

The complaint

Mrs D complains Marsh Finance Limited (Marsh Finance) irresponsibly entered into a credit agreement with her because it didn't complete reasonable and proportionate checks to ensure the agreement was affordable for her.

What happened

Mrs D entered into a hire purchase agreement with Marsh Finance on 3 September 2020 in order to acquire a used car. The total cash price of the car was £9,535 and Mrs D made an advance payment of £680. This was made up of a part exchange of a previous vehicle for £500 and a cash deposit of £180. The total amount payable under the agreement was £14,193.60. Mrs D was to pay 59 instalments of £225.06 and a final instalment of £235.06.

Mrs D complained to Marsh Finance about irresponsible lending in February 2024. Marsh Finance responded to the complaint on 15 April 2024. It said it had not been irresponsible when making the lending decision. At the time of the application, it said it carried out a credit check and Mrs D met its policy and scoring rules to be provisionally approved. It then requested a copy of her payslip as well as a copy of her driving license. Based on the information obtained, it said its underwriters determined the monthly contractual payments were affordable and this was also confirmed by Mrs D when she signed the finance agreement.

Mrs D remained unhappy and asked our service to investigate. Our Investigator issued a view explaining why they felt the checks completed by Marsh Finance weren't reasonable and proportionate. They felt had such checks been completed it's likely they would have shown this agreement wasn't affordable for Mrs D. They went on to explain how they felt Marsh Finance should put things right. Mrs D accepted the view.

However, Marsh Finance didn't agree. In summary, it said:

- The credit file was checked and it did show some adverse credit but overall the file was well maintained. It is not a prime lender and therefore it is happy to assist customers who have previously had adverse credit in the past.
- Mrs D entered into the credit agreement on her own accord and was fully aware of the monthly contractual payments.
- It completed a validation call with Mrs D and she confirmed she was not aware of any reason that the finance would be unaffordable. At this time, Mrs D would have had her opportunity to express any concerns she may have had about the finance not being affordable.
- The checks it completed at the time of her application in 2020 were in line with the industry standard. It has since changed the checks it completes to keep up to date with changes in regulation. Mrs D's application should not be viewed on today's methods and that is how it believes our Investigator was looking to uphold the complaint.

- It asked for an Ombudsman to confirm if the correct checks were completed based on the information it had at the time of the application and under the regulations that were in place in 2020. It feels it did all the right checks that needed to be completed as per the CONC rules.
- It said Mrs D had settled the finance in full.

Therefore, the complaint has been passed to me to decide.

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.

Where evidence is incomplete, inconsistent, or contradictory, I reach my decision on the balance of probabilities – in other words, what I consider most likely to have happened in light of the available evidence and wider circumstances.

We explain how we handle complaints about irresponsible and unaffordable lending on our website. I've used this approach to help me decide Mrs D's complaint. Marsh Finance needed to ensure that it didn't lend irresponsibly as per the rules set out in the FCA's Consumer Credit Sourcebook (CONC). In practice, what this means is that Marsh Finance needed to carry out proportionate checks to be able to understand whether any lending was affordable for Mrs D before providing it.

In this case, there are two overarching questions that I need to answer to fairly and reasonably decide Mrs D's complaint. These two questions are:

1. Did Marsh Finance complete reasonable and proportionate checks to satisfy itself that Mrs D would be able to repay the agreement without experiencing significant adverse consequences?
 - If so, did it make a fair lending decision?
 - If not, would those checks have shown that Mrs D would've been able to do so?
2. Did Marsh Finance act unfairly in some other way?

Did Marsh Finance complete a reasonable and proportionate affordability check?

I've reviewed the application data taken from Marsh Finance's system and it recorded Mrs D was married with no dependents. She was in employment and Marsh Finance verified Mrs D's income using payslips. I can see, after deductions, her net pay was around £1,563.

I have listened to a phone call Marsh Finance had with Mrs D in which she confirmed she expected more hours at work and did not foresee any forthcoming circumstances which would affect her ability to make the loan repayments. However, Mrs D's declaration doesn't mean the checks Marsh Finance completed were proportionate.

Marsh Finance have provided some information regarding the search it completed but it doesn't show what it saw about Mrs D's credit commitments and how she was managing her finances. However, I can see from Marsh Finance's system notes that Mrs D had a recorded default and County Court Judgment (CCJ). I understand the CCJ was from February 2016. Marsh Finance also noted arrears on a utility account and that Mrs D had an existing car finance agreement for £102 per month. But these are notes rather than the credit search

itself. Marsh Finance have said it's likely its underwriters were reviewing a live system at the time, and it has not kept a record of the search itself.

In the absence of this, Mrs D has provided some information about her credit file. I note this is a screenshot of a credit file dashboard. Mrs D has also explained not all the information is available and it only goes back a couple of years. So again, I don't have all the details but Mrs D has selected July 2020 and it shows 27 missed payments. It does not show what period this covers.

Nevertheless, I have also seen a statement for Mrs D's previous car finance agreement, and I can see missed payments prior to the new agreement. Having considered all of the evidence, I'm satisfied it's likely the information Marsh Finance had (including what it has said about the information it saw) indicated Mrs D might be struggling or might recently have struggled to meet her credit commitments. This information ought to have prompted more thorough checks particularly to understand Mrs D's expenditure.

