

The complaint

Mr B has complained that Black Horse Limited trading as Land Rover Financial Services (“Black Horse” or “the lender”) was irresponsible to have agreed car finance for him in October 2016. Mr B also says that he was misinformed about the finance agreement.

What happened

Black Horse agreed credit for Mr B through an intermediary in October 2016 in order for him to acquire a car. The cash price of the car was £78,500. The total amount owing under the finance agreement (including interest and fees) came to £92,889. Mr B paid a deposit of £6,500, and the remainder was to be repaid over 47 monthly instalments of £1,113 with a final optional payment of £34,091 (I’ve rounded figures to the nearest pound).

The finance was granted under an agreement which allowed Mr B the option to purchase the car with the final payment once he’d met his monthly repayments. Black Horse remained the vehicle owner until that point and Mr B was, in essence, paying for the use of it. He also had the option of voluntarily terminating the agreement at any point and returning the car. This option would limit Mr B’s total liability to half the amount owing, in other words £46,444, if he’d taken reasonable care of the car.

Black Horse confirmed that Mr B made repayments until late 2018 and that, as of March 2021, the outstanding balance owing under the agreement was £60,796.28. I understand that Mr B still has the car. This means Mr B has paid just over £32,000 (at least, including his deposit) for the use of the car from October 2016.

Mr B says that Black Horse should not have agreed credit for him because at that time his income fluctuated and he had existing debts. He says that the appropriate checks were not carried out, for example Black Horse made estimates of his means when assessing his ability to meet his repayments and didn’t take any future changes in his income into account. Mr B is also concerned that he was misinformed about the agreement because it’s titled ‘hire-purchase’ which he understands to mean that he would own the car having made his repayments, rather than having the option to buy the car with a final payment.

Black Horse says that the agreement is a particular kind of hire purchase agreement which includes an option to return or purchase the goods at the end and doesn’t consider that Mr B was given incorrect or misleading information about it. Black Horse says that it carried out reasonable checks and found that the credit was affordable and sustainable for Mr B at the time. The lender also says it believes it acted fairly in lending to him and it was later, unforeseeable events which led Mr B to raise a complaint.

One of our investigators looked into Mr B’s complaint and recommended that it be upheld. They found that proportionate checks were likely to have shown that the finance repayments were unaffordable for Mr B and so Black Horse was irresponsible to have agreed to lend to him.

In order to put things right the investigator recommended that Black Horse end the agreement and allow Mr B to return the car with nothing further to pay. They also recommended that Black Horse refund Mr B's deposit (along with compensatory interest) but found that it was reasonable for the lender to retain all of the payments he'd made as he'd had the use of the car throughout.

Black Horse didn't accept this recommendation and asked for the complaint to come to an ombudsman to review and resolve.

I issued a provisional decision on 25 May 2021 setting out why I thought Mr B's complaint should be upheld. I won't set out the detail here as I have attached an extract from my provisional decision to this document. It sets out my reasoning on these points and forms part of this final decision.

In summary, I provisionally concluded that Black Horse was irresponsible when it agreed credit for Mr B and should compensate him for this. I thought the fairest way to put things right for Mr B was for Black Horse to end the agreement and recover the car at no further cost to him. I also thought it was fair for Black Horse to keep all payments Mr B made, including his deposit, as a fair hire or usage cost for the car.

Mr B agreed with my provisional conclusions but disagreed with my view of how to put things right for him. Mr B says that he has had little or no use of the car during the national response to the pandemic because his work isn't deemed essential and he could work from home. Mr B also says that he didn't have the means available to return the car and settle his agreement.

Mr B also says that when he took out the agreement he had a lump sum available for a deposit. This won't be the case now if he simply returns the car. While he appreciates that fair usage has to be accounted for, Mr B doesn't believe that he should be hurt financially and the weight of fairness should be in his favour if the complaint is being upheld. In summary, Mr B says Black Horse should refund his deposit along with compensatory interest

Black Horse didn't agree with my provisional findings but did agree with how to resolve the complaint. It said *"We welcome the change in decision at provisional stage confirming that there is no requirement to waive the £6,500 deposit in recognition of the fact that the customer had completed 80,000 miles over a 4 and ½ year period but even a usage charge of £580 per month is considered modest especially given the higher than average mileage and the prestige nature of the vehicle."*

Black Horse raised a number of points about my provisional findings. It said, in summary, that:

- it complied with the regulations and is concerned that this Service's approach seems to be that a lender should always check an applicant's bank statements before agreeing credit;
- its assessment was reasonable and proportionate;
- the assessment didn't raise any concerns and showed that the credit would be affordable;
- further checks wouldn't have shown that the credit was unaffordable and a later income and expenditure analysis confirmed this, and
- Mr B experienced an unforeseeable change in circumstances which caused him financial difficulty.

