

Complaint

Mr T complains that Marsh Finance & Commercial Limited ("Marsh") unfairly entered into a hire-purchase agreement with him. He's said that the finance was unaffordable which resulted in him experiencing ongoing difficulty.

Background

In October 2014, Marsh provided Mr T with finance for a used car. The purchase price was £13,950.00. Mr T received a part-exchange of £4,188.64 and entered into a 60-month hire-purchase agreement with Marsh for the remaining £9,761.35 he required for the purchase.

The loan had interest, fees and total charges of £7,993.05 (made up of interest of £7,595.05 a document fee of £199 and an option to purchase fee of £199) and the balance to be repaid of £17,754.40 (which does not include Mr T's part-exchange) was due to be repaid in 59 monthly repayments of £292.59 followed by a final payment of £491.59.

In March 2023, Mr T complained to Marsh saying that it shouldn't have entered into this hire-purchase agreement with him, as it ought to have realised that it was unaffordable and this getting behind on his priority bills as well as almost losing his house.

Marsh did not uphold Mr T's complaint. In the first instance, it considered that Mr T complained too late. Nonetheless, it was, in any event, satisfied that it had carried out proportionate checks at the time of Mr T's application and the results showed that it was reasonable to lend. Mr T was dissatisfied at this response and referred his complaint to our service.

Mr T's complaint was considered by one of our investigators. He reached the conclusion that proportionate checks would not have shown Marsh that it shouldn't have entered into the hire-purchase agreement with Mr T. So he didn't think that Mr T's complaint should be upheld.

Mr T disagreed with our investigator and the complaint was passed to an ombudsman for a final decision.

My findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Basis for my consideration of this complaint

There are time limits for referring a complaint to the Financial Ombudsman Service. Marsh has argued that Mr T's complaint was made too late because he complained more than six years after the decision to provide the finance as well as more than three years after he ought reasonably to have been aware of his cause to make this complaint.

Our investigator explained why it was reasonable to interpret Mr T's complaint as being one alleging that the relationship between him and Marsh was unfair to him as described in s140A of the Consumer Credit Act 1974 ("CCA"). He also explained why this complaint about an allegedly unfair lending relationship had been made in time.

Having carefully considered everything, I've decided not to uphold Mr T's complaint. Given the reasons for this, I'm satisfied that whether Mr T's complaint was made in time or not has no impact on that outcome.

I'm also in agreement with the investigator that Mr T's complaint should be considered more broadly than just the lending decision. I consider this to be the case as Mr T has not only complained not about the decision to lend but has also alleged that making his payments caused ongoing financial difficulty.

I'm therefore satisfied that Mr T's complaint can therefore reasonably be interpreted as a complaint about the overall fairness of the lending relationship between him and Marsh. I acknowledge Marsh still may not agree we can look Mr T's complaint, but given the outcome I have reached, I do not consider it necessary for me to make any further comment, or reach any findings on these matters.

In deciding what is fair and reasonable in all the circumstances of Mr T's case, I am required to take relevant law into account. As, for the reasons I've explained above, I'm satisfied that Mr T's complaint can be reasonably interpreted as being about the fairness of the lending relationship between him and Marsh, relevant law in this case includes s140A, s140B and s140C of the CCA.

S140A says that a court may make an order under s140B if it determines that the relationship between the creditor (Marsh) and the debtor (Mr T), arising out of a credit agreement is unfair to the debtor because of one or more of the following, having regard to all matters it thinks relevant:

- any of the terms of the agreement;
- the way in which the creditor has exercised or enforced any of his rights under the agreement;
- any other thing done or not done by or on behalf of the creditor.

Case law shows that a court assesses whether a relationship is unfair at the date of the hearing, or if the credit relationship ended before then, at the date it ended. That assessment has to be performed having regard to the whole history of the relationship. S140B sets out the types of orders a court can make where a credit relationship is found to be unfair – these are wide powers, including reducing the amount owed or requiring a refund, or to do or not do any particular thing.

Given Mr T's complaint, I therefore need to think about whether Marsh's decision to lend to Mr T, or its later actions resulted in the lending relationship between Mr T and Marsh being unfair to Mr T, such that it ought to have acted to put right the unfairness – and if so whether it did enough to remove that unfairness.

Mr T's relationship with Marsh is therefore likely to be unfair if it didn't carry out reasonable and proportionate checks into Mr T's ability to repay in circumstances where doing so would have revealed the monthly payments to the agreement to have been unaffordable, or that it was irresponsible to lend. And if this was the case, Marsh didn't then somehow remove the unfairness this created.

I'll now turn to whether Marsh acted fairly and reasonably when entering into the hire-purchase agreement with Mr T.

