

## **The complaint**

Mr M, who is represented in this complaint by his father, complains that Black Horse Limited ('Black Horse') approved a hire purchase agreement irresponsibly.

## **What happened**

In August 2022, Mr M acquired a used car financed by a hire purchase agreement from Black Horse. The cash price of the car was £18,499. Mr M paid a £99 deposit. The agreement was to be repaid by way of 60 monthly repayments of £411.11. The total repayable under the agreement was £24,765.60.

In April 2023, Mr M and his father complained to Black Horse. They complained that the finance was unaffordable and that Black Horse ought to have been aware of this.

The car was taken without Mr M's consent shortly after he'd taken out the finance. My understanding is that this has been reported to the police and that the car has never been returned.

Black Horse looked into the complaint but didn't uphold it. It said that Mr M had declared his annual salary as being around £20,400 which they had verified to be accurate. It said it carried out a credit check and estimated Mr M's living costs. Based on this the agreement looked to be affordable.

Our investigator recommended the complaint be upheld. Essentially, she wasn't satisfied that Black Horse had carried out reasonable and proportionate affordability checks. She said had it done so, it was more likely than not that Black Horse would have found out that the agreement was unaffordable and that Mr M would be unable to repay it sustainably.

Black Horse agreed that it ought to have carried out better checks. But, having reviewed Mr M's bank statements as part of its investigation, it said that he still had enough average net monthly income to be able to afford the agreement.

The complaint has therefore been passed to me for a decision.

## **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.

Black Horse will be familiar with all the rules, regulations and good industry practice we consider when looking at a complaint concerning unaffordable and irresponsible lending. So, I don't consider it necessary to set all of this out in this decision. Information about our approach to these complaints is set out on our website.

I think there are two key questions I need to consider in order to decide what's fair and reasonable in all of the circumstances of this complaint. I'll deal with each one in turn:

*1. Did Black Horse complete reasonable and proportionate checks to satisfy itself that Mr M would be able to repay the borrowing in a sustainable way?*

Before granting the credit, Black Horse needed to carry out a reasonable and proportionate assessment of Mr M's ability to sustainably repay the debt. This is often referred to as an 'affordability check'. This check had to be borrower-focussed. This means it needed to be concerned with whether Mr M could sustainably afford the borrowing (considering his specific circumstances), rather than how statistically likely he was to repay.

There isn't a one-size-fits-all approach to what is considered proportionate as any of these factors (or others) might influence what a reasonable and proportionate check ought to be. However, given the overall size of the borrowing, the monthly repayments and the term of the agreement, I think it would have been proportionate for Black Horse to have taken steps to properly check to ensure the loan was likely to be affordable. Based on what I've seen I don't think Black Horse's affordability check was reasonable or proportionate. Black Horse accepts that its checks could have been better, but I'll explain why I think it is in a little more detail.

Black Horse says it verified Mr M's income before approving the finance by relying on credit bureau information. Mr M had said he was working full time and receiving a net monthly income of around £1,450. In fact he was working part time with an average earned income of around £770. I have seen wage slips supporting this, as well as bank statements which I will refer to later. However, Black Horse didn't obtain such proofs of income at the time. I've seen that it relied on credit bureau information to find out more about Mr M's credit situation. Mr M had a clear credit history with no adverse markings such as missed payments or account defaults. But given that Mr M had no significant credit history to speak off – and was now taking on a significant and long term credit commitment – I think a good credit file in such circumstances would not be enough to establish that the finance was likely to be affordable. So, Black Horse needed to have carried out better, more borrower-specific checks before lending.

Black Horse says it calculated Mr M's expenditure and living costs using statistical information, arriving at a figure of £411 for monthly living costs, to which it added a buffer of £50. The regulator has approved this method as a way of carrying out affordability assessments unless there's something to suggest that an estimate is unlikely to be accurate. Black Horse also says Mr M signed a document saying he didn't know of any circumstances that would have made the loan he was applying for unaffordable. But given the size and length of the loan, I think it would have been reasonable and proportionate to have gained a better understanding of Mr M's specific financial circumstances, rather than relying on an estimate.

I therefore don't think Black Horse carried out reasonable and proportionate checks. Given the size and length of the borrowing and Mr M's specific circumstances – especially his lack of credit history - it would have been reasonable for Black Horse to have taken steps to properly verify his income and find out more about his typical monthly expenditure. I'm not persuaded that Black Horse did so.

*2. Would reasonable and proportionate checks have shown that Mr M would be able to repay the agreement in a sustainable way?*

I can't be certain about what information Black Horse would have found out had it conducted reasonable and proportionate checks. However, in the absence of anything else, I've reviewed Mr M's bank statements from around the time the agreement was taken out. To be clear, I'm not saying Black Horse was required to review his bank statements before granting the credit. But I do think they give a good indication of what Black Horse would

have likely found out about Mr M's income and expenditure at the time if it had asked him about it.

