

The complaint

Miss J is complaining that Marsh Finance Limited (MFL) shouldn't have lent to her – she says they were irresponsible in doing so.

What happened

In May 2022, Miss J took out a hire purchase agreement with MFL to finance the purchase of a vehicle. She paid a deposit of £500 and borrowed £19,980 – the cash price of the vehicle was £20,480. The agreement required Miss J to make 59 monthly repayments of £528.29, followed by a final instalment of £627.29 (including a £99 option to purchase fee).

In May 2023, Miss J complained to MFL, saying that she thought MFL had failed to conduct appropriate checks before lending to her.

In response, MFL said they'd carried out a credit check before lending to Miss J. Miss J had met their lending criteria and had passed their automated affordability checks.

Miss J was unhappy with MFL's response and brought her complaint to our service, saying she had three children and significant debt at the time of the application, whilst relying on benefits for her income. Our investigator upheld the complaint, saying he thought MFL hadn't done enough to check that the lending was affordable for Miss J.

MFL weren't happy with our investigator's view. They said they'd reviewed Miss J's bank statements after the investigator had issued his view and they were satisfied Miss J had more than enough disposable income at the time of her application to warrant lending to her.

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.

Having done so, I'm upholding Miss J's complaint for broadly the same reasons as our investigator – I'll explain below.

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 MFL carry out proportionate checks?

MFL said they carried out the following checks:

- reviewed Miss J's credit file; and

- carried out an automated affordability check.

Whether or not these checks were proportionate depends on various factors, including the size and length of the loan, and what MFL found. At over £32,000, the total amount Miss J would have to repay was significant, and the term of the loan was five years.

MFL have provided a summary of the data they looked at and of their automated affordability check. Although some of the data isn't clear, what is clear is that they noted Miss J's income as £1,200 per month, her monthly credit payments as £261, cost of housing as £227, and other cost of living expenditure as £310. Whilst the first figure seems to be based on what MFL saw on Miss J's credit report, the latter two appear to be estimates.

These figures suggest that before at the time of her application, Miss J's disposable income after paying her creditors and for her housing and basic costs of living was £402 per month. So the £528 per month she needed to repay under this agreement appears to have been completely unaffordable for Miss J.

I don't think it was reasonable or proportionate for MFL to have lent to Miss J based on the results of these checks.

If MFL had done proportionate checks, what would they have found?

I've looked at statements for Miss J's bank accounts for the three months leading up to her application to MFL. I'm not saying MFL needed to obtain bank statements as part of their lending checks. But in the absence of other information, bank statements provide a good indication of Miss J's income and expenditure at the time the lending decision was made.

Looking at these statements, I can see Miss J's only sources of regular income were from Universal Credit and Child Benefit. This was around £980. In addition, Miss J received child maintenance and ad-hoc financial assistance from a former partner - but the amounts were inconsistent. The same individual also asked Miss J to pay cash into her account on his behalf. Again these amounts varied significantly. Taking into account the total of cash receipts, income from and payments to this individual each month, it looks like the average across the three months was around £300. This figure is fairly typical of child maintenance arrangements, and also takes Miss J's total income to £1,280 – which is around what she told MFL before they decided to lend to her.

In requesting a decision MFL pointed to money paid into Miss J's bank account from another individual in both March and April 2022. But all of these amounts are paid straight out to a third party almost immediately. So I've not taken these into account when assessing Miss J's income.

In summary I think if MFL had done proportionate checks, they could reasonably have decided Miss J had regular income of £1,280.

I couldn't see any evidence of Miss J paying regular rent or council tax. Miss J's explained that she was living with her mother. I can see from her bank statements she was contributing around £50 per month to utilities. And she had other costs – each month she was spending around £150 on communications, £68 on car insurance, around £80 on fuel and around £300 on payments to creditors, so a total of £848 per month. Deducting this from the income figure above suggests Miss J had disposable income of £432 per month. This wouldn't have been enough to make monthly repayments of £528 as required by MFL's agreement. So I'm satisfied if MFL had done proportionate checks they couldn't reasonably have decided to lend to Miss J.

Putting things right

As I don't think MFL should have approved the loan, I don't think it's fair for them to charge any interest or other charges under the agreement. But Miss J has had use of the vehicle for around 18 months to do so it's fair she pays for that use. There isn't an exact formula for working out what amount would reflect a customer's fair usage of a car. But in deciding what's fair and reasonable in Miss J's case I've thought about the amount of interest charged on the agreement, Miss J's overall usage of the car, and what her costs to stay mobile would have likely been if he didn't have this car.

In doing so, I think a fair amount Miss J should pay is £280 for each month she had use of the car, so a total of £5,040. To settle Miss J's complaint, MFL should do the following:

- End the agreement with nothing further to pay. MFL will be entitled to collect the car.
- Refund all the payments Miss J has made in excess of £5,040 (including the deposit), adding 8% simple interest per year from the date of each overpayment to the date of settlement.
- Remove any adverse information recorded on Miss J's credit file regarding the agreement.

If MFL consider tax should be deducted from the interest element of my award they should provide Miss J a certificate showing how much they've taken off so that Miss J can reclaim that amount, assuming she is eligible to do so.

My final decision

As I've explained above, I'm upholding Miss J's complaint. Marsh Finance Limited need to take the steps outlined above to settle the matter.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss J to accept or reject my decision before 26 December 2023.

Clare King
Ombudsman