

The complaint

Mr E complains that Marsh Finance Limited ("Marsh") irresponsibly granted him two hire purchase agreements he couldn't afford to repay.

What happened

In July 2018, Mr E acquired a car financed by a hire purchase agreement from Marsh. Mr E was required to make 34 monthly repayments of £241.11, followed by one final payment of £241.51. The total repayable under the agreement was £19,189.96. Mr E paid a deposit of £2,500 plus he used a benefit of £8,000, being the part exchange value of his previous car. The agreement ended in September 2020, after the car had been written off following an accident.

In September 2020 Mr E acquired another car from Marsh, again financed by a hire purchase agreement. Mr E was required again to make 36 monthly repayments, made up of 35 payments of £340.28 followed by a final payment of £350.28. This time Mr E paid a deposit of £8,500, being able to fund this due to money paid out by the insurers following his previous car being written off. The total repayable under the agreement was £12,260.08. The agreement is still continuing.

Mr E had a third, earlier agreement with Marsh which he has also complained about. I have previously issued a jurisdiction decision in which I explained why, applying our rules, we do not have power to the merits of that part of his complaint as it has been made too late.

Mr E says that Marsh didn't complete adequate affordability checks. He says if it had, it would have seen the agreements weren't affordable for him. Marsh didn't agree. It said that it carried out a thorough assessment for each agreement and there was no reason for them not to have been accepted.

Our adjudicator recommended that the complaint about each of the two agreements be upheld. He thought Marsh ought to have realised both agreements were unaffordable for Mr E.

Marsh didn't agree and said it carried out adequate checks and that Mr E had demonstrated a good payment record on the first agreement which helped to show the second agreement was likely to be affordable for him.

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 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.

I have decided to uphold both agreements and will explain why.

The 2018 agreement

The credit check Marsh carried out shows Mr E had a credit account that had gone into default in August 2015 and remained that way with a balance of around £3,300. Mr E was also making payments on a mortgage, had several credit card balances and also a catalogue account. At the time Mr E was also making use of pay day loans and other short term lending, often for relatively small amounts of money. I agree with our adjudicator that he already had around £8,000 in total debt at this point, demonstrating a real risk that Mr E could be struggling financially. It therefore would have been proportionate for Marsh to have got a more thorough understanding of his financial circumstances before lending.

Marsh took steps to check that Mr E was in full time employment and find out about his annual and monthly income by asking for a copy of a payslip. At the time Mr E was earning net monthly pay of around £1,736. But from what I've seen, Marsh didn't ask Mr E about his regular spending and other credit elsewhere. Without knowing what Mr E's regular committed expenditure was, Marsh wouldn't have got a reasonable understanding of whether the agreement was affordable or not. It therefore didn't complete proportionate checks.

I therefore think it would have been proportionate for Marsh to have found out more about Mr E's committed expenditure and living costs. I can't be sure exactly what it would have found out if it had asked. In the absence of anything else, I think it would be reasonable to place significant weight on the information contained in Mr E's bank statements as to what would most likely have been disclosed.

I've reviewed bank statements for three months from before the lending decision. These show that Mr E was making regular use of his overdraft and only going into credit for a short time after being paid each month. And from the details I've seen about his day-to-day expenditure on things such as food shopping, petrol, payments to utilities, plus his payments towards his existing mortgage and other credit, he had total monthly outgoings of around £2,000. This would leave him without any disposable income. So any further lending would have been likely to worsen what was already a weak financial situation.

To sum up on this agreement, I think it was clear that Mr E wasn't in a position to afford the repayments towards the new agreement without financial difficulty or having to borrow further. Had Marsh completed proportionate checks, I think it's likely it would have discovered this too.

It follows that I don't think Marsh acted fairly by approving the finance.

The 2020 agreement

Marsh says it ran checks at the time that showed the new agreement was affordable, including obtaining payslip evidence from Mr E. It also took into account the way he'd managed his previous agreement. Marsh points out that Mr E had always made his payments on time and not missed any payments. Marsh also says that Mr E passed most of the credit checks it carried out at the time and that there wasn't enough to suggest that the new agreement would be unaffordable for him. However, having seen Mr E's credit report, I would reiterate that Mr E's financial situation showed him still reliant on short term lending, with a significant level of credit borrowing alongside his existing mortgage payments. I again think that these are things that ought to have indicated that Mr E may be struggling financially.

It therefore would have been proportionate for Marsh to have got a more thorough understanding of his financial circumstances before lending. But from what I've seen, Marsh again didn't ask Mr E about his expenditure. I don't consider that the credit check alone was enough to establish whether the new agreement was likely to be affordable for Mr E. So again for this agreement, I don't think Marsh completed proportionate checks.

At this time Mr E's net monthly income was £1,546 - less than at the time he took out the previous agreement - although his required monthly payments were now significantly higher. I again think it would have been proportionate for Marsh to have found out more about Mr E's committed expenditure at the time of this further agreement. I say this taking into account that Mr E had around £15,000 in active debt at this point, including his use of overdraft, mortgage and credit card borrowing. Whilst I can't be sure exactly what Marsh would have found out if it had asked, I think it was still reasonable for Marsh to place significant weight on the information contained in Mr E's bank statements as to what would most likely have been disclosed.

I've reviewed three months of bank statements leading up to the lending decision. Mr E was still making extensive use of his overdraft facility and incurring daily fees for doing so. He was continuing to rely on his overdraft for most of the month, whilst his monthly outgoings of around £1,500 suggests he'd have less than £50 available each month by way of disposable income. So from what I'd seen he wouldn't have enough funds to afford the new agreement. Had Marsh completed proportionate checks, I think it's likely it would have discovered this too. It therefore didn't act fairly by approving the finance for this second agreement.

I therefore again don't think that Marsh acted fairly in approving this lending.

Putting things right – what Marsh needs to do

Mr E told our adjudicator that he wishes to keep his car as he need it for his work. I understand he has been keeping up to date with his payments under the current agreement. I therefore require Marsh to do the following in respect of each of the two agreements.

July 2018 Agreement

As I don't think Marsh ought to have approved the lending, I don't think it's fair for it to be able to charge any interest or charges under the agreement. Mr E should therefore only have to pay the original cash price of the car, being £17,500. Anything Mr E has paid in excess of that amount should be refunded as an overpayment.

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

- Refund any payments Mr E has made in excess of £17,500, representing the original cash price of the car. It should add 8% simple interest per year* from the date of each overpayment to the date of settlement.
- Remove any adverse information recorded on Mr E's credit file regarding the agreement.

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

September 2020 Agreement

As I don't think Marsh ought to have approved the lending, I don't think it's fair for it to

be able to charge any interest or charges under the agreement. Mr E should therefore only have to pay the original cash price of the car, being £18,500. If Mr E hasn't paid the full cash price of the car, the refund due to him from the July 2018 agreement by way of compensation should be used towards paying off any shortfall.

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

- End the agreement with nothing further to pay
- Calculate how much Mr E has paid in total, taking into account the refund now due to Mr E for the 2018 agreement, which should then be set off against the total cash price figure of £18,500.
- If there is still a cash shortfall, Marsh should arrange an affordable and sustainable repayment plan for Mr E for the outstanding balance.
- Remove any adverse information recorded on Mr E's credit file regarding the agreement.

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

My final decision

I uphold this complaint for both agreements and direct Marsh Finance Limited to put things right in the manner set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 31 January 2023.

Michael Goldberg
Ombudsman