

The complaint

Mr B, via a third party, complains that Marsh Finance Ltd ("Marsh") unfairly entered into an unaffordable hire purchase agreement with him. He says that the monthly payments were unaffordable and appropriate and proportionate checks by Marsh would have highlighted this.

What happened

In May 2018 Mr B entered into a hire purchase agreement with Marsh for a used car costing £12,212.99. Under the terms of the agreement, everything else being equal, Mr B undertook to make an advance payment of £142.14 followed by 59 monthly repayments of £296.52 and 1 monthly repayment of £306.52 making a total repayable of £17,943.34 at an APR of 17.8%.

In June 2023 Mr B complained that the agreement was unaffordable. Marsh didn't uphold Mr B's complaint. It said that it believed the *"correct lending decision was made"*.

Mr B's complaint was considered by one of our investigators. She didn't think that Marsh had done anything wrong or treated Mr B unfairly so she didn't recommend Mr B's complaint be upheld. Mr B disagreed so his complaint has been passed to me for review and 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.

In this decision I've focussed on what I think are the key issues. Our rules allow me to do this and these rules reflect the informal nature of our service as a free alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual argument (including those submitted by Mr B in response to the investigator's view) to be able to reach what I think is the right outcome. I will, however, refer to those crucial aspects which impact my decision.

I would also add, especially in the light of Mr B's response to the investigator's view, I've not carried out a form of compliance check or sought to enforce the regulator's rules. What I've done is looked at everything provided and decided whether Mr B has lost out due to Marsh failing to act fairly and reasonably in its dealings with him.

Finally, and for the avoidance of any doubt, I would like to make it clear that I'm only considering in this decision Mr B's complaint that Marsh acted irresponsibly in lending to him, not any other complaint he might have against it.

We've explained how we handle complaints about irresponsible and unaffordable lending on our website. And I've used this approach to help me decide Mr B's complaint.

Having carefully thought about everything I've been provided with, I'm not upholding Mr B's complaint. I'd like to explain why in a little more detail.

Marsh needed to make sure that it didn't lend irresponsibly. In practice, what this means is that Marsh needed to carry out proportionate checks to be able to understand whether Mr B could make his payments in a sustainable manner before agreeing to lend to him. And if the checks Marsh carried out weren't sufficient, I then need to consider what reasonable and proportionate checks are likely to have shown.

Our website sets out what we typically think about when deciding whether a lender's checks were proportionate. Generally, we think it's reasonable for a lender's checks to be less thorough – in terms of how much information it gathers and what it does to verify that information – in the early stages of a lending relationship.

But we might think it needed to do more if, for example, a borrower's income was low, the amount lent was high, or the information the lender had – such as a significantly impaired credit history – suggested the lender needed to know more about a prospective borrower's ability to repay.

On one hand Marsh says it only agreed to lend to Mr B after he had passed its affordability checks, policy and scoring criteria and after it had undertaken a credit search and verified his income. On the other hand, Mr B says the agreement was unaffordable from the outset and appropriate and proportionate checks by Marsh would have highlighted this.

I've thought about what Mr B and Marsh have said.

I can't say for certain whether the checks Marsh carried out went far enough. So I've gone on to consider what further checks might have shown and whether such checks would have made a difference to Marsh's decision to lend. But having done so, I'm not persuaded that further checks by Marsh would have made a difference to its decision to lend in this instance.

I say this because based on bank statements and other information provided by Mr B when his essential expenses are deducted from the income he received he appears to have had enough left over to make the repayments to this agreement. And for the avoidance of doubt I can confirm that I'm in broad agreement with the figures quoted by the investigator in her view in this respect. So I think that Moneybarn obtaining further information is likely to have led it to conclude that when Mr B's essential expenses were deducted from his monthly income, he did have the funds, at the time at least, to sustainably make the repayments due under this agreement.

Furthermore, and whilst this isn't always indicative that a loan was affordable at the outset, I can see that Mr B never missed any of the monthly agreement payments required of him and he settled the agreement over two years early. And this isn't normally consistent with a borrower being unable to afford the monthly repayments.

I note that Mr B says the terms and conditions of the agreement weren't explained to him, he wasn't given the opportunity to read the agreement before signing it, no other 'purchase' options were offered to him and he wasn't advised of his right of withdrawal from the agreement.

Now I know I can't say for certain what was and wasn't discussed with Mr B before he agreed to purchase the car and finance that purchase by way of an agreement with Marsh. But...

- I see no reason why Mr B couldn't have asked for more time to read and understand what it was he was being asked to sign
- Mr B signed the agreement immediately under the statement "*This is a Hire Purchase Agreement regulated by the Consumer Credit Act 1974. Sign it only if you want to be legally bound by it terms*" [my emphasis]
- the agreement clearly sets out Mr B's right of withdrawal
- Mr B confirmed in a telephone call with Marsh independent of the seller/broker (a call that I've listened to) that he was given enough time to read the terms and conditions of the agreement and the implications of entering into the agreement were explained to him
- I see no reason why Mr B, if he didn't want to purchase the car that he did on the agreement terms that he did, couldn't have sought a car and/or finance from elsewhere

So in summary I don't think that Marsh acted unfairly or unreasonably towards Mr B and I'm not upholding his complaint. I appreciate that this will be disappointing for Mr B, but I hope he'll understand the reasons for my decision and at least accept that his concerns have been listened to.

My final decision

My final decision is I don't uphold this complaint.

My final decision concludes this service's consideration of this complaint, which means I'll not be engaging in any further discussion of the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 3 May 2024.

Peter Cook
Ombudsman