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.

As before, I have also taken into account the law, any relevant regulatory rules and good industry practice at the time. I have carefully considered what both parties have said in their responses to my provisional decision.

Having done so, I remain of the view that everything didn't go as it should have when Mr B applied for credit and, had it done so, it's likely that Black Horse would have declined to lend to him. Neither party has provided any new information for me to consider but I will address their responses to my provisional decision.

I'll begin with the relevant regulations - these are set out in the Financial Conduct Authority's consumer credit handbook and can be viewed online here according to timeline:
www.handbook.fca.org.uk/handbook/CONC

Black Horse said in response to my provisional decision: *"You make reference to the fact that Black Horse cannot rely on CONC 5.2A.19G(1) which allows firms to use statistical data for non-discretionary expenditure as it was not in place at the time the agreement was taken out. Whilst we agree that this was the case, we do not believe that the previous CONC rules and guidance prohibited the use of statistical data and we believe the purpose of the CONC revisions was an enhancement to provide more clarity rather than being a fundamental change in the requirements."*

Black Horse used statistical data to estimate Mr B's living expenses and said that this complied with CONC 5.2A.19G(1). I'd pointed out in my provisional decision, for accuracy, that CONC 5.2A.19G(1) wasn't in place at the time of the lending. On a further point of accuracy, this particular guidance says that a lender may rely on such datasets, but it may not be appropriate to do so in every case.

The guidance in place when Mr B's agreement began doesn't specifically mention statistical datasets but does set out examples (CONC 5.2.4G (3)) of the types and sources of information lenders might use when assessing whether credit would be sustainable for an applicant *"which may, depending on the circumstances, include some of all of the following:*

- (a) [a lender's] record of previous dealings;*
- (b) evidence of income;*
- (c) evidence of expenditure;*
- (d) a credit score;*
- (e) a credit reference agency report; and*
- (f) information provided by the customer.*

[Note: paragraph 4.12 of ILG]"

Paragraph 4.12 of ILG – Irresponsible Lending Guidance from the previous regulator, the Office of Fair Trading – states explicitly that this isn't an exhaustive check list but, rather, a list of examples of the types and sources of information that may be appropriate, depending on the circumstances. In other words, the regulations aren't prescriptive about what a lender should rely on but are clear that whatever the type or source of the information relied on, it must be proportionate to the circumstances. The circumstances being the amount of credit granted and the total charge for the credit relative to the consumer's financial situation (CONC 5.2.4G(2)) and so the same checks might not be appropriate for all consumers or indeed for all credit agreements.

To be clear, my role here is limited to deciding whether Black Horse acted fairly and reasonably to Mr B when entering into this hire-purchase agreement with him. It isn't to assess the lender's model as a whole or to comment on the proportionality of its checks in other unrelated cases. In this case Black Horse checked Mr B's ability to meet his repayments in a number of ways: it used a Credit Reference Agency (CRA) tool to check that the income level Mr B declared was viable; statistical data to estimate his living expenses (excluding mortgage/rent), and a CRA credit report to understand his existing credit commitments. It accepted the figure Mr B gave for his monthly commitment towards housing costs and asked about any other material costs.

As I explained in my provisional decision, bearing the above regulations in mind, I didn't think the checks Black Horse carried out were appropriate here because:

- a) Black House should have been concerned that the only material monthly expenses Mr B declared were housing costs of less than £400 alongside a salary of £90,000;
- b) Mr B was described as a 'Director' on the agreement so I didn't think it was beyond reasonable for Black Horse to have asked about the nature of his employment;
- c) The credit file information Black Horse obtained showed that Mr B had over £12,000 of existing debt. The report also listed a financial associate of Mr B's with a large amount of debt, a significant proportion of which was unsecured, and
- d) Mr B was taking on the considerable financial commitment of monthly payment of over 20% of his declared (net) monthly income over a period of four years.

Black Horse says that it didn't understand why a customer with a high income and modest housing costs should raise concern. I'd said in my provisional decision that the only material monthly expenses Mr B had declared were housing costs, not that Mr B's housing costs were modest. A later income and expenditure check revealed other monthly expenses.

