DRN-4572306

The complaint

Mrs H is complaining that Marsh Finance Limited (MFL) shouldn't have lent to her – she says the lending was unaffordable. A representative has brought her complaint to us but for ease I've written as if she's dealt with us directly.

What happened

In March 2020, Mrs H took out a hire purchase agreement with MFL to finance the purchase of a vehicle. She borrowed £9,787.61 – the cash price of the car was £7,588 and the remaining finance paid off the balance on her previous vehicle. The agreement required Mrs H to make 59 monthly repayments of £224.30, followed by a final instalment of £234.30 (including a £10 option to purchase fee). Mrs H made her first eight payments on time but his December 2020 direct debit bounced. She was then granted a six-month payment holiday in relation to the pandemic. Mrs H returned to making most of her payments on time until mid-2022 when her payments became more sporadic. The agreement was terminated and Mrs H surrendered the car in December 2022.

In November 2022, Mrs H complained to MFL, saying that she thought MFL had failed to conduct appropriate checks before lending to her. She said she had significant existing debts at the time and couldn't sustain additional financial responsibilities.

In response, MFL said they'd carried out the correct checks before lending to Mrs H. Mrs H had met their lending criteria and been approved. They'd checked Mrs H's payslip and the monthly contractual payment was less than 10% of her monthly wage. So the monthly payment was deemed affordable and MFL didn't uphold Mrs H's complaint.

Mrs H was unhappy with MFL's response and brought her complaint to our service. Our investigator didn't uphold the complaint, saying although she didn't think MFL had done enough to check that the lending was affordable for Mrs H, she didn't think there were any indications in Mrs H's bank statements that the loan was unaffordable.

Mrs H remained unhappy so asked for an ombudsman to review her complaint. In doing so, she said she was responsible for the majority of household bills and had a significant number of existing credit commitments. I issued a provisional decision about the complaint on 21 December 2023. In that I said:

> **"***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.*
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> *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 "correct" checks but haven't explained what these were. They said they'd looked at Mrs H's payslip and the monthly repayments were less than 10% of her monthly income. It seems that this is the sole basis on which they lent to Mrs H.

Having reviewed the payslip provided by MFL (for February 2020), I can see that Mrs H received a bonus of £1,240 in that month. Without this bonus, her income would have been around £2,000, rather than nearly £3,000 as MFL seem to have assumed. And looking at the tax year to date figures it's possible to calculate that her average monthly net income for the year would have been just over £2,000. So her monthly payments were due to be more than 10% of her net income. I also noted that Mrs H's payslip showed she'd had a salary advance that month. This can be an indicator that someone is struggling financially.

Whether or not the checks were proportionate depends on various factors, including the size and length of the loan, and what the checks showed. The loan was for five years and Mrs H would have to pay nearly £13,500 to MFL. So the checks needed to be thorough. But they weren't. I'm inclined to say MFL should have done more to understand Mrs H's financial circumstances, including looking at her credit file and seeking to gain an understanding of her monthly credit commitments.

What would MFL have found if they had done proportionate checks?

I've looked first at Mrs H's credit file. Although the report is dated August 2022, it gives a good indication of what MFL would have found if they'd looked at Mrs H's credit file in March 2020. The credit report shows Mrs H had two County Court Judgments (CCJs) at the time – one for £3,795 dating back to April 2017, and one for £290 from August 2019 – just seven months before the loan.

They'd have also seen that Mrs H had credit cards and mail order accounts with balances totalling nearly £10,000 and an unsecured loan with a balance of £9,403. Although she was making most of her payments on time, she'd missed several payments on one of the credit cards, in March, April and May 2019, and then again in February 2020. And she'd missed a payment on one of the mail order accounts in January 2020. So Mrs H's credit file suggests she was in a lot of debt and may have been starting to struggle financially.

Assuming she paid 5% of the balance each month on her revolving debt, the credit file suggests Mrs H needed to pay around £920 each month to her existing creditors. This is in line with the amounts shown on Mrs H's bank statements, and in line with what she's told us about her monthly expenditure at the time. I've excluded Mrs H's existing hire purchase agreement from this calculation as it was replaced by the March 2020 agreement.

Given that Mrs H had net monthly income of around £2,000 and payments to existing creditors of around £920, and was missing some of her existing payments to creditors, I'm inclined to say it would have been proportionate for MFL to also get an understanding of Mrs H's non-discretionary expenditure before deciding to lend to her.

