

The complaint

Mr C has complained that a series of car finance agreements taken from Black Horse Limited trading as Jaguar Financial Services ("Black Horse") are unfair, have been misrepresented, and were lent to him irresponsibly.

What happened

Mr C has been represented in this complaint by a firm I will call Firm A. However, for simplicity, I will always refer to evidence provided, or questions asked, as coming from Mr C.

Mr C acquired his first new car through the car dealership in question in November 2016. This was via a finance agreement from a different finance company and doesn't form part of this complaint.

During 2017 and 2018, Mr C part exchanged his car four times at the dealership, each time acquiring a different car, paying off the existing finance agreement often including negative equity carried over to a new agreement. The details of the prices, payments and equity have been shared previously in this case and are not in dispute, I don't intend to repeat them all again here. These four agreements, all with Black Horse, form this complaint.

Mr C has told us that on each occasion, the new agreements were mis sold to him. He says on the first occasion in April 2017 he was told he could get a better deal to change to a brand new car and told the interest on the finance would be less than he was paying on his current agreement.

In September 2017 he says he revisited the dealership to have a small repair carried out and told them that he'd recently had some health concerns three months prior to that visit. He has told us that he was encouraged to acquire another brand new car and felt this was a pressurised sale.

In May 2018, he visited the dealership again, and told us he was encouraged again to acquire another new car. He says at every meeting he was mis sold new cars and encouraged to take out finance to acquire them. He then took out another new agreement in December 2018, his fourth agreement with Black Horse through the same dealership.

Mr C has told us that he was led to believe that by changing his agreements and getting new cars, he would be able to take advantage of better interest rates which would reduce his overall loan repayments, and that upgrading his vehicles would reduce his negative equity, but in reality this wasn't the case.

He has also said he was encouraged to put down minimum deposits, which increased the amount he owed and increased his loan repayments.

Mr C complained to Black Horse in 2020. Included in this complaint was an allegation about advisors suggesting Mr C should have the car stolen, to claim on the GAP insurance policy. He also raised concerns about being advised he could reduce his negative equity and monthly payments by taking the new agreements, about the amount of money the

agreements had cost Mr C, that he was encouraged to put down minimal deposits which increased his overall lending, and that he was self-employed, which wasn't made clear on the agreements.

They responded with their final response letter (FRL) in November 2020. They didn't uphold his complaint, explaining that on each occasion, sales invoices provided confirm the part exchange values and the amount that needed repaying still on the previous agreements, so they were satisfied the negative equity situation was clear to Mr C. They also highlighted that no GAP insurance policy had been taken so didn't understand why someone at the dealership might suggest having the car stolen to claim on a policy that wasn't in force.

They clarified the amount Mr C had spent wasn't the amount he had claimed because none of the agreements had run their term, so each agreement had its negative equity cleared in full when he took out a new agreement. They also highlighted that on each occasion, there was an application for finance, and that Mr C returned afterwards, between 9 and 20 days later, to sign up to the agreements. They felt this showed he had time to take the information away and make an informed decision as to whether he wanted to go ahead with the new agreements.

Alongside this, they broke down the affordability calculations/checks they had carried out on each occasion. They had used income disclosed by Mr C of between £60,000 and £66,000, and the expenses he provided, plus credit file information, to confirm that on each occasion, he had disposable income available to make car payments of between £1,576 to £2,788 per month.

They agreed that the agreements didn't note him down as self-employed but confirmed that this wouldn't change their decision to lend, as his income had been verified through other checks. They confirmed that for the first three agreements, he had been noted down as being a director, but for the fourth application, he had said he was a sales director. This seemed to tie in with checks on the Companies House database they carried out when investigating the complaint which showed that his company had not been a limited company since October 2018, two months prior to the final agreement being taken.

Mr C didn't agree with this outcome and brought his complaint to our service in January 2021. Unfortunately, due to delays in collecting evidence and our investigation process, the investigator didn't issue their view on the case until July 2022.

