

The complaint

Miss D complains that Marsh Finance Limited's creditworthiness and affordability risk assessments for a hire purchase agreement, under which a car was supplied to her, were unsatisfactory and that there was an unfair relationship. She's being represented by a legal adviser.

What happened

A used car was supplied to Miss D under a hire purchase agreement with Marsh Finance that she electronically signed in October 2021. The price of the car was £20,449, Miss D made an advance payment of £500 and she agreed to make 59 monthly payments of £490.91 and a final payment of £500.91 to Marsh Finance.

Miss D's representative complained to Marsh Finance about the complaint issues described above in January 2025. Marsh Finance detailed the checks that it had made and said that they showed that Miss D had sufficient disposable income to afford the repayments for the car she had applied for and was accepted for finance.

A complaint was then made to this service. The complaint was looked at by one of this service's investigators who, having considered everything, thought that it should be upheld. She thought that the checks that Marsh Finance conducted were proportionate, but she was satisfied that the checks would more likely than not have shown that the lending wasn't sustainably affordable for Miss D. She didn't think that it was fair for Marsh Finance to be able to charge any interest or charges under the agreement and that Miss D should only have to pay the original cash price of the car of £20,499, and that anything she'd paid in excess of that amount should be refunded as an overpayment.

Marsh Finance doesn't agree with the investigator's recommendation so I've been asked to issue a decision on this complaint. It says that: Miss D completed an open banking link during her application for finance which would have assessed her income and expenditure and confirmed that the maximum affordability would be £500 per month; the monthly payment was £490.91; and: Miss D maintained that payment for the first 18 months of the agreement with no issues which confirms that the agreement was affordable.

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.

Miss D applied to Marsh Finance for finance to pay for a car to be supplied to her and it has described the checks that it made. It says that Miss D had declared her income, which was automatically verified, her likely expenditure was calculated using credit reference agency, Office for National Statistics, application and other data, and she undertook an open banking process which examined twelve month's banking transactions with a view to establishing a disposable income amount and payment affordability. It says that the open banking process showed that Miss D had sufficient disposable income to afford the repayments for the car she had applied for and she was accepted for finance.

Marsh Finance was required to make reasonable and proportionate checks to ensure that any credit that it was going to provide to Miss D was sustainably affordable for her before entering into the hire purchase agreement. I consider that the checks that Marsh Finance has described, and which it has evidenced were made, were reasonable and proportionate for the credit for which Miss D had applied.

The evidence that Marsh Finance has provided about its reasonable and proportionate checks isn't complete as it has only provided incomplete screenshots of some of the evidence. I don't consider that its evidence shows that it conducted a proper affordability assessment which showed that the hire purchase agreement was sustainably affordable for Miss D.

Miss D's representative has provided details of Miss D's banking transactions for the three months before Miss D entered into the hire purchase agreement. The investigator used those details to calculate that Miss D's average monthly income was about £1,565, she received an average of £250 each month in child maintenance, her average monthly direct debit payments were about £633, she spent an average of about £450 each month on groceries and fuel and about £718 on rent. That would have meant that her average monthly disposable income in the three months before she entered into the hire purchase agreement was only £14.

I consider it to be more likely than not that reasonable and proportionate checks would have shown that Miss D couldn't sustainably afford the monthly payment under the hire purchase agreement and that Marsh Finance shouldn't have provided any credit to her. Marsh Finance says that Miss D maintained her contractual payments until May 2023, when she advised it of a change in her personal circumstances. I'm considering whether or not Marsh Limited made a fair and reasonable lending decision before providing credit to her and, for the reasons that I've described, I don't consider that it did so.

I'm not persuaded that there's enough evidence to show that the hire purchase agreement was sustainably affordable for Miss D and I consider that it wasn't responsible for Marsh Finance to have provided that credit to her. As I don't consider that Marsh Finance should have provided the credit to Miss D, I don't consider that it's fair or reasonable for it to have charged any interest, fees or penalties under the hire purchase agreement and that Miss D should only have to pay the original cash price of the car. I find that it would be fair and reasonable in these circumstances for Marsh Finance to take the actions described below to put things right.

I've also considered whether Marsh Finance acted unfairly or unreasonably in some other way, including whether its relationship with Miss D might have been unfair under section

140A of the Consumer Credit Act 1974. As I'm upholding Miss D's complaint for the reasons given above, I don't consider that I need to make a finding on that. I consider that the actions that I've described below result in fair compensation for Miss R in the circumstances of this complaint and I'm not persuaded that it would be fair or reasonable for me to require Marsh Finance to take any actions other than as described below.

Putting things right

I find that it would be fair and reasonable for Marsh Finance to end the hire purchase agreement. If the total of Miss D's payments to it under the hire purchase agreement have exceeded the cash price of the car, it should transfer ownership of the car to Miss D. If not, the transfer of ownership should be made once the total of her payments to it under the hire purchase agreement have exceeded the cash price of the car.

I find that it would be fair and reasonable for Marsh Finance to refund to Miss D any payments that she's made to it under the hire purchase agreement that total in excess of £20,499, with interest at an annual rate of 8% simple from the date of each overpayment to the date of settlement. HM Revenue & Customs requires Marsh Finance to deduct tax from that interest payment. Marsh Finance must give Miss D a certificate showing how much tax it's deducted if she asks it for one. Marsh Finance should also ensure that any information about the hire purchase agreement that it's reported to the credit reference agencies is removed from Miss D's credit file.

If the total of the payments that Miss D has made to Marsh Finance under the hire purchase agreement are less than £20,499, it should agree an affordable repayment arrangement with Miss D for the outstanding balance and, once Miss D has cleared that balance, it should also ensure that any information about the hire purchase agreement that it's reported to the credit reference agencies is removed from Miss D's credit file.

My final decision

My decision is that I uphold Miss D's complaint and order Marsh Finance Limited to take the actions described above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss D to accept or reject my decision before 19 November 2025.

Jarrold Hastings
Ombudsman