

## **The complaint**

Mrs B is unhappy that Marsh Finance Ltd issued a default against a hire purchase agreement she had with them.

## **What happened**

In May 2018, Mrs B was supplied with a used car through a hire purchase agreement with Marsh Finance. She paid a £245 deposit, and the agreement was for £8,650 over 60 months with 59 monthly payments of £241.48 and a final payment of £251.48.

Mrs B got into financial difficulties and struggled to maintain the payments. Marsh Finance issued a default notice in February 2022, and a termination notice in April 2022. However, it wasn't until April 2023 that Marsh Finance formally registered a default.

Mrs B wasn't happy with what had happened, and she didn't think that a default should've been issued, especially as this is making it difficult for her to obtain further finance. She complained to Marsh Finance who thought the default had been correctly applied. Mrs B didn't agree with this outcome, and she brought her complaint to the Financial Ombudsman Service for investigation.

Our investigator explained that Marsh Finance were within their right, as defined by the agreement Mrs B signed, to terminate and default the agreement, and they said the agreement made this clear at the outset. However, the investigator initially thought that the default should've been issued at the point of termination, and asked Marsh Finance to correct this date.

Marsh Finance didn't agree with the investigator. They said that, between April 2022 and April 2023, Mrs B had entered into a payment arrangement with them, and it was only when she failed to maintain this that they registered the default. So, they didn't think it was fair or reasonable to backdate the default date, as it wouldn't truly reflect what had happened.

Marsh Finance also provided evidence of what had happened after the default notice was originally sent. Given this, the investigator revised their opinion. They said that Marsh Finance were trying to work with Mrs B to ensure a default wasn't registered. And it wasn't until April 2023, when Mrs B advised Marsh Finance she was unable to agree a payment plan, that the default was issued. As such, the investigator didn't think Marsh Finance needed to do anything more.

Mrs B didn't agree with the investigator's revised opinion. She didn't think Marsh Finance had acted reasonably by issuing the default when they did, and she thought they should've issued a second default notice in 2023. Mrs B also said that different credit reference agencies were reporting different dates for the default, and she thinks that, due to the errors in both when the default was registered and how it was reported, it should be removed.

Because Mrs B didn't agree, this matter has been passed to me to make 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.

Having done so, I've reached the same overall conclusions as the investigator, and for broadly the same reasons. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome. Where evidence has been incomplete or contradictory, I've reached my view on the balance of probabilities – what I think is most likely to have happened given the available evidence and wider circumstances.

In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and (if appropriate) what I consider was good industry practice at the time. Mrs B was supplied with a car under a hire purchase agreement. This is a regulated consumer credit agreement which means we're able to investigate complaints about it.

Although I haven't been provided with a full copy of the agreement Mrs B signed with Marsh Finance, from what I have seen, and under the heading "*MISSING PAYMENTS*" the agreement states:

*"Missing payments may make obtaining credit more difficult and could have severe consequences such as the possibility of our taking possession of the Vehicle, legal proceedings, bankruptcy proceedings, and your home being repossessed."*

I've noted Mrs B's comment that this clause doesn't specifically state defaults. However, a default is a legal proceeding, and the default notice issued by Marsh Finance makes this clear stating "*This is a Default Notice served to you under Section 87(1) of the Consumer Credit Act 1974 because you have failed to keep to the terms of your agreement.*" I'm therefore satisfied that Marsh Finance were acting within the terms of the agreement by both issuing a Default Notice and, eventually, defaulting Mrs B's account.

I would not normally expect a Default Notice to be issued until an account is at least three months in arrears, and I've seen the Default Notice issued on 7 February 2022 confirms Mrs B was £1,101.84 in arrears. With an agreed payment of £241.48, this is the equivalent to around four and a half payments. As such, I'm satisfied that Marsh Finance acted reasonably by issuing the Default Notice when they did.