What we consider when looking at complaints about irresponsible or unaffordable lending

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 T's complaint.

I think that it would be helpful for me to set out that we consider what a firm did to check whether payments to credit were affordable (asking it to evidence what it did) and determine whether this was enough for the lender to have made a reasonable decision on whether to lend.

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.

That said, I think that it is important for me to explain that our website does not provide a set list of mandated checks that a lender is expected to carry out on every occasion – indeed the regulator's rules and guidance did not and still do not mandate a list of checks to be used. It simply sets out the types of things that a lender could do.

It is for a lender to decide which checks it wishes to carry out, although we can form a view on whether what was done was proportionate to the extent it allowed the lender to reasonably understand whether the borrower could make their payments.

Furthermore, if we don't think that the lender did enough to establish whether the repayments to an agreement were affordable, this doesn't on its own mean that a complaint should be upheld. We would usually only go on to uphold a complaint in circumstances where we were able to recreate what reasonable and proportionate checks are likely to have shown – typically using information from the consumer – and this clearly shows that the repayments in question were unaffordable.

I've kept this in mind when deciding Mr T's complaint.

Was Marsh's decision to enter into a hire-purchase agreement with Mr T fair and reasonable?

Marsh says it agreed to this application after Mr T provided details of his monthly income which it says it verified with a copy of a recent payslip and Mr T's tax return. I understand that it also carried out credit searches which showed that Mr T had no significant adverse information – such as County Court Judgments ("CCJ") or defaulted accounts - recorded against him.

In its view, when reasonable repayments to the total amount Mr T owed plus a reasonable amount for Mr T's living expenses were deducted from his monthly income the monthly payments were still affordable.

I've thought about what Marsh has said.

The first thing for me to say is that I can't see that Marsh took any steps to ascertain Mr T's living expenses. In my view, given the amount of the credit as well as the term, I think that Marsh needed to have an understanding of Mr T's living expenses in addition to the income and credit commitment details it took.

That said, I don't think that Marsh obtaining further information on Mr T's actual living costs would have made a difference to its decision to lend in this instance.

I say this because when Mr T's actual living expenses are added to his active credit commitments and deducted from his income, he, at the time at least, appears to have enough left over to repay this agreement. So I think that Marsh obtaining further information is likely to have led it to conclude that when Mr T's regular living expenses and existing credit commitments 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.

I note that Mr T has now carried out a line-by-line analysis of his bank statements and in his view he didn't have enough left over for emergencies once the payments to this agreement was deducted from his disposable income.

The first thing for me to say is that Mr T's analysis has been carried out with the use of three months' worth of bank statements and this includes all of his expenditure. Firstly, there was no requirement and there still is no requirement to obtain three months' worth of bank statements. In these circumstances, I don't think that the amount Mr T had left over means that it was unreasonable for Marsh to have lent to him, especially when bearing in mind the amount of the monthly payment for this agreement.

I've also mindful that while Mr T has said that he was paying towards a debt management plan, there is no clear evidence of this on his statements. The only payment for an amount of around what he's said he was paying was a card payment made in July 2014. This doesn't clearly show as a regular payment to a debt management plan and in any event, I don't think proportionate checks would have resulted in Marsh obtaining a copy of Mr T's July 2014 bank statement either.

I also have to keep in mind that Mr T's most recent submissions are being made in support of a claim for compensation and any explanations Mr T would have provided at the time are more likely to have been with a view to persuading Marsh to lend, rather than highlighting any unaffordability. So I think it unlikely that Mr T would have volunteered that he had the level of expenditure he's now referring to, particularly as Marsh wasn't required to request bank statements in the first place.

Overall and having carefully considered everything, while I've not seen enough to be satisfied that Marsh's checks before entering into this hire-purchase agreement with Mr T did go far enough, I'm nonetheless satisfied that carrying out reasonable and proportionate checks won't have stopped Marsh from providing these funds, or entering into this agreement with Mr T.

In these circumstances, I don't find that the lending relationship between Mr T and Marsh was unfair to Mr T. I've not been persuaded that Marsh created unfairness in its relationship with Mr T by irresponsibly lending to him when it entered into this hire-purchase agreement with him. And I don't find Marsh treated Mr T unfairly in any other way either based on what I've seen.

So overall and having considered everything, while I can understand Mr T's sentiments and appreciate why he is unhappy, I'm nonetheless not upholding this complaint. I appreciate that this will be very disappointing for Mr T. But I hope he'll understand the reasons for my

decision and that he'll at least feel his concerns have been listened to.

My final decision

My final decision is that I'm not upholding Mr T's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 4 August 2025.

Jeshen Narayanan
Ombudsman