

## **The complaint**

Mrs M's complaint is about a second charge loan she took out in 2007 with Black Horse Limited. She considers that Black Horse lent irresponsibly because it didn't assess the affordability of the loan and her creditworthiness. Mrs M has said this increased the level of financial difficulty she was in at the time and resulted in her having to sell her home.

## **What happened**

Mrs M took out her secured loan in the autumn of 2007. She borrowed £35,000 on a repayment basis over a term of ten years. The monthly payment was £403.07. It was detailed that the purpose of the loan was to consolidate existing borrowing. All payments were made on time between 2007 and May 2015, following which the loan was transferred to a new lender.

At the time of the sale Black Horse asked Mrs M for proof of her income, in the form of a payslip, and bank statements to evidence her outgoings. It also obtained a credit report. This showed that Mrs M had a mortgage, several credit cards with a total balance of slightly under £17,000, loans totalling slightly over £46,000 and a joint overdraft with her husband of around £3,000. The Black Horse loan would have allowed her to clear her credit cards and all but the largest of the loans in her name.

When the loan was agreed, Mrs M wrote to Black Horse and asked it for two cheques, made out to two of her creditors, and for the remainder of the advance to be sent to her bank account. She went on to confirm that she would clear the remainder of the debts through on-line banking.

Mrs M has told us that she repaid the loan in 2016 when she sold her property.

Mrs M complained to Black Horse in June 2021 about the loan being unaffordable. Black Horse told Mrs M that it had limited information about the loan and from the time of the sale, but it set out what its process was at that time. It was confirmed that this included a risk assessment to determine whether it was willing to lend to her. In addition, it concluded that the complaint had been made too late, based on the rules that govern our jurisdiction.

Mrs M referred her complaint to this service and provided copies of documentation from the time of the sale that she had obtained from Black Horse. Our jurisdiction was considered by one of my Ombudsman colleagues, who determined that the complaint was one that fell within our jurisdiction.

Our investigator went on to consider the merits of Mrs M's complaint. He explained what was expected of Black Horse at the time of the sale. He went on to set out the documentation it had obtained at the time regarding Mrs M's finances and situation, in that it explored what would happen if she were unable to work. He was satisfied the evidence showed that Black Horse had completed an appropriate affordability assessment. He also pointed out that there was nothing in the conduct of the account before it was transferred that would have caused Black Horse to conclude Mrs M was in financial difficulties.

Mrs M didn't accept the investigator's view. She said that Black Horse collecting information to complete an affordability assessment, doesn't mean that one was done. She went on to comment that if the bank statements had been assessed properly it would have shown that her income was not sufficient to cover the cost of all her debts and normal outgoings. She also said that a payment on her payslip was a payday loan, which should have raised a red flag. Mrs M also pointed out that an intention to consolidate debt didn't mean that it would be, so her using the money for the intended purpose should not have been assumed. She asked that the complaint was referred to an ombudsman.

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

As our investigator confirmed, Black Horse collected information from Mrs M for both her personal bank account and the joint one with her then husband, evidencing money coming in and going out of the account. The latter showing that both Mrs M and her ex-husband contributed to the account used for the household outgoings and debt repayments. Black Horse also obtained proof of income (both gross and net) from Mrs M and a credit report detailing her outstanding debts and settled financial accounts. It also clearly had discussions with her about how the loan would be paid if she was unable to work in the future.

I am satisfied that Black Horse obtained enough information to complete an affordability assessment for the loan it provided Mrs M. She has said that Black Horse collecting information to assess the affordability of a loan doesn't mean that it was actually done. Due to the amount of time that has passed, and that the loan was transferred to another lender, it is not surprising that Black Horse has limited information from the time of the sale. This means that it can't prove that an affordability assessment was completed.

However, an affordability assessment was not just for the purpose of protecting a consumer. It also determines how much of a risk that consumer posed to the lender – the likelihood of the loan being paid and the lender getting its money back. It has been proven that Black Horse collected the information needed to assess the affordability of the loan. I am satisfied that having gone to the effort to be able to complete an affordability assessment; one was done.

Mrs M has said that her payslip evidenced a payday loan from a particular provider. It is correct that there was a payment going out to a financial business, but that business is a credit union linked to the industry she was employed in at that time. The credit union provides savings accounts and loans, it was not and is not a payday lender. No evidence has been provided as to what type of account Mrs M had with the credit union, but I don't consider it should have raised a red flag as she has suggested.

While Mrs M has stated that her income wasn't sufficient to cover all of her existing debts and her general household costs, this is not the calculation that would have been completed to determine affordability of the loan. It would be an assessment of the situation following the loan being in place and Mrs M consolidating most of her debts. Included in that assessment would also have been the fact that her ex-husband was clearly contributing to the household costs, as evidenced from the joint bank account. As our investigator did, I also note that there is nothing in the conduct of the Black Horse loan in the almost eight years it was in place before transfer, that would indicate that Mrs M was in financial difficulties. Each

payment was made in full and on time

Mrs M has indicated that she doesn't think that Black Horse should have assumed that she would do what she said she would with the money from the loan – that she would pay off existing debts. While Mrs M hasn't said that she didn't use the money as intended, it is true that a lender can't force a borrower to use the money as they said they would. However, most borrowers do, and it would not be appropriate for a lender to call into question a consumer's integrity when assessing the affordability of a loan. There has to be a degree of trust in such a relationship and a lender has the right to rely on a consumer being honest with it. So I think it reasonable that Black Horse assessed the affordability of the loan based on Mrs M doing what she told it she would with the money. If she later decided to take a different course of action, which then resulted in financial difficulties, I don't consider Black Horse could be held responsible for the consequences of that decision.

### **My final decision**

My final decision is that I do not uphold this complaint. Under the rules of the Financial Ombudsman Service, I am required to ask Mrs M to accept or reject my decision before 7 April 2023.

Derry Baxter  
**Ombudsman**