

## **The complaint**

Miss M complains about the support she has received from Black Horse Limited ("BHL") in relation to a hire purchase agreement she has with it.

## **What happened**

Miss M is represented in her complaint but for ease of reading I've referred to everything said on her behalf as if Miss M had said it.

Miss M and BHL are both parties to a hire purchase agreement. In April 2020 Miss M contacted BHL because she was struggling to make her repayments due to financial difficulties caused by the restrictions put in place due to the Covid-19 pandemic.

Ultimately, Miss M tells us she asked for and was given she says, six months of payment deferrals. However, Miss M indicates that she was unaware of the specific terms that would apply if she accepted the payment deferrals. In particular, she was aware that some sort of charge would be levied but she was not told the amount despite receiving a lot of communication from BHL. However, given this situation had come about due to circumstances outside of her control her expectation was that a small fee of around £10/£20 per month would be charged. Therefore, she suggests that she was surprised to find that BHL wanted to charge her £599 in total (according to her).

Miss M's stance is that the amount of the charge was hidden away in the small print. She suggests that this is not appropriate, rather the amount of the charge should have been made clearer. Moreover, she indicates had she known how much she was going to be asked to pay, which she indicates she can't afford, she would never have asked for the payment deferral. Instead, she would have continued to make her full monthly contractual repayments, even though this would have been a struggle.

Overall, Miss M considers that BHL has acted unfairly and as a result, she wants it to write off the charge.

BHL's position was that it has done nothing wrong. It indicated its records show that Miss M applied online for the first payment deferral, which lasted three months. In order to progress this application Miss M had to confirm she had read the important information it provided about the terms on which the payment deferral would be granted.

The terms set out that a charge would be made and how the charge would be calculated. They also set out what the maximum charge would be. Moreover, it indicates that it had sent Miss M letters on a monthly basis to show how much she would be paying each time BHL deferred her repayments.

On this basis it did not agree that Miss M was unaware of the amount of the charges because of anything it did wrong. Further it did not agree that it had acted inappropriately in applying the charges.

For all of these reasons it did not uphold Miss M's complaint.

Dissatisfied, Miss M complained to this service.

Once Miss M's complaint was with us, BHL told us that Miss M had had five not six months of payment deferrals. It told us that the amount it had charged her for this was £467.89 (according to it) in total not £599. Plus, it pointed out that in order to carry out Miss M's request for a payment deferral it had extended the original term of the agreement by five months. It added that this was appropriate and pointed to the relevant guidance. Specially it said.

*"The guidance supplied to [BHL] by the Financial Conduct Authority confirmed that whilst they did not recommend that a business charges a fee for processing payment holidays, the finance company was entitled to charge interest on the account for the additional time that it would take to repay the finance."*

Miss M told us that she had never received the monthly letters. In addition, she wanted to underline that all of this happened during the pandemic and this context was important. There had been guidance issued by the Financial Conduct Authority ("FCA") which dealt with what should happen if a motor finance customer was experiencing financial difficulties due to the pandemic. The overriding purpose of the guidance was to provide relief during an unprecedented event. Miss M suggested that BHL's actions were not in line with the objectives of the guidance. She reiterated that in her opinion BHL was charging too much.

Miss M's complaint was sent to me. I looked into Miss M's complaint. I issued a provisional decision. This is what I said about what I'd provisionally decided and why in that provisional decision.

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

*First, I'm very aware that I've summarised this complaint in far less detail than the parties and I've done so using my own words. I'm not going to respond to every single point made by all the parties involved. No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here."*

*Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome."*

*Where the evidence is incomplete, inconclusive, or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances."*

*Miss M is correct when she suggests that the FCA put guidance in place to help consumers, who like her, were experiencing difficulties in making repayments to their motor finance agreements due to the pandemic. The guidance sets out the FCA's expectation that firms provide, for a temporary period only, exceptional, and immediate support to customers facing payment difficulties due to circumstances arising out of coronavirus. In particular, the guidance anticipated that firms such as BHL should provide payment deferrals (of up to six months), where a consumer requested this, provided such a payment deferral was in the consumer's best interests."*

*Further, the guidance also anticipated what should happen about paying back the money*

*owed once the payment deferral period had ended. The guidance explained that many customers might be able to make full repayment of both the deferred repayments and the normal monthly repayments, at the end of the payment deferral period, and if they could this was likely to be the best option for the consumer. It was expected that this option should be discussed, in good time, before the payment deferral ended.*

*However, the guidance also accepted where a customer can resume full repayments after the initial payment deferral, but is unable to pay the deferred amounts immediately and in full, the firm should allow them to repay the deferred amounts over the remaining term of the agreement or allow a longer period for repayment. The firm should consider what is most in the customer's interests. Again, these options should have been discussed with the consumer in good time and certainly before the deferral period ended.*

