DRN-4488068

The complaint

Mr G is complaining that Marsh Finance Limited (MFL) shouldn't have lent to him – he says the lending was unaffordable. A representative has brought his complaint to us but for ease I've written as if he's dealt with us directly.

What happened

In September 2019, Mr G took out a hire purchase agreement with MFL to finance the purchase of a vehicle. He borrowed £13,525 – the cash price of the vehicle. The agreement required Mr G to make 59 monthly repayments of £339.01, followed by a final instalment of £349.01 (including a £10 option to purchase fee). Mr G made his first two payments on time but his December 2019 direct debit bounced. He made that month's payment by card and then made the following few payments on time until March 2020 when he was granted a payment holiday in relation to the pandemic. Since then, he continued to make repayments but his direct debits repeatedly bounced. Mr G voluntarily terminated the agreement and returned the car in April 2023.

In February 2023, Mr G complained to MFL, saying that he thought MFL had failed to conduct appropriate checks before lending to him. He said his credit report shows he had seven active credit accounts at the time of the application, and three that had recently been closed. He said three of these had been opened in the three months prior to his application. Mr G also said he'd missed a payment to a lender in June 2019 which should have been highlighted when conducting the affordability assessment. He added that he'd taken out significant additional borrowing since September 2019 which reflected his dependence on borrowing.

In response, MFL said they'd carried out a credit check before lending to Mr G. Mr G had met their lending criteria and been provisionally approved. They'd then requested payslips as proof of income and used this to confirm his maximum monthly payment could be £522.34 per month. Since Mr G's actual monthly payment was £339.01 they said it was well under the maximum amount Mr G could afford. So MFL didn't uphold Mr G's complaint.

Mr G was unhappy with MFL's response and brought his complaint to our service, saying the lending has had a significant adverse impact on his finances and mental health. Our investigator didn't uphold the complaint, saying he thought MFL had done enough to check that the lending was affordable for Mr G. He didn't think the results of the credit check should have prompted MFL to do further checks beyond verifying Mr G's income.

Mr G remained unhappy so asked for an ombudsman to review his complaint. In doing so, he said his credit report showed he'd had numerous cash advances and short-term loans in the months prior to the application which should have prompted them to look at his bank statements. Mr G also said if MFL had looked at his bank statements they'd have seen persistent gambling.

I looked into Mr G's complaint and issued a provisional decision on 31 October 2023. In that I said:

"The Financial Conduct Authority (FCA) sets out in a part of its handbook known as CONC what lenders must do when deciding whether or not to lend to a consumer. In summary, a firm must consider a customer's ability to make repayments under the agreement without having to borrow further to meet repayments or default on other obligations, and without the repayments having a significant adverse impact on the customer's financial situation.

CONC says a firm must carry out checks which are proportionate to the individual circumstances of each case.

<u>Did MFL carry out proportionate checks?</u>

MFL said they carried out the following checks:

- *reviewed Mr G's credit file; and*
- *checked his income to payslips.*

Whether or not these checks were proportionate depends on various factors, including the size and length of the loan, and what MFL found. At over £20,000, the total amount Mr G would have to repay was significant, and the term of the loan was five years.

MFL haven't provided a copy of Mr G's credit file – they've simply told us Mr G met their lending criteria. I've looked at Mr G's copy of his credit file and this confirms what he told MFL when he complained. At the time of the application he had three active credit cards, with a total balance of £4,000. He had an unsecured loan with a balance of around £1,700. And he had a recent history of repeatedly using payday loans, cash advances on his credit cards, and other short-term lending and high cost credit. His credit file only showed one missed payment – on a previous hire purchase agreement – but the unsecured debts of nearly £6,000 and repeated short-term borrowing are an indicator that Mr G might have been in financial difficulties.

MFL were also aware that Mr G had been in an Individual Voluntary Arrangement (IVA) from 2013 until September 2018 – another indicator that he may have had trouble managing his finances.