They didn't uphold the complaint. They didn't agree that Mr C had been misled about getting better interest rates, reduced overall loan payments, or improving the negative equity position. They discussed a potential misrepresentation by the dealership about the negative equity but didn't agree that this conversation induced Mr C to take out the agreement. They felt the details were clear in the paperwork.

They also said that they had found no evidence of the alleged conversation between Mr C and the dealership about having the car stolen and claiming on the GAP insurance, and even if it had happened, Mr C hadn't followed that advice as no GAP insurance policy had been taken out. So, they couldn't conclude anything wrong had happened.

It is worth noting at this point that in March 2021, Mr C had part exchanged his car again and taken another finance agreement with Black Horse. This agreement came after the complaint to the business had been referred to us, and as such, I don't think it's fair for us to consider this as part of this complaint.

We've not been provided with the details of the agreement and Black Horse haven't had an opportunity to consider any specific concerns Mr C may have about that 2021 agreement.

On this basis, I am not considering it as part of this complaint.

I am aware that the investigator said in their view in July 2022 that Mr C had asked them to consider this further agreement, and they said had considered it during their investigation. But I can't see any evidence of them gathering any particular concerns about this agreement from Mr C, or asking Black Horse if they wanted to answer any concerns.

I think the investigator has considered the agreement in light of the general concerns about negative equity, but as I'll explain below, Mr C has also come back after their view with specific concerns about our answers to do with the affordability of the lending and it being irresponsible, and referenced concerns about misrepresentation and section 140A of the Consumer Credit Act 1974 (CCA).

In light of this, I don't think it is fair for me to consider this 2021 agreement as part of this complaint, when Black Horse have had no opportunity to consider or answer it. This complaint already covers four agreements, and a wide range of issues, and I don't think it benefits Mr C or Black Horse for me to try to also answer further points about an agreement taken out well after Mr C referred this complaint to our service.

There might be different specific concerns about the 2021 advice, for example I am aware that Mr C has changed his employment and his circumstances may have been different by the time he took that 2021 agreement. As I don't have this information, and this issue wasn't investigated by Black Horse in 2020, I am not going to consider it here. I will focus my answer here on the complaints raised to Black Horse in 2020, and subsequent questions and comments from Mr C while we've investigated those issues.

As mentioned above, Mr C didn't agree with the investigator's view. He said that insufficient weight had been given to the irresponsible lending in this case, that he had been encouraged to enter into a series of agreements which resulted in the negative equity position worsening, and highlighted that he felt the agreements had been misrepresented to him.

He then also highlighted that he felt that the requirements of both Section 140A of the CCA and banking codes hadn't been considered with regards to explaining the risks involved, explaining the full costs of the agreements, and the general affordability of them. He asked for an Ombudsman to make a final decision on the case.

I issued a provisional decision on 9 March 2023. My provisional findings were as follows:

Before I get on to the substance of my findings, I want to set out my role as an ombudsman. It isn't to address every single point that's been made to date. Instead, it's to decide what's fair and reasonable given the circumstances of this complaint. And for that reason, I'm only going to refer to what I think are the most salient points when I set out my conclusions and

my reasons for reaching them. But I have read the submissions from each side in full and have considered all the points made in relation to the complaint.

In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and (if appropriate) what I consider was good industry practice at the time. Mr C was supplied with vehicles under four hire purchase agreements. These are regulated consumer credit agreement which means we're able to look into complaints about them.

Particularly relevant here is section 56 of the CCA (Consumer Credit Act 1974), which has the effect of making Black Horse liable for anything the dealership has said in the

negotiations for these hire purchase agreements. Black Horse can be held responsible for the things that were said and done during the sales process that induced Mr C to enter the agreements.

I'm going to focus my response here on the areas of concern which Mr C has told us he doesn't feel we've considered properly to this point. Alongside this, I will confirm where I think answers previously provided are fair, and why I have reached that conclusion. I appreciate that this makes this a long response, and apologise to Mr C for this, but he's raised several points at different times, so I want to try to cover all of his concerns.

