

The complaint

Mr B complains that Black Horse Limited irresponsibly approved a hire purchase agreement for a car that he couldn't afford.

What happened

In February 2019 Mr B acquired a new car from a dealership via a hire purchase agreement with Black Horse. The agreement was for four years and the cash price of the car was around £44,000 and Mr B paid a deposit of £2,125. Mr B was required to make 48 monthly payments of about £565 and an optional final payment of around £22,500 if he wanted to keep the car when the agreement ended.

Mr B says that at the time he took out this agreement he was actually unemployed and had been since November 2018. He says that the plan was for his partner to pay for the car. Mr B also says that the supplying dealership knew he wasn't working and used the details of his previous employment to obtain the credit agreement.

Payments were made for the car until September 2019 when Mr B's relationship with his partner broke down and she left the property they'd shared. In December 2019, Mr B contacted Black Horse and enquired about voluntarily terminating the agreement but says he was unable to afford the cost to do so. It was then that Mr B told Black Horse he wasn't working.

Mr B complained to Black Horse that the hire purchase agreement was unaffordable and that he shouldn't have been approved for finance as he hadn't been working at the time. Black Horse didn't uphold his complaint. It said that before Mr B had entered into the hire purchase agreement, he had confirmed he was both working and that the repayments were affordable for him.

Black Horse said that it had assessed the information Mr B had provided together with information received from Credit Reference Agencies and this had provided a credit score and Mr B's application had been found to be within its lending criteria and the lending had been accepted. It disagreed it had acted incorrectly.

Mr B was unhappy at the response from Black Horse and complained to this service. Our investigator recommended that Mr B's complaint should be upheld. He said he didn't think Black Horse had carried out reasonable and proportionate checks to satisfy itself that Mr B was able to repay the agreement in a sustainable way.

Our investigator said that to put things right Black Horse should cancel the agreement and take back the car. As Mr B had had use of the car, our investigator said that it was fair for Mr B to pay for that but he shouldn't pay any interest or charges as the agreement shouldn't have been provided to him. Our investigator said it would be fair for Mr B to pay £400 per month for the period he had the car and so taking what had already been paid under the agreement there was an outstanding amount of £3,512.31 to be cleared by Mr B once it had been collected.

Our investigator also said that it would be fair for Black Horse to remove any adverse information about this account from Mr B's credit file. But added that if Mr B then subsequently didn't keep to an agreed payment plan to clear the shortfall in the payments then this shortfall amount could be recorded on his credit file.

Mr B agreed with our investigator's view however Black Horse disagreed. Black Horse said it had adhered to its obligations as a responsible lender by carrying out adequate affordability checks. It had carried out an indebtedness assessment (debt/income and industry standard indebtedness scores), looked at Mr B's credit history and conducted an affordability assessment. The results from these checks was that Black Horse had found Mr B was a low risk for credit lending and had approved the agreement.

As the parties weren't able to reach an agreement then the complaint has been passed to me.

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.

Taking into account the relevant rules, guidance, good industry practice and law there are two overarching questions I need to consider in order to decide what's fair and reasonable in the circumstances of this complaint. These questions are:

- Did Black Horse complete reasonable and proportionate checks to satisfy itself that Mr B would be able to repay the loan in a sustainable way?
 - a). If so, did it make a fair lending decision?
 - b). If not, would reasonable and proportionate checks have shown that Mr B would've been able to sustainably repay the agreement
- Did Black Horse act unfairly or unreasonably in some other way?

Looking at the first question, I agree with the view of our investigator that I don't think Black Horse carried out reasonable and proportionate checks despite its strong representations that it did, and I will explain why.

Black Horse says the checks it carried out complied with the requirements of the Consumer Credit Sourcebook ("CONC") set out in the FCA's handbook when assessing affordability. It says that lending to Mr B was an acceptable credit risk. But CONC says that a credit provider, in order to responsibly lend, is required to carry out what is referred to as an affordability check and this check should be borrower focused. So both a credit risk assessment and an affordability assessment should be carried out. The purpose of the checks is to verify that Mr B could sustainably afford the borrowing when looking at his particular circumstances.

CONC also says that checks are to be reasonable and proportionate and what's considered to fit that test will depend on a number of factors such as the amount of credit; the total repayable and the size of the regular payments; the duration of the agreement, the cost of the credit and the consumer's circumstances.

Here, the total amount payable was around £51,500 with monthly payments of £565 over a four-year term and an optional final payment of £22,500. As Mr B's declared monthly income was £1,890 per month (as recorded by the dealership), the monthly payments equated to

around 29% of Mr B's stated monthly earnings. So, I think it's reasonable to say this was a sizable and lengthy credit agreement for Mr B to enter into and due to that I think the affordability check needed to be thorough for it to satisfy the requirement set down in CONC.

Black Horse says that Mr B declared his income as being £28,500 per year and that he had held that employment for a number of years. Mr B says he told the dealership he wasn't working, and it used his past employment details. I have seen that the dealership has now ceased trading so I can't ask about what was said between Mr B and the supplying dealer. However, I have seen that Mr B signed the agreement and, by doing so, was acknowledging that the details contained in it, including his being employed, were correct. But, even if Mr B had misled the dealership about his income, that doesn't mean Black Horse isn't still required to carry out reasonable and proportionate checks.