Black Horse says that even if it had discussed the nature of his employment with Mr B, it would not have led it to the conclusion his business might fail at some point. I don't think it would be reasonable to expect Black Horse to carry out an analysis of Mr B's business before agreeing credit for him, but I do think it flagged the possibility that Mr B's income might fluctuate, that any bank deposits might not be net of tax payments and that he might be incurring business costs.

Black Horse says that Mr B's existing levels of debt weren't significantly high relative to his salary and that it wouldn't be appropriate to consider the debts of a financial associate when making a lending decision. I can accept this point but, in this case, Mr B's associate had £73,000 of unsecured debt across several accounts. Black Horse seems to accept that someone might not be named on a spouse or partner's mortgage but typically make a contribution to this debt. I don't think it was unreasonable in this case, given the high amount of existing debt, to check whether the management of this associate debt impacted on Mr B's expenses in any way.

Finally, Black Horse says that there is nothing in CONC or any other regulation which mandates that repayments of above 20% of monthly income should trigger a more in-depth assessment. As I've mentioned, the relevant regulations clearly state that the risk of credit not being sustainable directly relates to the amount of credit granted and the total charge for the credit relative to the customer's financial situation (CONC 5.2.4G(2)). It follows that more in-depth checks are likely to be appropriate where there is a greater risk of the credit not being sustainable and, clearly, this risk increases with the amount of credit borrowed.

I consider that, at 22% of Mr B's declared net income, this regular repayment was a significant commitment in this particular case where Mr B's other declared or estimated costs (housing, existing credit repayments and living costs) each came to 10% or less of his declared monthly income. Furthermore, taking on this commitment would potentially bring Mr B's total monthly debt repayments to about a third of his declared monthly income.

Altogether, in these circumstances, I remain of the view that it would have been reasonable and proportionate for Black Horse to have looked into Mr B's finances in more depth before agreeing credit for him. There was a risk here that its assessment would underestimate the means Mr B had available to meet his repayments as they fell due over the lifetime of the agreement. As I explained in my provisional decision had it done so and, for example, gathered and verified more information about Mr B's expenses, I think Black Horse would have learnt then that he wasn't likely to meet his repayments sustainably.

Our investigator reviewed Mr B's bank statements and concluded that Mr B didn't have enough disposable income each month to meet the repayments. Black Horse disagreed with this analysis and said that it wasn't possible to determine affordability by simply reviewing the bank statements in isolation due to the size and volume of all transactions passing through. I'd reviewed these bank statements and agreed that there were a high number of transactions. I didn't carry out a forensic income and expenditure analysis but could see, broadly, that Mr B didn't appear to have enough disposable income to meet his repayments. I also said that it was clear from the bank statements that the amount of money Mr B had access to varied considerably, for example he incurred unarranged overdraft fees in the months before the agreement despite the large deposits into his account.

Black Horse said in response that *"We do not understand why the act of passing monies to the customer's wife or a company would mean that these amounts should be disregarded for the purposes of assessing the customer's net disposable income. The money could have been transferred to his wife for a range of reasons e.g. savings, discretionary expenditure or one off costs, so we are unclear why you see this as essential expenditure. It would not be practical or appropriate to decline a customer's finance application simply because they are transferring some of their income to other parties."*

I think it would be appropriate to quote from CONC here:

"In making the creditworthiness assessment or the assessment required ... a firm should take into account more than assessing the customer's ability to repay the credit." CONC 5.3.1G(1)

CONC 5.3.1G(6) states:

"For the purposes of CONC "sustainable" means the repayments under the regulated credit agreement can be made by the customer:

(a) without undue difficulties, in particular:

(i) the customer should be able to make repayments on time, while meeting other reasonable commitments; and

(ii) without having to borrow to meet the repayments;

(b) over the life of the agreement, or for such an agreement which is an open-end agreement, within a reasonable period; and

(c) out of income and savings without having to realise security or assets; and “unsustainable” has the opposite meaning.