Overall, Marsh Finance have accepted there was some adverse information on Mrs D's credit file. This included arrears on a utility account. I think this ought to have prompted further checks into Mrs D's financial circumstances. Additionally, I've thought about Mrs D's income compared to the size of the monthly repayment (around £225), the duration of the agreement (60 months) and the total amount repayable (around £14,194). Thinking about all the circumstances, I'm not persuaded Marsh Finance did enough to ensure the agreement was affordable and sustainable for Mrs D. I appreciate it verified Mrs D's income with payslips, but I think it ought to have done more to understand Mrs D's other non-discretionary spend. This is bearing in mind the relevant rules and guidelines at the time of the lending.

Would reasonable and proportionate checks have shown Mrs D could sustainably repay the borrowing?

I must now consider what reasonable and proportionate checks were likely to have shown about Mrs D's circumstances at the time the lending was approved. In order to do this, I have considered bank statements from the three-month period leading up to the agreement. In doing so, I'm not saying Marsh Finance needed to obtain bank statements in order to complete reasonable and proportionate checks. However, the bank statements show Mrs D's expenditure and give a good indication of what Marsh Finance were likely to have discovered had it obtained more information.

Having reviewed these statements, I can see Mrs D received a regular income of around £1,648. This included her salary of around £1,563 and child benefit of £84.20. I appreciate our Investigator hasn't included this in Mrs D's income. I'd note it doesn't change the overall outcome here as it was a relatively small amount. However, I consider it appropriate to include the child benefit because it's likely some of the expenditure (such as food) would be for the benefit of the child.

I've reviewed the expenditure information on the statements. I'd note there were a number of returned direct debits and also larger payments towards creditors as Mrs D caught up with missed payments. For example, in August 2020 Mrs D paid £500 towards her other car finance agreement which is significantly larger than her usual monthly instalment. This agreement also seems to have ended in August 2020. So, I've thought about what the statements show Mrs D's committed spend would likely have been when the agreement with Marsh Finance commenced. I've also thought about what the other information I have shows about Mrs D's likely committed spend at the time to determine what Marsh Finance were likely to have discovered. This includes information about her credit file and Mrs D's own testimony.

Having done so, I can see her committed expenditure seemed to be around £1,401. This includes payments towards utility bills, food, insurances, communication accounts, petrol and credit commitments. This left Mrs D with around £246 disposable income, which means she would have only been left with around £22 each month after the repayments. This isn't enough to demonstrate Mrs D could sustainably afford to make the repayments throughout the lifetime of the agreement. I appreciate the figures I have come to are slightly different to those set out by our Investigator, but I'm satisfied this doesn't change the overall outcome. And reasonable and proportionate checks were likely to have shown Mrs D didn't have sufficient disposable income to afford the repayments.

Moreover, I think reasonable and proportionate checks were likely to have revealed other indicators that Mrs D might not be able to sustainably meet the repayments. The statements show Mrs D had repeated returned direct debits, missed payments for a previous car finance agreement, she was borrowing money off friends and family to repay arrears and was only paying a token payment towards one of her credit commitments. This is alongside the information Marsh Finance accepts it had about missed payments for a utility account. So, Mrs D was struggling to meet the financial obligations she already had, and any further lending was likely to have a significant adverse impact on her circumstances. Whilst Marsh Finance didn't necessarily need to obtain the bank statements, I think indicators Mrs D was at risk of not being able to sustainably make the repayments would likely have been discovered through the appropriate checks.

Overall, I'm not satisfied Marsh Finance completed reasonable and proportionate checks to ensure this agreement was affordable. Had such checks been completed, I'm satisfied it's likely they would have shown the agreement was not affordable or sustainable for Mrs D. She would not have been left with sufficient disposable income after the repayments and there were other indicators demonstrating this agreement was unlikely to be sustainable for her. Therefore, I don't think Marsh Finance ought to have lent to Mrs D and should put things right in the way outlined below.

Did Marsh Finance act unfairly in some other way?

I haven't seen any other evidence which shows me Marsh Finance acted unfairly in some other way. I've also considered whether the relationship might have been unfair under s140A of the Consumer Credit Act 1974. However, I'm satisfied the redress I have directed above results in fair compensation for Mrs D in the circumstances of her complaint. I'm satisfied, based on what I've seen, that no additional award would be appropriate in this case.

Putting things right

Mrs D has explained she sold the vehicle through a third party because she was struggling to meet the repayments. She settled the agreement in full in February 2024. As I don't think Marsh Finance 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. Mrs D should therefore only have to pay the original cash price of the car, being £9,535. Anything paid in excess of this amount should be refunded as an overpayment.

For the avoidance of doubt, the advance payment should also be included in Marsh Finance's calculations as it was a payment made towards the agreement.

To put things right, Marsh Finance Limited should do the following:

- Refund to Mrs D any payments made towards the agreement in excess of £9,535, 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 Mrs D's credit file regarding the agreement.

*If Marsh Finance considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mrs D how much it's taken off. It should also give Mrs D a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

I'm upholding this complaint and Marsh Finance Limited should put things right in the way outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs D to accept or reject my decision before 5 December 2024.

Laura Dean
Ombudsman