

The complaint

Mr T complains that Marsh Finance Ltd (“Marsh”) irresponsibly granted him a hire purchase agreement he couldn’t afford to repay.

What happened

In July 2020 Mr T acquired a used car financed by a hire purchase agreement from Marsh. Mr T was required to make 47 monthly repayments of £449.09, with a final optional payment of £9,903.18 if he wanted to own the car at the end of the agreement. The total repayable under the agreement was £31,010.41.

I understand that, having paid all sums due up to August 2021, Mr T then sold the car and settled the agreement in September 2021.

Mr T says Marsh didn’t complete adequate affordability checks. He says if it had, it would have seen the agreement wasn’t affordable to him from the outset and worsened his already difficult financial situation. Marsh didn’t agree. It said that it carried out a thorough assessment which included asking Mr T to provide copy payslips and bank statements.

Our adjudicator recommended the complaint be upheld. She thought Marsh ought to have realised the agreement wasn’t affordable to Mr T.

Marsh didn’t agree and said Mr T had enough disposable income to be able to afford the finance.

The case has therefore 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 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, I agree that Marsh gathered a reasonable amount of evidence and information from Mr T about his ability to repay. I say this because, having noted that in addition to completing a credit check, Marsh asked Mr T to provide a copy payslip and also copy bank statements for the previous three months. That means it was in a position to verify his income at the time and also have some understanding of his overall financial situation, being able to see Mr T’s regular income and expenditure.

Mr T has also provided us with a copy of his credit report. This didn’t show major issues of concerns in the in the three years prior to his taking out the agreement, such as defaulting on making required credit repayments.

However, just because I think Marsh carried out proportionate checks, it doesn't automatically mean it made a fair lending decision. So, I've thought carefully about what the evidence and information showed. And I've kept in mind all the responses made by Marsh to our adjudicator's uphold finding.

In addition to the bank statements Marsh saw at the time, Mr T also sent us a further statement, covering the remainder of June and some of July 2020. Whilst this is helpful, I don't think it adds to or significantly changes my view about what the income and expenditure information Marsh had to hand at the time of the agreement showed about Mr T and his financial circumstances.

I've seen that Mr T's bank statements show his income, which is consistent with the payslip he provided. Also, I agree with our adjudicator that there is significant evidence of Mr T being over-reliant on short-term, high cost borrowing, in addition to longer term loan repayments. At the same time, Mr T was also maintaining a mortgage and several revolving credit accounts.

Broadly speaking, I would say the statements leading up to the lending decision show that Mr T was spending an average of around £2,300 each month on credit, plus another £900 on housing costs arising from his shared ownership agreement. This already amounts to more than his monthly income and is before he started for paying for daily expenses such as utilities, food, clothing and car running costs. I also noticed that only one mortgage payment was showing in the bank statements. Responding to my query about this, Mr T said that at the time he had fallen behind with his mortgage payments and so had been allowed a payment holiday by his mortgage provider.

Mr T also confirmed that at the time he was in significant arrears with his housing association and this meant that he was making ad hoc payments by way of bank transfers whenever possible, over and above the £700 that was normally due each month. This is a further issue that Marsh has queried. And as Marsh has correctly noted, Mr T's mother was making occasional payments of around £2-300. Mr T has explained this was an attempt to help alleviate the extent of his financial difficulties.

I think all this strongly suggests that at the point of taking out the agreement, Mr T's financial circumstances were already deteriorating, to the extent that he was regularly resorting to high-cost short term borrowing as well as borrowing from family members, in addition to an already existing level of secured and unsecured credit. It follows that had Marsh taken steps to better understand the information it had been provided with about Mr T's finances, it would have seen he wasn't in a position to afford the repayments towards the new agreement without experiencing even more difficulty and having to borrow further. Marsh therefore didn't make a fair lending decision.

Putting things right – what Marsh needs to do

The car was sold in September 2021 and the agreement was then settled in full.

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 T should therefore only have to pay the original cash price of the car, being £22,098.08. Anything Mr T has paid in excess of that amount should be refunded as an overpayment.

To settle Mr T's complaint Marsh should do the following:

- Refund any payments Mr T has made in excess of 22,098.08, 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 T's credit file regarding the agreement.

*HM Revenue & Customs requires Marsh to take off tax from this interest. Marsh must give Mr T a certificate showing how much tax it's taken off if Mr T 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 T to accept or reject my decision before 11 August 2023.

Michael Goldberg

Ombudsman