

The complaint

Mrs M complains that Black Horse Limited trading as Land Rover Financial Services ("Black Horse") have not treated her fairly when she's fallen into arrears on her car finance agreement.

What happened

Mrs M took out a hire purchase agreement for a car with Black Horse in January 2022. She immediately got into payment problems with missed payments and had numerous conversations with Black Horse about payment plans, as well as making various payments by debit card.

In March 2023 notices of default were sent to Mrs M, and she complained to Black Horse about how they were handling her situation, as well as the fact they were reporting arrears/missed payments to the credit reference agencies. They issued their final response letter in April 2023 and did not uphold the complaint. They said that they were satisfied they had treated her fairly, and they had a duty to accurately report the status of her agreement to credit reference agencies including missed payments.

Unhappy with this, Mrs M brought her complaint to our service in July 2023. She told us that every time she called Black Horse they seemed to change what she had to do, she was being told payment plans were failing when they weren't, her credit file was not being reported correctly, and she could not afford for a default to be registered.

She said it was unfair that Black Horse wouldn't assist with the arrears by adding them onto the end of the agreement and her mum was going to help her with the costs of her mortgage and car payments when payment plans were being set up, but then she had to use the money for other bills.

An investigator here investigated the complaint and did not uphold it. They explained that they could see no errors made by Black Horse in administering the account or reporting to the credit reference agencies. They said that ultimately, while they understood that Mrs M didn't want an alternative payment plan or to voluntarily terminate the agreement, it's not possible to keep the car without paying what is owed to the finance supplier.

Mrs M asked for the affordability of her agreement to be considered at this point, and after some initial confusion, the investigator confirmed that had already been looked at in a separate complaint referred to our service previously, and she had received our final decision on it, so we wouldn't be looking into this further. Mrs M also asked for more phone calls between herself and Black Horse to be listened to as she felt they would back up her case, and we hadn't listened to all the calls she had with them. She asked for an Ombudsman to make a 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.

Firstly, I have great empathy with the situation Mrs M has found herself in, and I'm sorry this has caused her distress. In assessing her complaint, I have to focus on whether Black Horse have treated her fairly and shown her forbearance and due consideration in how they've dealt with her.

However, it's important for me to differentiate that this doesn't mean that Black Horse need to do what Mrs M feels is best for her circumstances. Nor does it mean there are a clear set of criteria for what Black Horse should and shouldn't do. The regulations around how a business should deal with customer suffering payment difficulties focus on needing to treat people fairly and providing due forbearance and consideration. There are no prescriptive rules or regulations telling a business precisely what they must do in any given situation.

As such, I think that's its important to explain that I'm not going to focus in on every phone call or email or action from each party to decide if each is correct or not. My role is to assess the evidence overall and come to a fair conclusion answering the crux of the complaint; whether Mrs M has been treated fairly by Black Horse in dealing with her financial difficulties. It's not my role to comment on every point made, but to assess the key information and come to a fair conclusion about what's happened.

Mrs M fell into payment difficulties almost immediately, indeed her first direct debit payment was returned unpaid. If I look at the payment details up to the point the complaint came to our service after approximately 17 months, only one direct debit payment appears to have been made. Mrs M had made sporadic card payments, but most of these didn't match the required direct debit amount at the time, and they weren't made every month.

A payment plan requires for payments of the right amount to be made at the right times, otherwise it fails and will need to be recalculated. In 2023, one payment went through by direct debit in March, but the April and May payments didn't go through again. There were then some card payments made, but by the end of June 2023, the total payments made by Mrs M after 17 months totalled a little over £5,000. By this point, if all payments had been up to date, she would have paid Black Horse a little over £11,500.

Mrs M is unhappy that Black Horse wouldn't add the arrears to the end of the agreement, in effect to extend the agreement. There is no requirement for Black Horse to do this, and generally it would be expected that a consumer makes payments to ensure the finance is paid off over the same term agreed originally.

With car finance, the finance is secured against a depreciating asset, the car. The calculations have been done in advance by Black Horse to ensure that once they receive all payments required by the end date of the agreement, the asset if returned should be worth the right amount to ensure they've not lost money. Extending an agreement has a massive impact on this; the car if returned to them is older than expected and potentially has travelled further. Hence extending an agreement isn't something that we would generally expect a business to offer to do.

Perhaps if there was a short term issue that had clearly been fixed, a payment holiday or similar to extend the agreement for a short period might have been suitable, but this was an ongoing situation, where Mrs M renegotiated payment plans and then couldn't make the payments required. This continued over a long period, including when she raised her complaint.

As I said at the beginning, I empathise with Mrs M. She's talked at different times about having had issues with losing her job and splitting up with her partner. She was being helped

out financially by her family, which she expected to be able to use to cover the car payments, but at times she had to use this money for other bills and needs unexpectedly.

Unfortunately, what this meant was that she wasn't able to keep up with the payments on the car finance. Black Horse have tried to work with her, renegotiating payment plans, accepting her asking to use family support promised as additional income, and trying to work with her to avoid having to default the agreement. But she was falling further and further behind on payments.

Mrs M has told us she thinks it unfair that Black Horse were reporting missed payments/arrears to her credit file, but I don't agree with her here. Black Horse have a responsibility to accurately report information to credit reference agencies, and I've seen no evidence that they have done anything wrong in that reporting.

Mrs M also told us that Black Horse were unhelpful when discussing a voluntary termination of the agreement. The details of a voluntary termination were provided to Mrs M on the original agreement she signed in the section titled "Your rights to terminate this agreement".

This confirmed that to terminate the agreement early she would need to have made payments totalling £26,889.24, and to then hand the car back. As discussed previously, Mrs M hadn't made anywhere near this level of payments, so she would have had to give the car back and to agree some way to cover the shortfall she still owed.

Whilst I appreciate this wouldn't have sounded an appealing scenario, it doesn't mean Black Horse have done anything wrong. Having only made less than £5,000 of payments at the point of complaint, Mrs M's options were clearly limited. She was adamant that she didn't want the agreement defaulted and terminated as she didn't feel she could have a default on her credit file. Whilst I can appreciate this desire, it also seems clear that despite all her efforts, she couldn't afford the agreement, so I can't say Black Horse were wrong to issue a default notice in 2023.

Ultimately, Mrs M feels unhappy at how she was treated by Black Horse in administering her finance agreement. But the evidence shows that they set up payment plans for her that she wasn't able to keep, so they often had to revisit these to try to ensure the agreement would be fully paid off by the relevant time.

Mrs M has said that phone calls she had with Black Horse would show the errors that they've made, but this appears more related to the affordability of her agreement, which as I've said, has already been dealt with on a previous complaint.

Black Horse have tried to work with her to find a way to continue the agreement and to avoid a default which she told them she definitely didn't want. But the reality has been that she hasn't been able to service the agreement or make payments on time. I'm satisfied that Black Horse have acted fairly and shown her the required forbearance and consideration. Sometimes, unfortunately, finance agreements are taken out with an expectation that they will be affordable, and at the time, they can be seen to be affordable, but circumstances change through no fault of either party.

When this has happened here, Black Horse have acted fairly in trying to support Mrs M to find a way through to continue the agreement, but ultimately, this hasn't worked. I'm satisfied that Black Horse have treated Mrs M fairly and with due consideration and forbearance, and I won't be asking them 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 Mrs M to accept or reject my decision before 29 March 2024.

Paul Cronin
Ombudsman