

The complaint

Mr D complains that Black Horse Limited (“BHL”) unfairly entered into a hire purchase agreement (“agreement”) with him. He says that due to his personal and financial circumstances at the relevant time the agreement was unaffordable. Mr D also complains that when he fell into financial difficulties BHL failed to treat him fairly and reasonably.

What happened

In March 2019 Mr D entered into an agreement with BHL for a used car costing £13,124.37. Under the terms of the agreement, everything else being equal, Mr D undertook to make 47 monthly repayments of £262.05 followed by 1 monthly repayment of £5,476.00 making a total repayable of £17,792.35 at an APR of 12.9%.

Mr D complained that the agreement was unaffordable and BHL failed, before agreeing to lend to him, fair, reasonable and proportionate checks into his personal and financial circumstances. BHL didn’t uphold the complaint. It said that it had seen no *“evidence to suggest that at the point of sale the loan was unaffordable and there is no evidence that [it] irresponsibly provided the finance”*.

Mr D’s complaint was considered by one of our investigators. They came to the view that BHL hadn’t made an unfair lending decision and had treated Mr D, when he says he fell into financial difficulties, fairly and reasonably. In other words, they didn’t uphold Mr D’s complaint.

Mr D disagreed with our investigator and so his complaint has been passed to me for review and 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.

In this decision I’ve focussed on what I think are the key issues. Our rules allow me to do this and these rules reflect 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. I will, however, refer to those crucial aspects which impact my decision.

I would also add I’ve not carried out a form of compliance check or sought to enforce the regulator’s rules. What I’ve done is looked at everything provided and decided whether Mr D has lost out due to BHL failing to act fairly and reasonably in its dealings with him.

Finally I would like to make it clear that I’ve only considered in this decision Mr D’s complaint That BHL unfairly entered into an agreement with him and treated him unfairly and unreasonably when he says he fell into financial difficulties, not any other complaint he might have against it.

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 D's complaint.

Having carefully thought about everything I've been provided with, I'm not upholding Mr D's complaint. I'd like to explain why in a little more detail.

BHL needed to make sure that it didn't lend irresponsibly. In practice, what this means is that BHL needed to carry out proportionate checks to be able to understand whether Mr D could make his payments in a sustainable manner before agreeing to lend to him. And if the checks BHL carried out weren't sufficient, I then need to consider what reasonable and proportionate checks are likely to have shown.

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.

BHL says it agreed to this application after it undertook a number of checks (including a credit search) and after it had undertaken an affordability assessment/calculation.

In BHL's view, taking everything into account, the monthly payments for this agreement were affordable.

On the other hand, Mr D says the agreement was unaffordable from the outset and this could and should have been apparent to BHL.

I've thought about what Mr D and BHL have said.

The first thing for me to say is that like the investigator I'm not persuaded that the checks BHL carried out went far enough. Given the monthly payments, the term of the agreement and the total cost of the loan I think BHL should have carried out further checks into Mr D's actual financial circumstances.

In these circumstances, I think that BHL ought to have done more to ascertain Mr D's actual income and actual non-discretionary expenditure. That said, I don't think that BHL obtaining further information on Mr D's actual income and non-discretionary expenditure would have made a difference to its decision to lend in this instance.

I say this because based on limited bank statements and other information provided by Mr D when his non-discretionary expenditure is deducted from the income he received he appears to have had enough left over to make the repayments to this agreement.

So I think that BHL obtaining further information is likely to have led it to conclude that when Mr D's non-discretionary expenditure was deducted from his monthly income, he did have the funds, at the time at least, to sustainably make the repayments due under this agreement.

Furthermore, whilst this isn't always indicative that a loan was affordable at the outset, I can see that Mr D was able to make all the monthly payments required of him and on time (taking into account a three month payment holiday granted and the write off of one contractual monthly repayment). And this isn't normally consistent with a borrower being unable to afford the monthly repayments.

As pointed out by the investigator BHL has a regulatory obligation to treat customers in financial difficulty with "*forbearance and due consideration*". And it's with this obligation in mind that I've considered whether BHL's treatment of Mr D in late 2022 and thereafter was fair and reasonable.

Based on system/diary notes and documentation provided by BHL it's my understanding that although BHL didn't agree to Mr D's further payment holiday request in late 2022 it did say it was prepared to consider a repayment plan but this offer of help was declined by Mr D.

Now I don't underestimate Mr D's strength of feeling on this point, but with the above in mind I'm satisfied that BHL treated him, when he says he was in financial difficulties, both fairly and reasonably and it need do nothing further in this respect.

Overall I'm satisfied that BHL didn't act unfairly towards Mr D when it lent to him or that it treated him unfairly or unreasonably when he says he says he fell into financial difficulties and I'm not upholding his complaint. I appreciate that this will be very disappointing for Mr D. But I hope he'll understand the reasons for my decision and that he'll at least feel his concerns have been listened to.

My final decision

My final decision is I don't uphold this complaint.

My final decision concludes this service's consideration of this complaint, which means I'll not be engaging in any further consideration or discussion of the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 14 June 2024.

Peter Cook
Ombudsman