Mr C's ongoing concerns fall into three areas. Whether the lending was irresponsible, taking into account the negative equity issues and general affordability of the loans. Whether the agreements were misrepresented in any way to Mr C, causing him to enter into one or all of the agreements when he otherwise wouldn't have. And whether any misrepresentation led to an unfair relationship arising between Mr C and Black Horse under Section 140A of the CCA, and banking codes.

I'll consider the concerns about irresponsible lending first. Within this, I am also going to look at the affordability of the lending, which Mr C has mentioned, but not focused on when bringing the complaint to our service. Some of these concerns are tied in with concerns about misrepresentation, so I'll answer some of these here as well.

The concerns Mr C has raised about irresponsible lending have centred on the amount of borrowing and the negative equity which accrued each time a new agreement was taken. He has said he was encouraged into entering a series of agreements which worsened his position. He's said that no heed was given to payments increasing, and negative equity and the worsening position he was put into wasn't considered. He's also said he was encouraged to put down minimum deposits, meaning he borrowed more on finance, and that he was told he'd get better interest rates to refinance. Finally, he has told us about some health concerns in 2017 and that his health should have meant he was treated differently by the dealership.

With regards to putting down minimum deposits, Black Horse have highlighted that their brokers are trained so that they know they aren't allowed to advise on the amount of deposit a customer should put down. This would only be part of an "advised" sales process, which they are not licensed to undertake.

Unfortunately, there is very little evidence of exactly what has been said or not said as part of these interviews at the dealership. As such, I give more weight to the paperwork provided and signed at the interviews, and then form my opinion based on the balance of probabilities, that is to say, what is most likely to have happened or been discussed at the interviews.

I've seen no written evidence of any discussions about the amount of deposit required for any particular agreement. I can see that each agreement has had a different figure, and with no corroborating evidence, I'm not persuaded that any advice has been provided about the level of deposit Mr C should use for each agreement.

With regards to increasing payments and interest rate changes, the monthly payments went from around £555 per month, up to £894 per month for the second agreement, then down to £744 per month for the third, and £539 for the fourth agreement. There's no pattern of increasing payments here, indeed the payments come down after the 2nd agreement.

Similarly, with regards to concerns about being mis-sold interest rates, I can see that the first agreement was at 4.9% APR, the second at 5.9% APR, the third at 3.9% APR, and the fourth at 3.9% APR. Again, I don't see any pattern here that matches Mr C's concerns that

he's been mis sold or misadvised regarding interest rates.

Both the payments and the rates have gone up and down during the four agreements, but both have ended up lower than where they started. I can't see any written evidence of Mr C being misinformed or misadvised here, and all these figures are clearly evident on the finance agreements that he was provided with and signed up to.

This leaves the issue of negative equity. As was mentioned by the investigator here who looked at the case first, it's widely known that the value of a car will go down, and because these cars were all new, it's also widely known that the value of a new car drops as soon as you drive it away from the dealership. In changing the car four times in less than two years, negative equity would be extremely likely, particularly as Mr C had chosen not to put down large deposits each time.

However, I've considered what information was given to Mr C about this, and whether he's been treated fairly by Black Horse in this regard. I've also considered the overall circumstances; were they reasonable and do they feel fair, based on the evidence provided.

The sales invoices provided each time a new car was acquired outlined both the cost of the new vehicle, as well as the finance owing at that time and the part exchange value of the existing car being replaced. I haven't seen any evidence of any of this information being misrepresented to Mr C. The finance agreements provided on each occasion show the total amount of finance required for each agreement, and I can see that Black Horse have confirmed the dates the agreements were quoted and paperwork was provided, and when they were signed, to evidence that Mr C, on each occasion, had time to take them away and consider them, to ensure they met his requirements.

I also think it's really important to recognise that this wasn't about just refinancing an agreement on unfavourable terms. Mr C wanted to change his car for a new one on each occasion. When he's done this, in order to acquire a new car, he's proceeded with finance agreements that included dealing with negative equity from the previous agreement. If at any point he wanted to stop this cycle, he could have continued with an agreement, until it either reached its conclusion, when he could choose to give the car back with nothing further to pay, or until the agreement reached a position of having equity in it to pay off the agreement.