Here the borrowing was equivalent to about twice what Mr B had declared as his annual earnings so I think it would have been proportionate for Black Horse to have verified his income.

I've seen that Black Horse says it verified Mr B's income by undertaking a credit check and looking at his current account's turnover and previous borrowing. But I don't think these checks were enough, they didn't verify Mr B's earning. Had Black Horse asked for further information about Mr B's salary, such as payslips then it would have discovered that he was no longer working.

I also don't think Black Horse has properly gathered information about Mr B's expenses. It says he didn't claim any rent or mortgage when information was taken about his outgoings, but I can't see what if any questions were asked about that. Black Horse says that Mr B's monthly outgoings amounted to £411 though no breakdown of how that figure was reached has been given. Mr B has provided bank statements, but these are in joint names with his ex-partner, so it isn't clear which expenses are his or whether these are shared expenses, or some are those of his ex-partner. However, what is clear from these statements, is that after December 2018 Mr B didn't have a salary coming in.

I accept Mr B's credit file didn't contain any adverse information and Black Horse says Mr B had a clean record and a good repayment history having eight active credit relationships listed at the time of the application. But I think more information outside of Mr B's credit commitments was required when considering the proportion of his monthly income that would be committed to paying this agreement. Black Horse should have checked Mr B wasn't overcommitting when taking on this agreement.

So, for the reasons set out above, I don't think Black Horse completed reasonable and proportionate checks to satisfy itself that Mr B would be able to repay this agreement in a sustainable way. This means I now need to consider that if Black Horse had carried out those checks, would it have shown Mr B was able to repay this agreement in a sustainable way. I think the answer to this second question is "no".

I can't be sure of the information and evidence Black Horse would have asked for or would have received if it had carried out reasonable and proportionate checks, so I've looked at what it would have been likely to have discovered. Here, I think it would have uncovered that Mr B wasn't working and had no income at the time of applying for the credit agreement for the car.

I'm not clear what the arrangements were between Mr B and his ex-partner over financial matters. Mr B says that the expenses on the provided bank statements were all his and he was meeting these expenses by using money that had been transferred into his account in November and December 2018. Mr B has explained this was money that had been intended

to be used for another purpose and which had been moved to another account before being moved to this account when that purpose fell through.

Black Horse has queried Mr B's monthly commitments as calculated by our investigator, but I don't think I need to resolve what was and wasn't an essential expenditure for Mr B. This is because at the time Mr B entered into the hire purchase agreement, he didn't have an income and so any repayment wouldn't have been affordable. So, I think in these circumstances it's more likely than not that Black Horse would have declined Mr B's credit application for the car.

The final question I have to consider is whether Black Horse did anything wrong. I haven't seen any evidence that it acted unfairly or unreasonably in any other way.

So, for the reasons given above I'm intending to uphold Mr B's complaint.

Putting things right

As the credit agreement shouldn't have been accepted by Black Horse then I'm going to ask it to cancel the agreement with no fees or charges to be paid by Mr B. Black Horse is to collect the car at no cost to Mr B.

Mr B had been able to make use of the car since he acquired it in March 2019, and although I understand its mileage isn't very high being around 9,600, I think it would be fair for him to pay for that usage. However, as the agreement shouldn't have been accepted by Black Horse, I don't think it's fair Mr B pays any element of interest or any charges arising from how he has managed that account.

I've seen that Mr B has made some payments towards the car as well as paying a deposit when he entered into the hire purchase agreement. In total Mr B has paid Black Horse £6,087.65. Our investigator calculated that for the period March 2019 until March 2021 (the date of their view) this equated to £253.65 per month. However, he said taking into account that this was a premium car, then that monthly payment wasn't sufficient to cover the usage and a monthly amount of £400 per month would be fair. This means Mr B should have paid a total of £9,600 for that period of use. This therefore leaves a shortfall of £3,512.31 that Mr B will have to clear when the car is returned.

I think the approach and calculations as to how much Mr B should fairly pay for the car while it's been in his possession are reasonable, and I have seen Mr B agrees with the proposal put forward by our investigator. So, I can't see any reason why I would depart from that. Although I appreciate these calculations were done with the view the car would be collected shortly and the agreement ended a short time after the investigator's view, I don't think it's fair for me to now alter that shortfall amount because the complaint has come to me and the outcome of Mr B's decision has been delayed. I still think in the circumstances that Mr B should repay the amount of £3,512.31 to Black Horse for his use of the car.

Finally, I think it would be fair that any adverse information recorded on Mr B's credit file for this account should be removed by Black Horse. However, if Mr B doesn't keep to agreed payments for the shortfall amount then Black Horse can record this shortfall amount on his credit file.

My final decision

I'm upholding Mr B's complaint and I am asking Black Horse to do the following:

- Cancel the agreement with no fees or charges to be paid by Mr B.

- Collect the car at no cost to Mr B.
- Agree an affordable repayment plan with Mr B for the shortfall £3,512.31 which allows him to repay over a reasonable period of time. Black Horse should take into account Mr B's overall financial situation when agreeing any repayment plan.
- Remove any adverse information about this account from Mr B's credit file.
- If Mr B doesn't keep to an agreed payment plan for the shortfall amount than Black Horse can record the shortfall debt on his credit file.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 13 August 2021.

Jocelyn Griffith
Ombudsman