

The complaint

Miss J is complaining that Black Horse Limited (BHL) shouldn't have lent to her – she says they were irresponsible in doing so.

What happened

In August 2017, Miss J took out a hire purchase agreement with BHL to finance the purchase of a vehicle. She paid a deposit of £500 and borrowed £20,319 – the cash price of the car was £20,819. The agreement required Miss J to make 47 monthly repayments of £363.44, followed by a final instalment of £6,959. The total amount she'd have to pay to BHL was £24,540.68.

In February 2023, Miss J complained to BHL, saying that she thought BHL had failed to conduct appropriate checks before lending to her. She said at the time of applying for finance she'd already been rejected by another lender, had recently taken out a loan for £5,000, and had two credit cards and an overdraft with limits totalling £2,900. Miss J added her take home pay at the time was £1,200 per month which was low to be approved for payments of £363.44 per month. Miss J said the finance was difficult from the start and that she couldn't afford the repayments from 2019 onwards.

Miss J also complained about BHL having sold her debt to a third party. She said BHL had told her that the debt had been written off – so it was unfair to sell it to a third party.

In response, BHL said when she'd applied, Miss J told them she earned £1,577 net monthly income, and had minimal monthly deductions. They carried out some checks at the time and determined Miss J would have disposable income of just over £1,000 after making the loan repayments. They also noted from Miss J's credit file that she'd made all creditor repayments on time in the six months preceding her application. BHL said looking back now at Miss J's bank statements at the time of the lending they're comfortable the loan was affordable at the point of sale.

Miss J was unhappy with BHL's response and brought her complaint to our service, where one of our investigators looked into it. Our investigator thought the complaint should be upheld, saying she didn't think BHL had done proportionate checks and if they had, they wouldn't have fairly decided the loan was affordable.

BHL didn't agree with our investigator's assessment of Miss J's income and expenditure at the time of the lending and asked for a decision. So the complaint was passed to me. On 6 February 2024 I issued a provisional decision in which 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.

Did BHL carry out proportionate checks?

BHL said they carried out the following checks:

- reviewed Miss J's credit file;
- used current account turnover analysis and other checks from one of the credit reference agencies to verify that Miss J hadn't overstated her income; and
- used statistical data to estimate Miss J's cost of living and hence disposable income.

Whether or not these checks were proportionate depends on various factors, including the size and length of the loan, the cost of credit, and what BHL found. The term of the loan was four years and the total amount payable was substantial, at nearly £25,000. So I'd expect the checks to be thorough.

BHL said they verified Miss J's income as £1,577 per month, deducted the £150 per month she'd said she paid in rent and deducted £27 which was an estimate of her essential living costs based on statistical data.

BHL also said they couldn't see any missed payments in the previous six months on Miss J's credit file – and I haven't seen any evidence to contradict this. But BHL don't appear to have factored Miss J's existing credit commitments into their estimates – their records show she was making monthly repayments to other creditors of £287. Their records show this agreement was replacing a previous one it's not clear what made up that £287 per month – whether that was just one agreement or several. I think BHL should have done more to understand this.

CONC as it is now allows a business to use statistical data when it hasn't got reasonable cause to suspect the statistical data might not be appropriate. But in 2017 it didn't mention the use of statistical data. CONC 5.3.1G set out some guidelines, and this included an expectation that a firm would base its assessment on what it knew at the time of its assessment.

In responding to the complaint, BHL have produced Miss J's bank statements from the time of her application. I've seen no reason that they wouldn't have had direct access to these at the time and, as such, I'm inclined to say the information contained in those bank statements is information they were aware of at the time. It's clear from these bank statements that Miss J's employment income was much lower than she'd declared, at around £1,200 per month.

Taking everything together, I'm inclined to say BHL didn't do proportionate checks – they were lending a substantial amount of money to a young lady on a low income. I think they should have done more to verify Miss J's income and understand her monthly expenditure.

If BHL had done proportionate checks, what would they have found?

I've looked at the statements BHL provided for Miss J's bank accounts for the three months leading up to her application to BHL. In the absence of other information, bank statements provide a good indication of Miss J's expenditure at the time the lending decision was made.

The statements show that Miss J was being paid an average of £1,171 per month. There's no evidence of other regular income. The bank statements also don't show any payments for rent or utilities – which supports BHL's statement that she was living with family. Instead, she was paying around £330 per month on average to two individuals. She's told us some of this was for car insurance – and the rest was contributions to rent and bills. If BHL had done proportionate checks I think they'd have deducted all of these costs in assessing Miss J's disposable income.

Miss J's statements also show she was making repayments on a loan of £117 per month, as well as repayments on a hire purchase agreement of £180 per month. It would have been reasonable for BHL to ignore the £180 per month in calculating Miss J's disposable income because that agreement was being replaced by theirs. But they should have included the £117 in her monthly expenditure.

