Finance ought to have realised the agreement wasn't affordable to Mr M.

Marsh Finance didn't agree. It requested copies of Mr M's bank statements and credit file which were provided.

The case has been passed to me for a final 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.

Marsh Finance will be familiar with all the rules, regulations and good industry practice we consider when looking at a complaint concerning unaffordable and irresponsible lending. So, I don't consider it necessary to set all of this out in this decision.

Before granting the finance, Marsh Finance received a copy of Mr M's payslip and said it undertook a full credit check. Marsh Finance didn't ask Mr M about his expenditure. Although it did complete a credit check, this won't have indicated what Mr M's regular living expenses were. Without knowing what Mr M's regular committed expenditure was Marsh Finance wouldn't have got a reasonable understanding of whether the agreement was affordable or not. It therefore didn't complete proportionate checks.

Based on Mr M's payslip, his monthly income was around £1,500. I have looked through Mr M's bank statements and these support a monthly salary of around £1,500. Mr M was also receiving benefits worth around £465 a month. I haven't seen a copy of the credit check results that Marsh Finance received and so I have looked at the credit report Mr M has provided as being a reasonable indication of what the credit check would have shown.

Mr M's credit report shows he had loans totalling over £5,500, credit and store card debts of over £8,700 (five credit cards that he was using almost the full limits on) and had an overdraft of over £2,800. Given Mr M's total debt was almost £18,000, I think it would have been reasonable to verify Mr M's expenditure to ensure the agreement was affordable. I note Marsh Finance's comment about not requesting bank statements for a loan amount of less than £15,000 but in this case I think the credit report raised concerns that meant verification was needed to ensure affordability and one way Marsh Finance could have done this was by requesting copies of Mr M's bank statements. I've reviewed three months of bank statements leading up to the lending decision.

The statements show that Mr M was making persistent use of his overdraft and payday loans. Mr M paid an average of around £460 for payday loans and took out further loans in the month of the agreement which would have still been outstanding at the time. Additional to this he was paying £280 for a loan and making payments towards his credit and store cards of over £200 a month. This gave total credit commitments of around £940 a month. Mr M's committed expenditure was around £1,400 for costs such as housing, utilities, mobile and nursery fees. Additional to this Mr M had to pay for food and fuel. This demonstrates that Mr M didn't have enough disposable income to afford the additional borrowing. I think it's likely proportionate checks would have revealed this to Marsh Finance, it therefore didn't act fairly by approving the finance.

I understand that Mr M wants to keep the car but given he has struggled with the repayments and noting what is left still to pay, I think the fairest thing to do is for C to give the car back.

Putting things right

As I don't think Marsh Finance ought to have approved the lending, it should therefore refund all the payments Mr M has made, including any deposit. However, Mr M has had use of the car for around 38 months, so I think it's fair he pays for that use. But I'm not persuaded that monthly repayments of £145 a month are a fair reflection of what fair usage would be. This is because a proportion of those repayments went towards repaying interest.

There isn't an exact formula for working out what a fair usage should be. In deciding what's fair and reasonable I've thought about the amount of interest charged on the agreement, Mr M's likely overall usage of the car and what his costs to stay mobile would likely have been if he didn't have the car. In doing so, I think a fair amount Mr M should pay is £93 for each month he had use of the car. This means Marsh Finance can only ask him to repay a total of £3,534. Anything Mr M has paid in excess of this amount should be treated as an overpayment.

To settle Mr M's complaint Marsh Finance should do the following:

- End the agreement and collect the car with nothing further to pay.
- Refund all the payments Mr M has made, less £3,534 for fair usage.
 - As Mr M has paid more than the fair usage figure, Marsh Finance should refund any overpayments, adding 8% simple interest per year* from the date of each overpayment to the date of settlement.
- Remove any adverse information recorded on Mr M's credit file regarding the agreement.

*HM Revenue & Customs requires Marsh Finance to take off tax from this interest. Marsh Finance must give Mr M a certificate showing how much tax it's taken off if Mr M asks for one.

My final decision

I uphold this complaint and direct Marsh Finance Ltd to put things right in the manner set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 15 June 2022.

Jane Archer
Ombudsman