*I take on board, that Miss M suggests that if she had known what she would be charged she would never have asked for the payment deferral. Instead she would have continued with her monthly repayments as normal. However, I am not persuaded by this. This was a far from normal situation, overnight it seems, like many people, Miss M's financial circumstances changed through no fault of her own. And this regrettably meant that she was struggling to repay.*

*That being so I am not satisfied that Miss M would have been able to continue to make her normal repayments. However, if in response to this provisional decision, Miss M chooses to send in information to show she could have made the repayments I will consider that information before I issue my next decision.*

*With the FCA's guidance in mind I'm going to look at Miss M's circumstances after the end of the payment deferral and did BHL act fairly and reasonably in the light of her very particular individual situation.*

*I would have expected BHL to have offered Miss M the chance to pay off the deferred payments in full at the end of the payment deferral period. It appears it did not. But I cannot fairly or reasonably say this made any difference here because from the information I have seen Miss M could not have taken up this option, even if it had been offered.*

*I would also have expected BHL to have offered Miss M, the opportunity to pay off the deferred payments over the original term of the agreement. That said that would have meant her paying extra each month on top of the contractual monthly payments. Again, it does not appear that BHL did put this possibility to Miss M. That said, nothing I have seen persuades me that Miss M could have taken this option had it been offered.*

*It follows that I think that the only realistic avenue open to Miss M was that which she has been offered. That is the extension of the original term to allow her to pay off the deferred repayments.*

*But that said this is not the end of it because the guidance also said "a firm should give customers adequate information to enable them to understand the implications of a payment deferral. For example, for a regulated credit agreement, this would include the consequences of interest that is accrued during this period and its effect on the balance due under the agreement and on future payments". This is where I think BHL let Miss M down.*

*It is not that I think the charges were hidden in the small print as Miss M suggests. I am satisfied that BHL did enough to bring its approach to Miss M's attention, in particular I am satisfied that Miss M had to follow the online process BHL outlines for the initial payment deferral. Moreover, I am satisfied that the correctly addressed letters BHL tells us about would have been delivered.*

*However, I find it very unclear from reading the information that BHL has supplied about how the payment deferral worked to see exactly how the charges would be calculated and what they might be. It was this information that Miss M would likely have seen while she was deciding whether to go ahead with the payment deferral application. Therefore, I think BHL did not give Miss M adequate information to enable her to understand in advance of making her decision the implications of her payment deferral. I find this in turn, most likely, caused her to experience distress and inconvenience. I am persuaded that it is fair and reasonable that BHL ought to compensate Miss M for this. I think that £300 is an appropriate amount.*

*I find nothing BHL did could reasonably have given Miss M the impression that BHL was likely to charge her £10/£20 per month. Rather, that seems to have been a figure she came up with by herself. Moreover, nothing I have seen suggests that BHL has charged Miss M £599 in total. The amount BHL has charged is a commercial decision for it, which I can't set aside. And I have no power to tell BHL therefore that it must charge Miss M less on the basis that the charges are too high."*

My provisional decision was as follows:

*"My provisional decision is that I intend to require Black Horse Limited to pay Miss M £300 for distress and inconvenience."*

I invited Miss M and BHL to respond to my provisional decision should they wish to do so. Both did. Miss M responded to let us know that *"I am happy that the ombudsman has highlighted the confusion cause by BHF with their information and how the charges would work. I do feel that £500 compensation would recognise the distress and inconvenience"* experienced. She mentioned again how this had all happened in the context of an already stressful time due to the pandemic. On this basis Miss M rejected my provisional decision. BHL responded to let us know it accepted the provisional decision and awaited the final 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.

I thank both Miss M and BHL for their responses. I've reviewed the complete file again and revisited my provisional decision.

Miss M indicates that £500 would be a more appropriate award for the distress and inconvenience she experienced due to what BHL did wrong. However, she does not go on to say why this figure is more appropriate so I've not much to go on here. She does though mention the wider circumstances at the time, that is the pandemic. The award I suggested already took on board that Miss M experienced this distress and inconvenience during what may well have been a particularly taxing time for her due to the pandemic. Without that wider context I'd have made a smaller award. Therefore, in the circumstances, I am not persuaded by Miss M's response to my provisional decision. It follows I've reached the same conclusions for the same reasons as in my provisional decision.

## **My final decision**

My final decision is that Black Horse Limited must pay Miss M £300 for distress and inconvenience.

It must pay the £300 within 28 days of the date on which Miss M accepts my final decision. If it pays later than this it must also pay interest on the compensation from the date of the final decision until the date of payment at the rate of 8% simple per year.

If it considers it is legally required to deduct income tax from that interest, it must send a tax deduction certificate with the payment so that Miss M can reclaim the tax if she is able to.

Miss M should refer back to BHL if she is unsure of the approach it has taken and both parties should contact HM Revenue & Customs if they want to know more about the tax treatment of this portion of the compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 30 September 2022.

Joyce Gordon  
**Ombudsman**