[Note: paragraphs 4.3 and 4.4 of ILG]

Paragraph 4.3 of the ILG states that *“The OFT regards ‘in a sustainable manner’ in this context as meaning credit that can be repaid by the borrower:*

- without undue difficulty – in particular without incurring or increasing problem indebtedness;*
- over the life of the credit agreement or, in the case of open-end agreements, within a reasonable period of time;*
- out of income and/or available savings, without having to realise security or assets.*

4.4 The OFT would regard ‘without undue difficulty’ in this context as meaning the borrower being able to make repayments (in the absence of changes in personal circumstances that were not reasonably foreseeable at the time the credit was granted):

- while also meeting other debt repayments and other normal/reasonable outgoings; and*
- without having to borrow further to meet these repayments.”*

I can appreciate that it might not be practical or appropriate to automatically decline credit to an applicant on the basis that they are transferring some of their income to other parties. However, it isn't the case here that Mr B was transferring some money to other parties – he was transferring most of the money coming into his personal account to his business or to his partner and doing so on a regular basis (the bank statements I've seen cover about four months prior to the agreement). I don't know the specific purpose of all of these transactions but, clearly, they weren't all one-off expenses and I think it's unlikely Mr B was building up a pot of savings given his difficulties later on.

Having carefully considered the matter again, I remain of the view that reasonable and proportionate checks would likely have shown that Mr B wasn't going to be able to meet a monthly payment of over £1,100 in a sustainable manner over four years and so I find that Black Horse was irresponsible when it agreed to lend to him.

Black Horse says *“It is the change in the customer’s circumstances that could not have been foreseen at the point of sale which subsequently made the lending unaffordable.”* I do understand that Mr B experienced a financial shock when his business went into liquidation and, even without any previous difficulties, I can see why this would cause an obvious and immediate problem. However, as I explained in my provisional decision, from everything I've seen I think it's more likely than not that Mr B struggled from the outset to meet his repayments sustainably, which later events compounded.

Putting things right

I've provisionally found that Black Horse was irresponsible to have agreed to lend to Mr B, so he shouldn't lose out because of this by, for example, paying interest and charges on the money he borrowed. If Mr B was up-to-date with his repayments, it wouldn't be fair for Black Horse to keep everything he's paid because the monthly repayments include interest and charges. On the other hand, it wouldn't be fair to simply refund everything Mr B's paid under the agreement because he has been able to use the money to hire the car for over four and a half years and, I understand, has driven it about 80,000 miles.

There isn't an exact formula for working out what a fair usage charge might be. In

deciding what's fair and reasonable in this case, I thought about the amount of interest charged on the agreement, Mr B's overall usage of the car (including the mileage covered) and that he would have incurred costs to stay mobile if he hadn't entered into this agreement. I've also considered that this was a new and relatively expensive model of car which Mr B, to paraphrase, considered aspirational.

As mentioned, Mr B hasn't met all his monthly repayments and as of March 2021 has paid about £32,000 to Black Horse in total, including his deposit. I don't know if Mr B has paid anything since March. So, from the information I have, this equates to about £571 a month to date, slightly less per month than it was at the time of my provisional decision. I'd provisionally concluded that this was a fair usage charge in this case and so thought it fair for Black Horse to keep all of the payments Mr B made.

Mr B says that he hasn't needed to use the car to the extent he did at the outset of the agreement. While I appreciate that, I understand that he has managed to use it beyond what might be considered average mileage per year or indeed what was set out in the hire purchase agreement. Mr B has now had the use of the car for about 56 months and I remain of the view that it's fair for Black Horse to retain all his payments to cover fair usage.

As I don't think the agreement should have been entered into, I don't think it would be fair or accurate to record any adverse information on Mr B's credit file. However, recording the agreement as satisfied isn't appropriate in this case either. This is because it will give a potentially misleading impression to future lenders that Mr B is able to adequately service an agreement of this size. I therefore think the agreement should be removed from his credit file entirely.

In summary, Black Horse should:

- End the agreement with nothing more for Mr B to pay; and
- Recover the car at no expense to him; and
- Remove any information about this credit agreement from his credit file.

My final decision

For the reasons set out above and in my provisional decision, I am upholding Mr B's complaint against Black Horse Limited trading as Land Rover Financial Services and it needs to put things right for him as I've set out.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 3 August 2021.



Michelle Boundy
Ombudsman

Extract from Provisional Decision

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I have also taken into account the law, any relevant regulatory rules and good industry practice at the time. These included, for example, the Consumer Credit Act 1974, its revisions in 2015 and the Financial Conduct Authority's Consumer Credit Handbook (CONC) which set the regulations and guidance for lenders such as Black Horse.

Before agreeing credit for Mr B, Black Horse needed to check that he could afford to meet his repayments sustainably, in other words out of his usual income and savings without having to borrow further and without experiencing financial difficulty. The checks needed to be proportionate to the nature of the credit and Mr B's circumstances, and Black Horse needed to take proper account of the information it gathered. Ultimately, Black Horse needed to treat Mr B fairly and take full account of his interests when making its lending decision.

