

complaint

Mr K complains about a hire purchase agreement he took out to buy a car. He is unhappy Marsh Finance Ltd did not accept his request to voluntarily terminate the agreement when he said he could not afford the monthly repayments. He also believes the hire purchase agreement was not affordable to him at the time he took it out.

Mr K is represented in his complaint by his local Citizens Advice Bureau (CAB).

background

The adjudicator upheld the complaint. He found that Marsh Finance should have accepted Mr K's request to voluntarily terminate the agreement when he first asked. He also thought the hire purchase agreement was not affordable at the time it was taken out by Mr K. He recommended Marsh Finance close the hire purchase agreement with nothing further owed and refund any payments made to the agreement, with interest. He also recommended any information on Mr K's credit file is also removed.

Marsh Finance said it has now accepted Mr K's request to terminate the agreement and that its claim is limited to half of the amount due under the agreement, less what Mr K has paid. It does not however accept the adjudicator's findings in relation to the affordability of the hire purchase agreement.

It said that at the time the agreement was set up Mr K's credit file had only one 'blemish' and the credit reference agency did not consider him to be a high risk. It performed its standard affordability checks and Mr K was easily within its requirements. It feels it was reasonable to assume that an existing unsecured loan was for a car and that this would be repaid as Mr K was likely replacing the car. It has strict rules that do not allow it to lend to customers who have pay day loans but the pay day loan Mr K had was not recorded on his credit file at the time.

It has never been accused of irresponsible lending before and it does not think it is an irresponsible lender. However, as a sign of goodwill it is willing to reduce Mr K's liability by a considerable sum as it has now sold the car. It is willing to apply the sale proceeds to the balance owed and this will reduce the amount Mr K will need to pay to settle the account.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Having done so, I have upheld this complaint.

The Office of Fair Trading's irresponsible lending guidance requires lenders to "*take reasonable steps to assess a borrower's likely ability to be able to meet repayments under the credit agreement in a sustainable manner*". Marsh Finance seems to have been satisfied with Mr K's credit file at the time he applied for the finance and says he only had one missed payment recorded on his credit file. It also says that the pay day loan Mr K had was not recorded on the credit file and had it known about the loan it would not have agreed to lend to him.

A consumer's credit file is an indication of his previous ability to repay what he had borrowed. It may include an indication of his 'indebtedness' but it will not always

demonstrate that the new borrowing being applied for is actually affordable. Managing existing credit commitments is not the same as managing additional financial commitments and a previously good credit file is not therefore evidence any new borrowing is actually affordable.

Marsh Finance refers to the credit file not showing the Mr K had a pay day loan. Lenders voluntarily provide details to credit reference agencies and although it is considered good practice, there is no requirement for them to do so. A credit file will not necessarily be an accurate reflection of all of a consumer's credit commitments.

Although Mr K's credit file did not record any commitments to pay day lenders it did show that he had three outstanding loans, three outstanding credit cards and two bank current accounts. Mr K's income details do appear to have been considered at the time the loan was taken out and I understand it was above the required level for the finance to be agreed. However, I have seen nothing to indicate that Mr K's expenditure was considered against his income. Whilst it may not be a specific requirement to consider a customer's income and expenditure I think that in this case it would have been helpful. I also think that the existing credit commitments shown on the credit file should have been sufficient for Marsh Finance to have at least made further enquiries about them and what Mr K was paying towards them. Had Mr K's expenditure been considered it would have been clear that the additional commitment of £186 each month was not affordable.

I have considered the amount of existing credit Mr K owed and his other monthly commitments and I am satisfied that he was unable to afford the new borrowing for the car. Marsh Finance should not have therefore agreed the loan for the new car. Although the car has now been taken back Mr K is still being asked to repay a considerable sum. I do not think Mr K should be liable for any further sums under the hire purchase agreement and Marsh Finance should now cancel the agreement with nothing further owed. Any amounts that have been paid by Mr K, or his IVA practitioner, should be refunded with interest.

Given my findings, it would not be appropriate for adverse entries to be maintained on Mr K's credit file.

Part of Mr K's complaint is also about Marsh Finance not accepting his request to voluntarily terminate the agreement correctly. Even if this aspect of the complaint was upheld any redress would not be greater than I have already instructed above. I see little benefit therefore in explaining my findings in great detail on this point. However, for the avoidance of doubt, I am broadly in agreement with the adjudicator's findings on the issues surrounding the voluntary termination of the agreement.

my final decision

My final decision is that Marsh Finance Ltd should:

- write off the outstanding liability and cancel the loan;
- refund the amounts paid to this agreement, including the £104.50 deposit and any sums paid by Mr K or the IVA practitioner; and,
- remove any adverse information placed on Mr K's credit file in relation to this debt.

Marsh Finance should make the payment to Mr K's IVA practitioner, the details of which can be found in the letter accompanying this decision.

If Marsh Finance believes that tax should be deducted from the interest element of my award, it should provide Mr K with the appropriate tax deduction certificate so that he is able to claim a refund if appropriate.

Mark Hollands
ombudsman