

Complaint

Mr S complains that Black Horse Limited (“Black Horse”) unfairly entered into a hire-purchase agreement with him. He’s said that the monthly payments to this agreement were unaffordable and so he shouldn’t have been lent to.

Background

In February 2019, Black Horse provided Mr S with finance to facilitate the purchase of a used car. The purchase price of the vehicle was £13,656.00. Mr S paid a deposit of £3,000.00 and entered into a hire-purchase agreement with Black Horse, which had a term of 36 months, for the remaining £10,656.00.

The loan had interest charges of £2,547.30 and a £10 option to purchase fee. This meant that the total amount to be repaid of £13,213.30 (not including Mr S’ deposit) was due to be repaid in 35 monthly instalments of £218.98 followed by an optional final repayment of £5,549.00 which Mr S had to pay if he wished to keep the vehicle. Mr S settled the finance early and in full in July 2021.

In March 2024, Mr S complained that the monthly payments for this agreement were unaffordable and so Black Horse should never have agreed to provide finance to him. Black Horse didn’t uphold the complaint. It said that its checks confirmed that the finance was affordable and so it was reasonable to lend.

Mr S’ complaint was considered by one of our investigators. He didn’t think that Black Horse had done anything wrong or treated Mr S unfairly. So he didn’t recommend that the complaint should be upheld.

Mr S disagreed with our investigator and the complaint was passed to an ombudsman for a final decision.

My findings

I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint.

We’ve explained how we handle complaints about irresponsible and unaffordable lending on our website. And I’ve used this approach to help me decide Mr S’ complaint.

Having carefully considered everything, I’ve decided not to uphold Mr S’ complaint. I’ll explain why in a little more detail.

Black Horse needed to make sure that it didn’t lend irresponsibly. In practice, what this means is that Black Horse needed to carry out proportionate checks to be able to understand whether any lending was sustainable for Mr S before providing it.

Our website sets out what we typically think about when deciding whether a lender’s checks were proportionate. Generally, we think it’s reasonable for a lender’s checks to be less

thorough – in terms of how much information it gathers and what it does to verify that information – in the early stages of a lending relationship.

But we might think it needed to do more if, for example, a borrower's income was low, the amount lent was high, or the information the lender had – such as a significantly impaired credit history – suggested the lender needed to know more about a prospective borrower's ability to repay.

Having carefully thought about everything I've been provided with, I'm not upholding Mr S' complaint. I'd like to explain why in a little more detail.

Black Horse says it agreed to Mr S' application after Mr S provided details of his monthly income and some details on his expenditure. It says it also carried out searches with credit reference agencies which not only showed that Mr S' bank account received monthly credits consistent with the income declared, but also that Mr S had no significant adverse information such as defaults or County Court Judgements ("CCJ") recorded against him. The credit that Mr S did have outstanding was well maintained.

In Black Horse's view, when the amount owing plus the amount Mr S declared for his living expenses were deducted from his monthly income, the monthly payments were affordable. On the other hand, Mr S says that he was using an overdraft, that these payments were unaffordable and there was no way he was going to be able to maintain them.

I've thought about what Mr S and Black Horse have said.

The first thing for me to say is that the information obtained at the time does appear to show that when Mr S' committed regular living expenses and existing credit commitments were deducted from what he received each month, he did have the funds, at the time at least, to sustainably make the repayments due under this agreement. Indeed, having looked at Mr S' bank statements, I can see that what he had left each month was enough to make his payments. And this is with including his discretionary expenditure.

Mr S has said that the information doesn't accurately reflect his financial position and that he had to take care of all the household expenses after his wife became ill. I'm sorry to hear about Mr S' wife's illness. However, while I sympathise with what Mr S has told us, I can't see how Black Horse would have known this – particularly as Mr S says he wanted and needed a car at this time.

I know Mr S says that he had to use his savings and wasn't in a position save more. But a lender is entitled to rely on savings as a source of repayments. Furthermore, while this isn't in itself definitive, it's also very difficult for me to accept at face value that Mr S couldn't make his payments given he settled this agreement early, well in advance of the end of what was for a hire-purchase agreement, an unusually short term and by even paying the optional balloon payment. I'm afraid that Mr S' actions are inconsistent with him having been provided with an unaffordable agreement.

I'd also add that it's only fair and reasonable for me to uphold a complaint in circumstances where a lender did something wrong. I don't think that Black Horse could possibly be expected to have realised that this agreement might have been unaffordable for Mr S. I say this having considered the information Mr S has now provided to support his application having been unaffordable and what has happened in the period since he purchased the vehicle in question.

Overall and having carefully considered everything, while I accept that there is an argument for saying that Black Horse's checks before entering into this hire-purchase agreement with

Mr S might not have gone far enough, I'm, in any event, satisfied that carrying out further checks won't have stopped Black Horse from providing these funds, or entering into this agreement with Mr S. I'm therefore satisfied that Black Horse didn't act unfairly towards Mr S when it agreed to provide the funds.

In reaching this conclusion I've also considered whether the lending relationship between Black Horse and Mr S might have been unfair to Mr S under section 140A of the Consumer Credit Act 1974 ("CCA").

However, for the reasons I've explained, I don't think that Black Horse irresponsibly lent to Mr S or otherwise treated him unfairly in relation to this matter. And I haven't seen anything to suggest that section 140A CCA or anything else would, given the facts of this complaint, lead to a different outcome here.

So while I've considered everything that Mr S has said, I don't think that Black Horse acted unfairly or unreasonably towards him. And I'm not upholding this complaint. I appreciate that this will be disappointing for Mr S. But I hope he'll understand the reasons for my decision and at least consider that his concerns have been listened to.

My final decision

My final decision is that I'm not upholding Mr S' complaint.

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

Jeshen Narayanan
Ombudsman