

## **The complaint**

Mr A complains through a representative that Marsh Finance & Commercial Limited (“Marsh”) failed to carry out sufficient affordability checks before it lent to him.

## **What happened**

In October 2019, Marsh provided Mr A with a hire purchase agreement, for a used car, through a credit intermediary. The cash price of the car was £9,031 and the full amount was financed. The charge for credit was £3,263.68 with a total to repay of £12,294.68. Mr A was due to make 43 monthly repayments of £212.97 followed by a final payment of £294. The statement of accounts shows the agreement ended in April 2022.

Marsh issued a final response letter about Mr A’s complaint in February 2024. Marsh didn’t uphold the complaint saying the checks it carried out showed the agreement to be affordable. Mr A’s representative then referred the complaint to the Financial Ombudsman.

Mr A’s complaint was considered by an investigator who didn’t uphold it. Mr A’s representatives disagreed and I’ve summarised its responses below.

- The expenditure check carried out by the investigator hadn’t included costs for food or clothes and so the calculation didn’t reflect Mr A’s financial situation.
- The bank statements show Mr A was already struggling to meet his existing commitments.
- Mr A was taking out loans in order to meet his financial commitments and was reliant on his overdraft.
- Mr A’s gambling transactions ought to have raised concerns, and these transactions would’ve been apparent had the correct affordability checks been carried out.
- Mr A wasn’t left with a sufficient amount of disposable income to cover any unforeseen emergencies.

The investigator explained why these comments didn’t change his mind and as no agreement could be reached the complaint has been passed to an ombudsman for a 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.

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 A’s complaint. Having carefully thought about everything I’ve been provided with, I’m not upholding Mr A’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 any lending was sustainable for Mr A before providing it.

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.

I also want to reassure Mr A that where I haven't commented on a specific issue referred to, or all comments made, it's not because I've failed to take it on board and think about it. The reason I will not have commented on the issue is because I'm satisfied that I don't need to do so in order reach what I consider to be a fair and reasonable outcome. For the sake of completeness, I would add that our complaint handling rules, which I'm required to follow, permit me to adopt such an approach.

As part of the application process took Marsh obtained a copy of a payslip that confirmed Mr A received a net salary of just under £1,500 per month. So, Marsh could've been reasonably confident that the income it used for its affordability assessment was accurate.

It doesn't look like that Marsh took any details of what Mr A's likely monthly living costs were – such as whether he had housing payments or utility costs. In addition, Marsh has said it carried out a credit search – but despite asking for a copy of the results none where provided. All it has said;

*“... the underwriters, they would have reviewed the customers credit file and other policy rules that were in place at that time.”*

It also obtained the front page of a bank statement – but this seems purely to have been used to check Mr A's identity and address because he provided a copy ISA statement which showed he didn't have any funds in the account. And Mr A wouldn't be using the ISA account as his day-to-day account.

Overall, Marsh seems to be saying that based on the result of the checks that it carried out Mr A could've been approved for finance with a monthly payment of £400. As the cost of this agreement was smaller it therefore follows, that Marsh considers a fair lending decision was made.

But I disagree with Marsh over this, for much the same reasons as the investigator. I do think further checks were needed. Bearing in mind Marsh hasn't provided the credit check results nor has it demonstrated that it had even the most basic idea of Mr A's living costs. As such further checks were needed before it lent.

But Marsh had an accurate idea of Mr A's income, so I do think the further checks needed only to extend to finding out about his regularly monthly outgoings. Marsh could've gone about doing this a number of ways, it could've simply asked Mr A about his actual living costs, asked for evidence from Mr A about his bills, any other documentation it felt it may have needed or as I've done here reviewed the bank statements Mr A has provided.

This didn't, and doesn't mean that, Marsh had to undertake a full financial review of Mr A's circumstances: in my view that would've been disproportionate given the amount and term of the loan. Instead, Marsh merely it just needed to obtain a better idea of Mr M's financial circumstances.

I accept that had Marsh conducted proportionate checks it may not have seen all the information that I have seen. But, in the absence of Marsh conducting a proportionate check I do think it's entirely fair and reasonable to consider the bank statements that I now have access to.

I can see regular payments towards another loan, insurance as well as a regular payment to his wife to cover mortgage payments and some of the utilities. But I can't see any of the other utilities being paid out of Mr A's account. So, even with the loan payment Mr A still had some disposable income each month to cover other cost.

I've thought about the fact that Mr A was using his overdraft, but when he was paid the account did go into credit and I wouldn't say a customer using an overdraft would mean that a car finance provider – given the rest of the information I've seen – would've led it to conclude the agreement was unaffordable and to refuse the car finance.

Mr A's representative has said that even based on the investigator's monthly outgoings the agreement wasn't likely to be sustainable, given he was left with around £200. To be fair, I think the disposable was likely to be more given I can't see any petrol costs or food shops within the statements.

But even if the disposable was as low as the investigator calculated – at £180 per month. I still think that was sufficient to have led Marsh to believe the loan was affordable, and while the representative would like to know how much disposable is sufficient. I can't provide a direct answer to that. There are a number of reasons that can lead to an amount being left as isn't enough. There is no set limit in the guidance or regulations and it will depend on the circumstances of the complaint including what proportionate checks may or may not have shown.

This leads me on to Mr A's gambling, but as I don't think Marsh needed to obtain bank statements in order to conduct a proportionate check it therefore follows, that it didn't and wouldn't have reasonably known about Mr A's gambling and couldn't have factored that into the affordability assessment.

I've also considered whether the relationship might have been unfair under s.140A of the Consumer Credit Act 1974. However, for the reasons I've already given, I don't think Marsh lent irresponsibly to Mr A or otherwise treated him unfairly in relation to this matter. I haven't seen anything to suggest that Section 140A would, given the facts of this complaint, lead to a different outcome here.

### **My final decision**

For the reasons I've outlined above, I am not upholding Mr A's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 8 August 2025.

Robert Walker  
**Ombudsman**