

## The complaint

Miss M, who is represented by her brother, Mr M, complains that Black Horse Limited handled the termination of her hire purchase agreement incorrectly.

## What happened

In September 2015 Miss M acquired a car costing £65,781 funded by a deposit of £8,000 and the balance with a hire purchase agreement over four years. The total sum payable was £77,686.

In March 2018 Miss M suffered a serious illness and in late April she contacted Black Horse to let them know. Her account was placed with a specialist team and she called back at the end of May. She paid £800 which was the last payment she made. It says that during this call Miss M said she wanted to keep the car and didn't want to voluntarily terminate (VT) the agreement.

Black Horse says it tried to contact her through June to September 2018 by a variety of means including a visit by a third party. It says she discussed VT and it issued the relevant documents. Miss M contacted the bank on 12 October 2018 to say she wanted more time and she may have buyer for the car. The bank says she called again and said she had a buyer offering £41,000 which it accepted. It says it next heard from her in December 2018 when she informed the bank the car had been stolen. It was later returned.

It next heard from her in March 2019 and it sent a second set of VT documents. In May 2019 Miss M's brother became involved and the bank explained that without the VT documents the only option would be voluntary surrender (VS). In September 2019 Miss M wrote to the bank to say that she had been given the impression that she could return the car in full and final settlement. Black Horse issued a default notice for £44,516.77 when the agreement came to an end on 5 October 2019.

Black Horse rejected Miss M's complaint and she brought the matter to this service. It was considered by one of our investigators who recommended it be upheld in part.

He noted that agreement says, under the section titled "*termination: your rights*", Miss M had the right to end the agreement by writing to the person she makes her payments to. They'll then be entitled to return the goods and half the total amount payable under the agreement, which is £38,843.42. The agreement didn't require her to complete any forms and he thought Black Horse could have started the VT process upon receipt of the letter.

He said he believed the bank was aware of her desire to VT the agreement on 3 July and it hadn't responded to her written request until 1 November. As a result of this delay her liability had increased from half of the amount due under the agreement, of which she'd paid £33,976.62, to the total amount under the agreement.

If VT had been processed, she would have owed some £4,866.80 rather than £43,710.00 albeit she had the car as an asset. Our investigator thought it would have been better for Miss M to have been allowed to VT the agreement. He also noted the additional stress Miss

M has suffered and the fact that she was close to being able to hand the car back due to her being close to paying 50% of the sum due.

He also addressed Miss M's claim and that if her brother that they had been told that the car could be handed back without any further sum to pay. He said he could find no evidence of that and he believed there may have been a misunderstanding during the intermittent communication regarding VT. Under the terms of the agreement it was clear that Miss M would have to pay at least half the amount due. He pointed out that Miss M continued to have use of the car.

He said that Miss M's circumstances meant Black Horse should treat her with "*due forbearance*" while she was trying to pay what she owed. He thought this meant that it should have included following up on the communications sent by Black Horse, to ensure they were being received and understood. Especially as her letters indicated not everything was being received.

He suggested Black Horse should collect the car, at no further cost to Miss M and rework the agreement to reflect that it was VT'd on 12 September 2019. It should also amend the information on her credit file.

Black Horse agreed with this but said if the outstanding sum was paid within 30 days a default would be placed on Miss M's credit file. Miss M said she had been told she could have returned the car in full and final settlement. She also said that she had kept the car insured even though she hadn't driven it. She provided some details of calls between her and her brother and the bank.

The bank provided the recording for the call made on 22 March 2019, but not the others. It explained one was to a third party and the others could not be found. He listened to the call recording and reviewed the call notes again. He concluded there was insufficient evidence to show that the bank had told Miss M or her brother that the car could be handed back in full and final settlement.

However, he said that he would expect Black Horse to agree to a sustainable, affordable, payment plan for the remainder. If this was met then he would not expect Black Horse to issue a default. From the call he had listened to he noted the bank had said that if an income and expenditure exercise found you couldn't afford to pay the final amount Black Horse wouldn't pursue the debt, but this would most likely involve placing a default on her credit file.

Miss M didn't agree and said she had spoken to Black Horse in August 2020 and had been told that her call on 3 July noted the bank had agreed to VT in full and final settlement. In September 2020 it was agreed that the bank would collect the car while awaiting a final decision from this service.

### **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.

I have every sympathy with Miss M's situation, but while I consider I should uphold her complaint I do not believe she is entitled to hand the car back in full and final settlement. I will explain why.

It is clear that despite the efforts on both sides that communications were not as clear or as productive as one would have hoped. I can appreciate that Miss M was struggling with her

health and financial problems which ensued. I also believe she sought to retain the car for some time, before concluding that she would have to give it up.

I can understand Miss M's concern that Black Horse was unable to find some call recordings. However, it has explained why and I don't consider there to be anything untoward in that outcome.

I have looked at the bank's records which we have had for some time now and I have examined these to identify if there was any evidence to show that Miss M or her brother may have been misled. In short, I cannot see any such evidence. I have looked at the call on 3 July in particular given Miss M says she was told in August last year that the bank's records showed it had agreed to accept the return of the car in full and final settlement. I presume the call handler in August had access to the same records held by this service.

The records note: "Further sum due £4,866.80". It does not make sense that the call handler on 3 July would have said you don't need to pay us any money and just had the car back and yet record there is an outstanding sum due. On the same date the records show that the account was handed back to collections which again does not support Miss M's claim.

I consider it more likely there was misunderstanding as to what VT meant and while I accept Miss M and her brother took the view that the bank had agreed to what would have been a generous deal, I have seen no supporting evidence that would allow me to agree. I have noted that the letter Miss M sent on 2 September states that "*both my brother and I have informed your colleagues to take the vehicle from me as full and final settlement.*" That doesn't refer to Black Horse agreeing to do so rather it sets out what Miss M wants.

However, I do agree with our investigator that the bank could have handled the matter better. Once it was told of Miss M's situation her account was passed to a specialist team and I believe it could have chased up letters and done more to maintain contact.

I also agree that once Miss M put her VT request in writing then that was sufficient to trigger the process. I have noted the bank's response to Miss M which reads: *Within your letter received on 12 September 2019, you state you are unhappy with the delay. Whilst within this letter you confirm that you would like the vehicle to be collected, no reference is made to the outstanding liability amount, as such this letter could not be accepted in order to start the VT process.*"

I don't consider that it was necessary for her to address the outstanding sum in that letter. She simply had to request the agreement be VT's and the details could be resolved later. Therefore, to ensure she is put back into the position she would have been I agree with our investigator's recommendation. I also note that the bank is prepared to forgo the debt if it is satisfied that payment is beyond Miss M's means. However, that would have a negative impact on her credit file.

Therefore, I have concluded that the agreement should be VT'd from the date Miss M's letter was received by Black Horse, 12 September which will put her in a much better position than she would otherwise have otherwise been facing.

### **Putting things right**

The car has been returned and it only remains for the agreement to be reworked.

### **My final decision**

My final decision is that I uphold this complaint and I direct Black Horse Limited to rework the

agreement to show the car was VT'd on 12 September 2019. It is entitled to pursue the outstanding sum but I would remind it of the requirement to treat Mis M in positively and sympathetically in helping her resolve her financial difficulties. That would include the recording of any information on her credit file.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 23 February 2021.

Ivor Graham  
**Ombudsman**