I haven't seen any written evidence that Mr C was told he would be better off from an equity point of view to part exchange and take a new agreement, and I'm not persuaded that this conversation would have happened. As discussed above, it's well known that new cars will lose value as soon as they are driven away from the dealership, and I am satisfied that the paperwork provided on each occasion is clear about the negative equity involved to take the new agreement.

I've then considered the health issues Mr C has told us he suffered. I was sorry to read about the health issues he had in 2017 after he had taken out the first finance agreement in April 2017, although we've been supplied very limited details. Mr C has told us he was given the all clear to drive in September 2017, hence he had gone to the dealership to get something checked on the car and ended up part exchanging it and getting a new car.

Without further detail, I'm not persuaded that Mr C's health should have meant he shouldn't acquire a new car if he chose to. He had said he was "given the all clear" to start driving again in September 2017, which would suggest he had doctor's approval to drive safely at that point. He's also not indicated any ongoing concerns or issues which Black Horse or the dealership should have taken into consideration at the time. And Mr C hasn't told us about any effect his health was going to have on his income or expenditure or his wellbeing in the future, and there doesn't appear to have been any longer term impact here.

An email trail he's provided from August 2017 also starts with the salesperson saying "sorry to hear that pal, good to hear you back well". I think it's most likely that this indicates Mr C had told them about his health issues but explained that he was feeling better.

Alongside this, as with all four agreements, the details were given to him and he had time to take them away and consider whether he wanted to go ahead and acquire the new car. He did this, and based on the evidence provided, I'm not persuaded that Black Horse or the dealership should have done anything different when Mr C wanted to acquire a new car in September 2017.

There has been mention of concerns about affordability of the loans, but firm A did indicate that the principle issue for Mr C is the irresponsible lending with regards to the negative equity as discussed above. Black Horse answered the concerns about the affordability initially in their FRL, and I have since checked this response alongside the evidence provided by both Black Horse and Mr C during our investigation.

Some evidence isn't available, as Mr C was self-employed, and his business has ceased trading, meaning that some financial documents and bank statements are no longer available to him. But from the evidence provided, for the four agreements taken in 2017 and 2018, I have no concerns about the affordability of the lending to Mr C.

Black Horse have said that the income of Mr C was declared by him at between £60,000 and £66,000 at the interviews, and that they had been able to verify that income at the time through a variety of checks carried out. Whilst Mr C's bank statements show payments in at various points from what appears to be his business, I can't verify with any certainty the exact amount of his income from the bank statements supplied. Black Horse have explained that one of the checks they carried out verified Mr C's income through checking turnover on his bank accounts at the time.

Mr C has said his earnings were much lower but hasn't provided any evidence of this and I have been unable to find any published business accounts online to verify it. As such, without further evidence, I'm satisfied that his income was most likely recorded accurately by Black Horse.

With regards to outgoings, what I can see from Mr C's bank statements appears to match up with what he's told us, and what Black Horse have told us. Black Horse, as detailed above, said that Mr C had disposable income of between £1,576 and £2,788 per month at the various application points. This was assessed through automated checks based on some details he provided as well as recognised averages and credit file checks. Mr C has given us an estimate of his outgoings as around £2,500 per month, although this was stated as being in 2016. It also hasn't taken into account regular payments I can see from I believe Mr C's partner into his accounts.

At £2,500 per month with no further contributions from his partner, Mr C would have had over £1,500 per month disposable income taking nothing else into account. With the car payments ranging from £540 per month to £895 per month for the various agreements, I'm satisfied that based on the evidence available, Mr C had disposable income to meet these car payments, so they were affordable. I'm satisfied that Black Horse carried out reasonable and proportionate checks at the time on his finances to verify the affordability of these agreements, so I have no concerns here.

