

The complaint

Mr H complains that Black Horse Limited trading as Black Horse (Black Horse) irresponsibly granted him a hire purchase agreement that he couldn't afford to repay.

What happened

In December 2018 Mr H acquired a vehicle financed by a hire purchase agreement from Black Horse. Mr H was required to make 48 monthly repayments of £207.57, after an initial deposit of £400. The total amount repayable under the agreement was £10,363.36. Mr H believes Black Horse failed to complete adequate affordability checks. Mr H says that if it had it would've been clear the agreement wasn't affordable at the time. Mr H also believes that the interest rate attached to the agreement was unfairly high.

Black Horse disagreed. It said it carried out an adequate assessment which included a full credit search, income verification and income and expenditure checks. Black Horse said its searches showed Mr H had enough disposable income left after his declared committed costs to afford the agreement. It assessed his net income as £1,700 a month and felt that the agreement was affordable as his outgoings were declared as only £151 at the time.

Our Investigator didn't recommend that the complaint should be upheld. They felt Black Horse's checks were proportionate and that none of the information it gathered at the time suggested that the lending shouldn't have been approved.

Mr H didn't agree. He felt that not enough checks were completed and that at the time he had debts he had to repay family members due to his recent wedding. He also explained how the agreement meant that when he moved out of his family home in 2020, he and his partner struggled to maintain the payments whilst also saving for a deposit to purchase a home. He asked for an Ombudsman to issue a final decision on the matter.

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.

Where evidence is incomplete, inconsistent, or contradictory, I reach my decision on the balance of probabilities – in other words, what I consider most likely to have happened in light of the available evidence and wider circumstances.

We explain how we handle complaints about irresponsible and unaffordable lending on our website. I've used this approach to help me decide Mr H's complaint. Black Horse needed to ensure that it didn't lend irresponsibly as per the rules set out in the FCA's Consumer Credit Sourcebook (CONC). In practice, what this means is that Black Horse needed to carry out proportionate checks to be able to understand whether any lending was affordable for Mr H before providing it.

In this case, there are two overarching questions that I need to answer to fairly and reasonably decide Mr H's complaint. These two questions are:

1. Did Black Horse complete reasonable and proportionate checks to satisfy itself that Mr H would be able to repay his loan without experiencing significant adverse consequences?
 - If so, did it make a fair lending decision?
 - If not, would those checks have shown that Mr H would've been able to do so?
2. Did Black Horse act unfairly or unreasonably in some other way?

Did Black Horse complete a reasonable and proportionate affordability check?

Black Horse was required to ensure it carried out adequate checks on Mr H's ability to sustainably afford the agreement. These checks had to be borrower-focused and proportionate (see CONC 5.2A). What is considered proportionate will vary depending on the circumstances, such as (but not limited to): the total amount repayable, the size of the monthly repayments, the term of the agreement (CONC 5.2A.20 R), and the consumer's specific circumstances.

Black Horse says that Mr H's application underwent credit and underwriting checks, which showed no adverse credit data. Its system data from the time shows Mr H declared his occupation as a teacher and his income as £1,914 a month. Black Horse then verified this using credit bureau data and used a more conservative £1,700 in its calculations. It also combined credit bureau data with Mr H's own account of his committed expenditure at the time – which he declared as £151 in total. It subsequently completed an income and expenditure check using this data and felt that Mr H had enough disposable income to sustainably afford the agreement.

From the information it had gathered I think its estimation of Mr H's disposable income was reasonable. I say this because it had taken specific costings of his existing credit commitments from Mr H and had also taken information from his credit file for any outstanding commitments. This meant that Black Horse estimated Mr H had around £1,549 of disposable income before accounting for the agreement. It ultimately decided on this basis that the agreement was affordable.

Given the size of the lending, the monthly repayments, the length of agreement, and the information in Mr H's credit file, I think Black Horse's checks were proportionate. None of its completed searches contained indicators of financial difficulty – and Mr H's own submissions suggested that his expenditure was limited as he lived with his parents. I understand from Mr H's own testimony that he was repaying debts to family members for the cost of his wedding – however when asked about his expenditure Mr H informed Black Horse that he was paying £151 a month. I don't think its unreasonable in the circumstances for Black Horse to have relied on this disclosure along with credit bureau data showing low commitment levels.

I also understand that Mr H later struggled to save for a deposit for his home, but from what he's disclosed this appears to have been over a year after the finance was approved, and the circumstances he's described couldn't reasonably have been foreseen at the point of the application. I'm satisfied that Black Horse's checks were proportionate for the known circumstances at the time of sale.

As such, I'm satisfied Black Horse completed proportionate affordability checks, but this doesn't automatically mean it made a fair lending decision.

Did Black Horse make a fair lending decision?

Overall, I'm satisfied that the lending decision was a fair one. I say this because the income and expenditure check Black Horse completed showed ample disposable income left over after factoring in Mr H's credit file commitments and his self-declared committed expenditure. After including the agreement payments Mr H had roughly £1,340 per month left for emergency costs. I'm satisfied that this allowed enough for emergency or unexpected costs – and that the lending decision was fair for Mr H's known circumstances at the point of sale.

Again, I do understand that Mr H's own testimony explains he went on to rely on family members to maintain the repayments once his family grew and he decided to move out of his parent's home. But I can't say that Black Horse should have been aware of this based on the checks that it did complete, and I'm satisfied that the checks it did complete were proportionate for the circumstances that its checks revealed. So, it follows that I think Black Horse made a fair lending decision.

Did Black Horse act unfairly or unreasonably in some other way?

Mr H has complained that the interest rate on offer was unfairly high – but I'm satisfied that the documentation Mr H signed was clear in its illustration of the finance offered. Black Horse were clear about the total amount that would be owed under the agreement and the amount required to be paid monthly for the term of the agreement. I can't agree that Black Horse acted unfairly in presenting its offer to Mr H, and it was up to Mr H to decide if he wanted to agree to the terms offered by Black Horse.

For the reasons I've already given, I don't think Black Horse lent irresponsibly to Mr H or otherwise treated him unfairly in relation to this matter. I've also considered whether the relationship might have been unfair under s.140A of the Consumer Credit Act 1974. 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

My decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 1 August 2024.

Paul Clarke
Ombudsman