I note that Mr M's earned income was considerably lower than the figure recorded by Black Horse. Mr M has told us he was a student working part time. That said, he told Black Horse he was working full time and quoted salary that was not unreasonable given his age and circumstances. If it was the case that Black Horse had taken steps to verify his income through a credit reference agency by way of account turnover, it's possible that Black Horse wouldn't have discovered this discrepancy. That's because that sort of check analyses account turnover only. And from what I've seen Mr M was in receipt of regular payments from family members that would have been treated as income. This is something that Black Horse has noted from its own review of Mr M's bank statements. Black Horse has calculated Mr M's average net monthly income as being £868. I think the more accurate figure is around £770, having looked at the salaried income shown in the bank statements from the three months leading up to the agreement.

Mr M's father has told us that Mr M was expected to pay £150 per month towards living costs, but rarely managed to do so. But Mr M was also being very significantly subsidised by funds being provided by close family members. Our investigator said Mr M was paying an average of around £240 per month in non-discretionary spending, leaving him with disposable income of about £120. From my own review, focusing on grocery spending and car expenses such as petrol and maintenance costs, Mr M's average non-discretionary spending in the three months before the agreement was closer to £400. So I think the figure of £461 applied for living costs by Black Horse was a realistic one. And that means, based on his part-time employment income, Mr M would be likely to be left with no disposable income whatsoever – and very likely a negative figure.

After our investigator's uphold finding, Black Horse came back with a number of questions about the bank statements. This included that Mr M appeared to be receiving additional income by way of payments from family members, plus there was minimal evidence of non-discretionary spending. Based on this Black Horse said that that Mr M would have around £1,100 in disposable income available each month. So Black Horse maintains that better checks would still have shown the agreement to be affordable.

In response to my raising these points, Mr M's father says that despite attempts to do so, Mr M was unable to pay towards his monthly upkeep as he had to borrow money back. He was also helped financially by several family members, with no real expectation that they would be repaid given his personal circumstances. These payments also included paying for accident repair and insurance costs that arose during the short time Mr M had the car. Mr M's father also confirmed that Mr M had a separate savings account but these funds were depleted and then used up by Mr M. And given that there was only a marginal difference in the funds transferred and withdrawn from that account, I don't think this particular issue impacts significantly on my uphold finding.

All of this means that Mr M was not in fact benefitting from the level of income Black Horse relied upon when it carried out its checks. Had Black Horse carried out further checks it would likely have seen this as well and this in turn would have been likely to prompt further enquiries about Mr M's financial situation.

For all these reasons, I'm satisfied that if Black Horse had carried out reasonable and proportionate checks – including asking Mr M for more details about his sources of income and spending – it would likely have found the agreement was unaffordable to him. I therefore don't think it's made a fair lending decision and needs to put things right.

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

The facts of what happened at the time of the sale are disputed. Black Horse says it obtained details from the dealership that suggest Mr M filled out an online application before visiting the dealership to choose the car he wanted. The dealership also says that Mr M called his mother from the dealership to check that she was happy with him going ahead with the agreement.

Mr M and his father say this didn't happen and that he took out the finance as it was 'handed to him on a plate.' Mr M's father has told us about Mr M's personal situation and that he was a vulnerable individual at the time.

Whilst I am sorry to learn of all this, I am not able to say that these are issues that Black Horse ought to have been aware of or can be held responsible for. So I won't be asking Black Horse to do anything more in respect of this aspect of the complaint.

I've considered whether the relationship between Mr M and Black Horse might have been unfair under S.140A of the Consumer Credit Act 1974. However, I'm satisfied the redress I have directed should be carried out for Mr M results in fair compensation for him in the circumstances of his complaint. I'm satisfied, based on what I've seen, that no additional award would be appropriate in this case.

### **Putting things right – what Black Horse needs to do**

Where the business has acted unfairly, we'd look to put the consumer – as close as possible – back in the position they were in prior to the lending decision. As I don't think Black Horse ought to have granted the credit, it's not fair that Mr M should be required to pay any interest or charges under the agreement. Mr M no longer has the car and in any event only had the use of it for a limited time. But Mr M still owes the cash price of the car, being £18,499, less any payments he has already made.

I'm not aware of Black Horse having recorded any adverse information on Mr M's credit file in relation to this hire purchase agreement. But as I don't think it ought to have lent to Mr M, I think it should remove any adverse information from his credit file (if there is any). This is because I don't think Mr M should be disadvantaged by Black Horse lending to him.

So, to settle Mr M's complaint Black Horse should therefore do the following:

- Remove all interest and additional charges due under the agreement
- Set up a payment plan to enable the remaining balance to be repaid, applying appropriate forbearance and due consideration for Mr M's financial circumstances.
- Once the balance has been repaid, Black Horse must remove any adverse information recorded on Mr M's credit file regarding the agreement.

### **My final decision**

It follows that I uphold this complaint and direct Black Horse Limited to put things right as set out above.

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

Michael Goldberg  
**Ombudsman**