On that basis, I'm inclined to say it wasn't enough for MFL to just check Mr G's income – I think they ought to have also got some understanding of his monthly expenditure and credit commitments to ensure that he'd be able to sustainably make the repayments under their agreement.

<u>What would MFL have found if they had done proportionate checks?</u>

A proportionate check would have involved MFL finding out more about Mr G's expenditure to determine whether he'd be able to make the repayments in a sustainable way.

I've looked at statements for Mr G's bank accounts for the three months leading up to his application to MFL. I'm not saying MFL needed to obtain bank statements as part of their lending checks. But in the absence of other information, bank statements provide a good indication of Mr G's income and expenditure at the time the lending decision was made.

Looking at these statements, I couldn't see any evidence of Mr G paying regular rent or utilities. His regular expenditure was limited to insurance, telecoms, and travel costs, totalling around £600. I asked Mr G about the lack of apparent living costs in his bank *statements and he told us that at the time of the agreement he was homeless, having been evicted for non-payment of rent. Instead, he was paying cash to stay with various friends and family members.*

The statements also show Mr G was struggling with debt. In July and August 2019, he paid around £3,500 and £2,150 respectively to creditors, with the majority of this being short-term credit. Mr G's income from his primary source of employment was around £2,450, so this left very little to spare. Mr G had other income – he'd started doing self-employed delivery work – but he's described this to us as being out of desperation to make ends meet rather than an intended long-term source of income.

I've considered Mr G's comments about his gambling, but I've seen no evidence of that before this agreement was taken out – so that's not a factor in my provisional decision.

In summary, Mr G wasn't managing his repayments against existing debts in a sustainable way at the time of the lending decision. So I'm inclined to say that if MFL had done proportionate checks, they wouldn't have been able to fairly decide to lend to Mr G."

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.

In response to my provisional decision, Mr G told us that he'd returned the vehicle, but had no other comments. MFL weren't happy with my provisional decision. They thought the reason our position had changed was because Mr G had told us about his gambling. They said this wasn't appropriate because the statements he'd sent to evidence his gambling were dated after the date of the agreement.

As I explained within my provisional decision, I didn't take Mr G's gambling into account at all. I simply had a different view from that of our investigator. MFL's comments haven't changed my mind, so my findings are the same as I set out in my provisional decision and quoted above.

Putting things right

After Mr G clarified that he'd returned the vehicle, I updated my thoughts on what MFL should do to put things right, and shared them with both parties on 7 November 2023. Neither party commented on this update and so the following is unchanged from what I sent previously:

As I don't think MFL should have approved the loan, I don't think it's fair for them to charge any interest or other charges under the agreement. But Mr G had use of the vehicle for around 43 months so it's fair he pays for that use. There isn't an exact formula for working out what amount would reflect a customer's fair usage of a car. But in deciding what's fair and reasonable in Mr G's case I've thought about the amount of interest charged on the agreement, Mr G's overall usage of the car, and what his costs to stay mobile would have likely been if he didn't have this car. In doing so, I think a fair amount Mr G should pay is £225 for each month he had use of the car, so a total of £9,675. To settle Mr G's complaint, MFL should do the following:

- Refund all the payments Mr G has made in excess of £9,675, adding 8% simple interest per year from the date of each overpayment to the date of settlement.
- If Mr G has paid less than £9,675, MFL should arrange an affordable and sustainable repayment plan for the outstanding balance.
- Remove any adverse information recorded on Mr G's credit file regarding the

agreement.

If MFL consider tax should be deducted from the interest element of my award they should provide Mr G a certificate showing how much they've taken off so that Mr G can reclaim that amount, assuming he is eligible to do so.

My final decision

As I've explained, I'm upholding this complaint. Marsh Finance Limited need to take the steps outlined above to settle the matter.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 28 December 2023.

Clare King
Ombudsman