I've also considered the plausibility of Mr C's testimony that he was misled about many of these issues, and the reality of these agreements was misrepresented to him. With the paperwork being clear on these issues, I'm not persuaded that Mr C is likely to have been told something different. He was provided with the relevant paperwork at the same time that

he has said that he was told different information by salespeople at the dealership. He's also said that he was told things which are directly contradicted by paperwork he was given at the same time, or that he wasn't told things which I am satisfied are clear in the paperwork.

There is a responsibility on consumers to read the paperwork they are signing and agreeing to, and as well as that, Mr C appears to have been given time to take the paperwork away, to ensure it meets his needs and matches his understanding of the agreements and the costs.

Mr C has said that he was encouraged to enter into a series of agreements which worsened his position. I haven't seen any evidence of him being encouraged to do this. Indeed, the email trail shared from August 2017 seems to be driven by Mr C wanting to find a specific new car; the emails start on 18 August 2017 with the salesperson saying "I'm off until Monday, if it can be done I'll make it happen for you mate...I'll look at it first thing Monday". On 23 August 2017 Mr C replies asking if the salesperson has "any ideas", which suggests he is chasing up the search for a new vehicle, until the salesperson comes back with a suggestion for a particular car which he says is the only one in the country with a particular specification that matches what Mr C wants.

I am not persuaded that Mr C has been encouraged to enter an agreement here by Black Horse, it seems evident that the driving force was a desire from Mr C to get a particular new car that he wanted.

Mr C has also raised specific concerns about misrepresentation with regards to the email correspondence with the dealership being misleading. Mr C shared with us an email chain from August 2017 about the proposed agreement which went ahead in September 2017. This email has a section from someone at the dealership which says "£2,000 deposit from you, £897.94 per month, with us paying off your negative equity, which is over £9,000, same contract as you're on now...".

He's provided this as evidence of the negative equity being misrepresented to him, but I'm not persuaded by this argument. The reality of this is that they did pay off the £9,000 negative equity from his existing agreement, and they did this via a small dealer contribution, and moving the rest of it onto the new agreement. This is clear on the sales invoice for the car acquired in September 2017, which shows he was being offered a new finance agreement for £56,335, with the value of the new car being £47,365.

I'm not persuaded that the email sent in August 2017 has misrepresented the agreement, and induced Mr C to enter into it. I don't think the emailing is providing inaccurate information, but even accepting that this email may have confused Mr C and not been totally clear, he's then been provided with clear paperwork after this outlining accurately the figures involved, including the negative equity. He's been able to take this paperwork away to review for a number of days before agreeing to go ahead with the agreement.

And Mr C has also raised concerns about being advised to have the car stolen so he could claim on the GAP insurance policy to deal with the negative equity. There is no evidence of this conversation, and Black Horse have said that there was no GAP insurance policy taken out. There's no evidence of any conversation about this, but even if it had taken place, Mr C didn't choose to go ahead with any GAP insurance, so I'm not persuaded that anything untoward or unfair happened here.

The other area raised by Mr C around misrepresentation is in relation to Section 140A of the CCA about the misrepresentations creating an unfair relationship between Mr C and Black Horse.

Only a court has the power to decide whether a relationship between the creditor and debtor is unfair, but it is relevant law, so I have taken it into consideration.

I've considered this, but as I don't agree that any misrepresentation occurred here, I'm not persuaded that an unfair relationship has been created. I've not seen any evidence to indicate that there were any other acts or omissions by Black Horse or the dealership that were unfair or misleading. I therefore think it's unlikely that a court would conclude that there was an unfair relationship in this case.

With regards to other concerns raised about section 140A or banking codes, Mr C has said that he feels there is a requirement for regulated businesses to explain fully the risks involved in a transaction, to explain the full costs involved, and to ensure general affordability is met.