Furthermore, the regulations in place at the time stated that a lender must take steps to ensure that the information it relies on, including information from the applicant, is complete and correct. They also state that is not generally sufficient for a firm to rely solely for its assessment of the customer's income and expenditure on a statement of those matters made by the customer.

In addition, as the owner of the vehicle bought from the dealership, Black Horse was responsible for any negotiations the dealership had with Mr B, including advertisements, before he entered into the agreement.

Bearing all of this in mind, in coming to a decision on Mr B's case, I have considered the following questions:

- was Mr B given clear, fair and not misleading information before he entered into the agreement with Black Horse?
- did Black Horse complete reasonable and proportionate checks when assessing Mr B's loan application to satisfy itself that he would be able to repay the loan in a sustainable way? If not, what would reasonable and proportionate checks have shown?
- overall, did Black Horse make a fair lending decision?

Mr B says that that the sales process happened very quickly and that he wasn't given the information he should have been before he entered into the agreement. He explained that he went to browse the cars on display at the showroom with his family while on a day out and didn't intend to purchase a car. Mr B also says that the documentation from Black Horse shows that he had entered into a hire-purchase agreement which he understood to mean that he would own the vehicle outright at the end of the term having made regular payments throughout. In fact, the agreement gives Mr B the option to purchase the car with a final payment of over £34,000. So Mr B feels he was misled about the terms of the agreement and that it is possibly invalid.

Clearly, I can't know exactly what was discussed at the showroom before Mr B agreed to buy the car with finance from Black Horse or how the agreement was presented to him. I can understand why, considering how events unfolded, Mr B now feels he needed more time to consider whether or not to enter into the agreement and regrets that he fell for a sales pitch, as he put it. I've seen a copy of the (electronically) signed agreement which

sets out the relevant information about the monthly repayments and the optional final payment to purchase the car. So I think if Mr B wasn't expecting these terms or didn't want to accept such an arrangement he would have raised a query about it at the time.

However, I don't plan to consider this aspect of Mr B's complaint further and haven't made any finding on whether or not Black Horse got something wrong in this regard. As I will go on to explain, even if I concluded that everything happened as it should have at the point of sale, I'm upholding Mr B's complaint because I think Black Horse was irresponsible to have agreed credit for him at that time.

Black Horse says that it checked Mr B's ability to meet his repayments in a number of ways. It used a Credit Reference Agency (CRA) tool to check that the income level Mr B declared was viable; statistical data to estimate his living expenses (excluding mortgage/rent), and a CRA credit report to understand his existing credit commitments. It accepted the figure Mr B gave for his monthly commitment towards housing costs and asked about any other material costs.

Black Horse said that "The use of the model for essential living costs within the affordability assessment complies with CONC 5.2A.19G (1), which says 'for the purpose of considering the customer's non-discretionary expenditure under CONC 5.2A.17R, the firm may take into account statistical data unless it knows, or has reasonable cause to suspect, that the customer's non-discretionary expenditure is significantly higher than that described in the data or that the data are unlikely to be reasonably representative of the customer's situation.'"

With respect to Black Horse this particular guidance wasn't in place at the time the finance was taken out. As I mentioned above, the rules and guidance stipulated that Black Horse needed to check Mr B could meet his repayments sustainably and its checks needed to be proportionate. So I've thought about whether its checks were sufficient in Mr B's circumstances, and I've concluded that there were indications in the information Black Horse had gathered that its estimation of Mr B's available income was likely to fall short.

In the first instance, I think Black Horse should have been concerned that the only material monthly expenses Mr B's declared were housing costs of less than £400 alongside a salary of £90,000. I appreciate that Black Horse then estimated what Mr B spent monthly on repaying existing debt and covering living costs, though I can't see that it took steps to verify his housing costs. I note that Mr B is described as a 'Director' on the agreement so I don't think it's beyond reasonable for Black Horse to have asked about the nature of his employment. I've also noted that the credit file information Black Horse obtained showed that Mr B had over £12,000 of existing debt. The report also lists a financial associate of Mr B's with a large amount of debt, a significant proportion of which was unsecured.

Given this information and that Mr B was taking on a considerable financial commitment, I think a reasonable and proportionate response would have been to look into his finances in more detail to understand whether a payment of over 20% of his declared (net) monthly income would be sustainable for him over four years in his particular circumstances.