Mrs H included a summary of her expenditure in her complaint to us. I've also looked at her bank statements for the three months leading up to the lending decision to verify what she told us. Mrs H wasn't paying her rent at the time but she's also included a letter from her landlord threatening eviction, which shows her rent costs. Taking all this information together I'm inclined to say Mrs H was paying, or was supposed to be paying, around £400 for rent, council tax, utilities and home insurance, around £300 for mobile phones, internet and TV services. She was spending around £90 per month on car and pet insurance, around £30 per month on fuel, and around £300 per month on food and other *non-discretionary expenditure. The bank statements also show Mrs H was paying £120 per month to a debt recovery company for overpaid benefits. Adding all of this suggests Mrs H's committed and non-discretionary expenditure was around £1,240 each month.*

Mrs H has told us that her husband was suffering with his mental health at the time and wasn't able to work much. This is consistent with Mrs H paying for most of the family expenses. Looking at the bank statements it seems her husband was contributing. On average, taking into account transfers both to and from her husband, he contributed around £200 per month to the household expenditure. The bank statements also show she received £83 each month in child benefit.

So if MFL had done proportionate checks, I'm inclined to say they would have estimated Mrs H had total monthly income of around £2,300, monthly credit commitments of around £920, and committed and non-discretionary expenditure of around £1,240 each month. This left her with around £140 in disposable income each month. It's clear that isn't enough from which to make monthly repayments of £224.30 under this agreement. In summary, I'm inclined to say that if MFL had done proportionate checks they couldn't have decided to lend to Mrs H."

Mrs H accepted my provisional decision but MFL did not. In summary, they said Mrs H met their lending criteria at the time. They said the credit report shows Mrs H's credit commitments were around £780 per month rather than the £920 figure I used. MFL added that Mrs H had contacted them around nine months after the agreement started to say that her husband had stopped contributing to the household expenses. MFL said this showed the agreement was affordable at its inception when her husband was contributing. MFL also said they'd carried out a validation call with Mrs H before lending to her. They said in this call they'd asked Mrs H whether there were any circumstances that might affect her ability to repay the loan and she didn't disclose anything. MFL added they wouldn't have been able to consider Mrs H's husband's employment circumstances, or the possibility of rent eviction, unless Mrs H had specifically disclosed these to them.

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 not persuaded to change my mind, and I'm upholding Mrs H's complaint. I'll explain why.

I've looked again at Mrs H's credit report. MFL haven't provided any evidence of their £780 credit commitments figure, but it appears they've calculated this assuming monthly repayments against credit cards of 3% of the balance. Whilst this approach would be sufficient for Mrs H to make the minimum payments each month, CONC requires lenders to consider what's necessary for consumers to make repayments in a sustainable way and to pay off creditors within a reasonable timeframe. When I did my calculations, I used 5% rather than 3% - this would allow Mrs H to repay her creditors within a reasonable timeframe, whereas 3% would not. I'm satisfied it's more appropriate to use 5%.

MFL have said Mrs H should have disclosed the possibility of eviction and the situation with her husband's job before taking out the loan. They've said it seems Mrs H's circumstances changed after she took out the agreement. But the eviction threat is dated January 2020 – two months before the start of the agreement. And, as I noted above, Mrs H's bank statements show clearly how much she was paying for household bills and how little her husband was contributing. I appreciate Mrs H didn't disclose her circumstances in full. I haven't heard a recording of the call MFL referred to, so I don't know the context or tone of the question. But I think if MFL had done proportionate checks they'd have specifically asked about Mrs H's living circumstances, how much she spent on rent, and how much her husband contributed to the household expenditure. On balance, if they'd asked these key questions, I'm satisfied Mrs H's circumstances would have come to light and MFL wouldn't have been able to fairly lend to her.

Putting things right

Neither party commented on my suggested redress, so the below is unchanged from that set out in my provisional decision.

As MFL shouldn't have approved the loan, it's not fair for them to charge any interest or other charges under the agreement. But Mrs H had use of the vehicle for around 33 months so it's fair she pays for that use. And the finance agreement included an amount of £2,199.61 to settle Mrs H's previous finance agreement. If MFL hadn't approved this loan she'd still have had to pay that amount so I think it's fair she pays that amount in full.

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 Mrs H's case I've thought about the amount of interest charged on the agreement, Mrs H's overall usage of the car, and what her costs to stay mobile would have likely been if she didn't have this car. In doing so, I think a fair amount Mrs H should pay is £125 for each month she had use of the car, so a total of £4,125. Adding on the settlement of the previous finance agreement makes this £6,324.61. To settle Mrs H's complaint, MFL should do the following:

- Refund all the payments Mrs H has made in excess of £6,324.61, adding 8% simple interest per year from the date of each overpayment to the date of settlement.

- If Mrs H has paid less than £6,324.61, MFL should arrange an affordable and sustainable repayment plan for the outstanding balance.

- Once any outstanding sums have been received, remove any adverse information recorded on Mrs H's credit file regarding the agreement.

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

My final decision

As I've explained, I'm upholding this 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 Mrs H to accept or reject my decision before 20 February 2024.

Clare King
Ombudsman