In addition, Miss J made monthly payments for her phone averaging £68, gym membership of £29, for road tax and fuel averaging £60 and to one of the credit reference agencies, of £15. I appreciate BHL considers some of these to be discretionary. Whilst I don't disagree that a gym membership, for example, is discretionary, Miss J was committed to paying it. CONC requires a firm to assess whether the repayments under their agreement will adversely impact a customer's financial situation. If the payments under the new agreement require a customer to make significant changes to existing financial commitments such as a gym membership, then I'm inclined to say that would be an adverse impact to the customer's financial situation.

Adding all of this expenditure together suggests Miss J's regular committed and non-discretionary expenditure was around £620 per month. The payments under the BHL agreement were around £343 per month. Deducting both of these figures from Miss J's income would have left her with around £200 per month disposable income available for other spending. It's clear from Miss J's bank statements that she had quite a high level of discretionary expenditure.

I understand Miss J's circumstances changed significantly in 2019, which made it more difficult for her to make the monthly repayments. But I can't see this was foreseeable for BHL in 2017 – so it's not reasonable to say they shouldn't have lent to her on that basis.

In summary, although I'm not persuaded BHL's checks were proportionate in the circumstances, I'm inclined to say that if they had done proportionate checks they could reasonably have arrived at the same outcome and decided the loan was affordable for Miss J. So I'm not inclined to uphold her complaint.

Have BHL acted unfairly in any other way?

Miss J's also complained about the communications she had with BHL. In particular she was upset that they'd told her the outstanding balance on the loan had been written off when in fact it had been passed to a third party debt collection agency.

I've reviewed BHL's notes from their contact with Miss J but not heard any call recordings. I can see BHL wrote to Miss J in June 2021 telling her of the outstanding liability, and tried to contact her on other occasions around that time. It looks like BHL decided in August 2021 to stop pursuing Miss J for the debt – it was marked on the system as a write off and debt sale.

I can understand Miss J's disappointment that the debt has been sold to a third party, especially when she thought it had been written off. And it's possible that disappointment has been caused in part by BHL representatives telling Miss J the debt would be or had been written off. But I also think she should have been aware the balance was still outstanding – she said she received a statement of account in 2021 and again in 2023. Looking at the letters Miss J was sent in June 2021, BHL were clear about the amount

owed and about the possibility of passing the debt on to a third party. This possibility is also anticipated by the original agreement Miss J signed – which says “If we relax any term of this Agreement we can enforce it strictly again at any time” and “We may transfer our rights and duties under this Agreement...”

On balance, whilst I can understand Miss J may have been told by BHL that the balance had been written off, this was most likely a miscommunication. I haven't seen enough evidence to be sure of what was said. And I can't say BHL have acted unfairly in passing the debt to a third party.”

BHL accepted my provisional decision but Miss J did not. In summary she said:

- she'd never told anyone she was earning £1,577 per month;
- she disputed the idea that there had been a “miscommunication” about the debt write off, saying she'd been told this numerous times; and
- the car became completely unaffordable when she lost her job in early 2020 but she wasn't able to send the car back because of the pandemic and asked where that left her with the outstanding debt which is still being pursued.

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.

Having done so, I've not been persuaded to change my findings from those set out above.

In relation to Miss J's comment about her income – this has no impact on my findings – I concluded BHL didn't do proportionate checks and I used a much lower income figure when deciding that BHL could have fairly decided to lend to Miss J.

Miss J says she was told by BHL on several occasions that the debt had been written off so it can't have been a miscommunication. I've seen no documentary evidence of phone contact between Miss J and BHL since BHL decided to stop pursuing Miss J for the debt. And I think it's unlikely she spoke to BHL on more than two occasions. Whilst it's unfortunate BHL told Miss J the debt had been written off, I remain of the view that it's likely BHL's representatives meant that the debt had been written off internally.

I can't say this has had a significant impact on Miss J – while I appreciate Miss J was upset to find out she still needed to pay the debt when the third party contacted her, she'd had nothing in writing from BHL to say that the debt had been written off. Instead, BHL had sent her two letters in June 2021 setting out how much she did still owe. Miss J's told us that if she'd known the debt was still outstanding she'd have paid it much earlier. But she's only recently started making payments of £100 per month despite being made aware of the debt in June 2021 and again in 2023. And there's no interest being added to the account or ongoing impact on her credit file – so I can't say she's in a worse position than she'd have been if BHL had been clear on the phone.

Finally, I'll turn to Miss J's question about not being able to return her car during the pandemic. Miss J hasn't raised this point previously so BHL hasn't had a chance to investigate, and it therefore wouldn't be fair for me to comment on it. I'd suggest Miss J discuss this aspect directly with BHL.

My final decision

As I've explained above, I'm not inclined to uphold Miss J's complaint about Black Horse Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss J to accept or reject my decision before 4 April 2024.

Clare King
Ombudsman