Mr B provided his personal bank statements covering about four months in 2016. I'm not suggesting this is the information Black Horse ought to have relied on, but it gives a useful insight into Mr B's finances at the time. Our investigator reviewed these and concluded that Mr B didn't have enough disposable income each month to meet the repayments. Black Horse disagreed with this analysis and said that while it noted that the credits to Mr B's account indicated a salary even higher than the £90,000 Mr B had

declared, it concluded that it wasn't possible to determine affordability by simply reviewing the bank statements in isolation due to the size and volume of all transactions passing through.

I've reviewed these bank statements and agree that there is a high number of transactions. I can see about £39,000 deposits in over these months and about £34,000 transfers out to two payees: Mr B's wife and a company. Disregarding everything else, this doesn't leave enough for Mr B to meet his repayments each month. It's clear from the bank statements that the amount of money Mr B had access to varied considerably, for example he incurred unarranged overdraft fees in the months before the agreement despite the large deposits. It's also clear that Mr B had business interests and paid significant sums to his wife each month.

Mr B explained to this Service that he was the sole owner of a company at that time - he drew a salary of £1,000 a month (and provided income tax returns which support this) and he also took payment from the company by way of ad-hoc dividends to pay his bills. Mr B said his wife paid the mortgage and most of their bills and living costs, which at times included school fees for their two children. I understand that his business went into liquidation in early 2018.

Altogether, I don't think it's likely that any further information about Mr B's financial affairs would have reassured Black Horse that he would have been able to meet his repayments sustainably and so I think it was irresponsible to have agreed to lend to him when it did.

Black Horse says that about nine months after the agreement began Mr B told it he was experiencing cash-flow problems. The lender took an income and expenses statement from Mr B at that time, which showed a far lower disposable income than at inception. Black Horse says that Mr B still had sufficient disposable income to meet his repayments though I don't know what checks it did at that time to support its conclusion. Black Horse also says that while Mr B found it difficult to keep up his repayments when his company ceasing trading, he would have complained sooner if his difficulty paying was there from the start.

While I can understand the lender's perspective on this, I'm afraid I don't agree with this conclusion. Successfully meeting his repayments doesn't automatically mean Mr B managed to do so without experiencing difficulty. Mr B says that he didn't raise a complaint sooner because he felt it was his fault that he wasn't able to manage the agreement. And, considering everything, I think it's more likely than not that that is what happened here.

What Black Horse needs to do to put things right

I've provisionally found that Black Horse was irresponsible to have agreed to lend to Mr B, so he shouldn't lose out because of this by, for example, paying interest and charges on the money he borrowed. If Mr B was up-to-date with his repayments, it wouldn't be fair for Black Horse to keep everything he's paid because the monthly repayments include interest and charges. On the other hand, it wouldn't be fair to simply refund everything Mr B's paid under the agreement because he has been able to use the money to hire the car for about four and a half years and, I understand, has driven it about 80,000 miles.

There isn't an exact formula for working out what a fair usage charge might be. In deciding what's fair and reasonable in this case, I've thought about the amount of interest charged on the agreement, Mr B's overall usage of the car (including the mileage covered) and that he would have incurred costs to stay mobile if he hadn't entered into

this agreement. I've also considered that this was a new and relatively expensive model of car which Mr B, to paraphrase, considered aspirational.

As mentioned, Mr B hasn't met all his monthly repayments and as of March 2021 has paid about £32,000 to Black Horse in total, including his deposit. I don't know if Mr B has paid anything since March so, from the information I have, this equates to about £580 a month to date. I think this is a fair usage charge in this case and so I think it's fair for Black Horse to keep all of the payments Mr B made.

As I don't think the agreement should have been entered into, I don't think it would be fair or accurate to record any adverse information on Mr B's credit file. However, recording the agreement as satisfied isn't appropriate in this case either. This is because it will give a potentially misleading impression to future lenders that Mr B is able to adequately service an agreement of this size. I therefore think the agreement should be removed from his credit file entirely.

In summary, Black Horse should:

- End the agreement with nothing more for Mr B to pay; and
- Recover the car at no expense to him; and
- Remove any information about this credit agreement from his credit file.

My provisional decision

For the reasons set out above, I am planning to uphold Mr B's complaint about Black Horse Limited trading as Land Rover Financial Services.

I'll wait a month to allow both parties time to comment on what I've said and/or provide any new information for me to consider before making my final decision.

Michelle Boundy
Ombudsman