As I've explained above, I am satisfied that the affordability for these four agreements in 2017 and 2018 was assessed fairly on each occasion, and the evidence shows the agreements as affordable to Mr C. I'm also satisfied that the hire purchase agreements provided on each occasion, alongside the sales invoices, detail all the costs involved fairly. The finance agreements show the costs were Mr C to run an agreement for its full term, and the sales invoices outline the negative equity, and the fact that it is being financed onto a new agreement, and how this is happening.

I don't agree that anything here hasn't been disclosed fairly to Mr C, and based on the evidence I have, I am not persuaded that any requirements of the banking codes or CCA legislation weren't met.

The arguments being made don't include recognition of a fundamental point here; that Mr C was refinancing the agreements because he wanted a new car on each occasion. On each of the four occasions, he has decided he wants to acquire a new car and has refinanced his previous agreements to allow himself to achieve this goal. None of the agreements taken have been done without consideration to ensure they were affordable for him, so Black Horse have satisfied themselves that he was not taking unnecessary risks to acquire the cars.

On each occasion, Black Horse have supplied paperwork to show the amount of finance being taken, and the value of the vehicles being acquired as well as the amount of finance needed.

I'm satisfied that Mr C was provided all the relevant information, on each occasion, to decide whether he wanted to part exchange his car for a new one and take out a new finance agreement. I haven't seen any evidence to persuade me that any of these agreements were misrepresented to him or lent irresponsibly to him. As such, I don't intend to ask Black Horse to do anything more here.

My provisional decision

My provisional decision is that I don't intend to uphold Mr C's complaint.

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.

Black Horse responded to my provisional decision saying they accepted it and had nothing further to add. Mr C also responded. He said he felt that his complaint had been misunderstood, and that his complaint was that when he went to the dealership in September 2017 for some repair/service work, he was lied to and persuaded to buy a new car, and that they would take care of the negative equity.

What followed was him being persuaded that the only way to resolve the situation was to "trade out" and try to reduce his payments and negative equity. He said that he had no intention of acquiring any more cars, but felt he had to keep trading them in to try to resolve the situation.

He said that he had only acquired the vehicle in September 2017 because of "fraudulent representation" and said that two members of staff had committed fraud, and the finance company should be responsible for this.

I've considered these points from Mr C, but they don't change my mind. As I have said above, I don't have evidence that persuades me a misrepresentation occurred when Mr C acquired a new car in September 2017. He references conversations that happened, but there is no evidence of these.

Alongside this, I have reviewed the paperwork supplied at the time, which I am satisfied is clear, and explains the situation correctly. So, even if I accept that Mr C might have misunderstood a conversation about negative equity, he's then been given all the relevant information to read and ensure the agreement matches his understanding of what was happening.

I'm not persuaded that having read the paperwork, someone would believe that the negative equity was no longer present. And I don't think it's reasonable when purchasing an item like a new car, for someone to decide not to read the paperwork, and to rely solely on their interpretation of a conversation they've had.

I'm also not persuaded that someone would think they could trade their way out of negative equity. As I've previously discussed, it's well known that a brand new car will lose value as soon as its driven off the forecourt of a dealership, so I don't agree that expecting to keep changing for another new car every few months might seem like a way to get out of negative equity. Alongside this, I've seen no evidence of any conversation about this, which would lead Mr C to believe this is what would happen.

And my final point on this, is that on each occasion, paperwork was produced, and given to Mr C to take away and ensure he wanted to go ahead. He has said he felt there was a pressurised sale, but I don't agree. These agreements followed a process which allowed him to take the paperwork away for several days, to read it and decide if he wanted to go ahead, before returning to sign up to an agreement.

Overall, I don't believe the agreement was misrepresented to Mr C, and even if it had been, I am satisfied that Black Horse provided all the relevant paperwork to Mr C for him to have recognised if something wasn't as he expected it to be. For all four agreements, I don't believe any misrepresentation occurred, and have seen no evidence that persuades me otherwise.

I've also seen no evidence of any fraudulent representation, or fraud of any kind from the dealership or Black Horse. As such, I won't be asking Black Horse to do any more here.

My final decision

I am not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 19 April 2023.

Paul Cronin
Ombudsman