The Default Notice was clear that, if Mrs B was unable to clear the arrears by 24 February 2022, Marsh Finance would look to terminate the agreement, repossess the car, and pursue her for the total outstanding balance of £4,549.84. Mrs B was unable to clear the arrears, and, on 3 March 2022, Marsh Finance issued a Notice of Termination. This again asked Mrs B to rectify the situation, which she was unable to. So, on 8 April 2022, Marsh Finance terminated the agreement. Within the termination letter, Marsh Finance made it clear they could "*report your default to the credit reference agencies*" and "*if you do not ... come to a suitable agreement with us, we may commence court proceedings to recover the balance.*"

Based on what I've seen, I'm satisfied that Marsh Finance made it clear to Mrs B what was happening, what she needed to do to stop any action being taken against her and, more importantly for the subject of this complaint, that they had the right to register a default with the credit reference agencies.

Marsh Finance's case notes make it clear that, after the agreement was terminated, they attempted to come to a payment arrangement with Mrs B that allowed her to keep the car.

Mrs B made a complaint to Marsh Finance about the service she'd received, asking for all collections activity to be stopped while this was ongoing.

Once this complaint had been resolved, Marsh Finance emailed Mrs B on 21 April 2023. In this email, they explained that they hadn't received any payments since April 2022, and the agreement was due to end in May 2023. Marsh Finance offered an extension to the term if Mrs B was able to repay the outstanding balance over eight equal payments of £571.94. They also explained that failure to agree to this offer, or failure to make any payments if the offer was accepted, would result in further action being taken. In response, on 24 April 2023, Mrs B advised Marsh Finance that she wasn't accepting their offer, nor was she handing the car back, and she'd brought the matter to us for investigation. And she again asked Marsh Finance to put matters on hold while we were investigating.

Following on from this, Marsh Finance registered a default against Mrs B.

Based on what I've seen, I'm satisfied that Marsh Finance acted reasonably by issuing a default on Mrs B's account. She was clearly in arrears, had been issued a default notice, and stopped making payments to Marsh Finance in April 2022.

I've considered whether the default should've been issued in April 2022, but I don't think that's the case. I say this because Mrs B had raised a complaint with Marsh Finance, asking for matters to be put on hold. They weren't obliged to do this, but they agreed to do so. And putting all collections activity on hold, in this instance, included putting the registration of the default with the credit reference agencies on hold as well.

Once Mrs B's complaint had been dealt with, Marsh Finance made her an offer to allow her to keep the car, which she refused. While I appreciate that Mrs B may not have been able to afford the payments Marsh Finance proposed, she didn't make any counteroffer, and instead brought her complaint to us, again asking Marsh Finance to put matters on hold. As I've explained above, Marsh Finance weren't obliged to do this, and in this instance they didn't.

The email of 21 April 2023 made it clear that, if Mrs B didn't come to some arrangement with them or failed to keep to any arrangement put in place, then further action would be taken. While I think that, ideally, Marsh Finance could've clarified that this would include the registration of a default, I'm looking for a reasonable, not a perfect, service. And, as Mrs B had already received a default and termination notice and had failed to make any payments for a year after this, I think she should reasonably have been aware that a default could be registered against her. As such, I don't agree that Marsh Finance have made an error.

So, for the reasons given, I won't be asking Marsh Finance to either remove the default from Mrs B's credit file, nor to amend her credit file to change the date of the default.

Finally, Mrs B has raised the issue of the date of the default being recorded differently by different credit reference agencies. Marsh Finance are required to report accurate data to the credit reference agencies, and they've confirmed they send a file containing the same information to all the agencies on the 14<sup>th</sup> of each month. As this is in line with what I would expect, I don't consider Marsh Finance are doing anything wrong. If the individual credit reference agencies are reporting different information based on this file, this is a matter that Mrs B will need to take up with them separately and individually.

### **My final decision**

For the reasons explained, I don't uphold Mrs B's complaint about Marsh Finance Ltd.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or

reject my decision before 2 May 2024.

Andrew Burford  
**Ombudsman**