

Complaint

Mr W complains that Black Horse Limited (“Black Horse”) unfairly entered into a hire-purchase agreement with him. He’s said that the monthly payments to this agreement were unaffordable and so he shouldn’t have been lent to.

Background

In April 2019, Black Horse provided Mr W with finance to facilitate the purchase of a used car. The purchase price of the vehicle was £12,194.58. Mr W paid a deposit of £46.33 and entered into a hire-purchase agreement with Black Horse, which had a term of 48 months, for the remaining £12,148.25.

The loan had interest charges of £2,168.55 and a £10 option to purchase fee. This meant that the total amount to be repaid of £14,326.80 was due to be repaid in 60 monthly instalments of £238.78.

In September 2023, Mr W complained that the monthly payments for this agreement were unaffordable and so Black Horse should never have agreed to provide finance to him. Black Horse didn’t uphold the complaint. It said that its checks confirmed that the finance was affordable and so it was reasonable to lend.

Mr W’s complaint was considered by one of our investigators. She didn’t think that Black Horse had done anything wrong or treated Mr W unfairly. So she didn’t recommend that the complaint should be upheld.

Mr W disagreed with our investigator and the complaint was passed to an ombudsman for a final decision.

My findings

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

We’ve explained how we handle complaints about irresponsible and unaffordable lending on our website. And I’ve used this approach to help me decide Mr W’s complaint.

Having carefully considered everything, I’ve decided not to uphold Mr W’s complaint. I’ll explain why in a little more detail.

Black Horse needed to make sure that it didn’t lend irresponsibly. In practice, what this means is that Black Horse needed to carry out proportionate checks to be able to understand whether any lending was sustainable for Mr W before providing it.

Our website sets out what we typically think about when deciding whether a lender’s checks were proportionate. Generally, we think it’s reasonable for a lender’s checks to be less thorough – in terms of how much information it gathers and what it does to verify that information – in the early stages of a lending relationship.

But we might think it needed to do more if, for example, a borrower's income was low, the amount lent was high, or the information the lender had – such as a significantly impaired credit history – suggested the lender needed to know more about a prospective borrower's ability to repay.

Black Horse says it agreed to Mr W's application after Mr W provided details of his monthly income and some details on his expenditure. It says it also carried out searches with credit reference agencies which not only showed that Mr W's bank account received monthly credits consistent with the income declared, but also that Mr W had no significant adverse information such as defaults or County Court Judgements ("CCJ") recorded against him. And the credit that Mr W did have outstanding was well maintained and low in comparison to his income.

In Black Horse's view, when the amount owing plus the amount it calculated for Mr W's living expenses were deducted from his monthly income, the monthly payments were affordable. On the other hand, Mr W says that he was using an overdraft, had more in debt and that these payments were unaffordable so there was no way he was going to be able to maintain them.

I've thought about what Mr W and Black Horse have said.

The first thing for me to say is that the information obtained at the time does appear to show that when Mr W's committed regular living expenses and existing credit commitments were deducted from what he received each month, he did have the funds, at the time at least, to sustainably make the repayments due under this agreement.

Mr W has said that the information doesn't accurately reflect his financial position and that he was using his overdraft at the time. Mr W might have been using his overdraft but there isn't an automatic prohibition to lending to a prospective borrower who has used (or is using an overdraft) in the way that Mr W's arguments suggests he believes to be the case.

I do accept Mr W's actual circumstances at the time might have been worse than he let on – particularly as it's clear he would have wanted the vehicle. For example, I can see that Mr W has referred to further debts and says he was paying for a vehicle that his wife might have been using.

I'm sorry to hear about what he has said. But the key thing here is that when Mr W's discretionary spend is removed from the expenditure in the bank statements he has now provided and then added to what Black Horse knew about his existing commitments, I've not seen anything to suggest that he didn't have enough to make the required payments to this agreement.

Furthermore, while this isn't in itself definitive, it's difficult for me to accept at face value that Mr W did find it as difficult as he says to make his payments given the statement of account shows that he settled this agreement early in June 2022.

I'd also add that it's only fair and reasonable for me to uphold a complaint in circumstances where a lender did something wrong. And I don't think that Black Horse could possibly be expected to have realised that this agreement might have been unaffordable for Mr W having considered the information he's now provided to support his application having been unaffordable and what has happened in the period he purchased the vehicle in question.

Overall and having carefully considered everything, while I accept that there is an argument for saying that Black Horse's checks before entering into this hire-purchase agreement with

Mr W might not have gone far enough, I'm, in any event, satisfied that carrying out further checks won't have stopped Black Horse from providing these funds, or entering into this agreement with Mr W. I'm therefore satisfied that Black Horse didn't act unfairly towards Mr W when it agreed to provide the funds.

So while I've considered everything that Mr W has said, I don't think that Black Horse acted unfairly or unreasonably towards him. And I'm not upholding this complaint. I appreciate that this will be disappointing for Mr W. But I hope he'll understand the reasons for my decision and at least consider that his concerns have been listened to.

My final decision

My final decision is that I'm not upholding Mr W's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 19 April 2024.

Jeshen Narayanan
Ombudsman