

The complaint

Mrs M complained that Black Horse Limited ('Black Horse'), irresponsibly granted her a finance agreement she couldn't afford to repay.

What happened

In January 2022 Mrs M acquired a caravan holiday home, financed in part by a hire purchase agreement from Black Horse. The total cost of the caravan home was £69,981. Mrs M was required to make 84 monthly repayments of £926.12. She paid an upfront deposit of £8,000 which meant she had a balance to pay of £61,981.

Mrs M contacted Black Horse in July 2023 to say she was struggling to meet the monthly repayments. Having reviewed the circumstances of the finance being granted, including the details that Mrs M had provided as part of her application, Black Horse cancelled any further payments and suggested that Mrs M return the caravan to them, which she subsequently did. Black Horse also waived the remaining balance due under the terms of the agreement and refunded the £8,000 deposit she'd paid, adding statutory interest.

After Mrs M brought her irresponsible lending complaint to us, Black Horse also offered to pay Mrs M £500 for distress and inconvenience. It also said it would consider paying the costs she incurred when subletting the caravan. But Black Horse said it wouldn't refund the interest Mrs M had paid on each monthly repayment as she had had the benefit of full use of the caravan.

Our investigator thought Black Horse's offer was fair. She also said that Mrs M should provide details of the fee she'd paid when arranging for the caravan to be sublet.

Mrs M was unhappy with our investigator's finding. She said she was still very much out of pocket, owed large sums to family and friends and had had to take out a further loan. She also said she'd never had the opportunity to make use of the caravan as she couldn't afford to travel to and from the site. She also said she had to find the money to pay site fees. She also emphasised the impact of the whole situation on her physical and mental health.

Black Horse thought Mrs M had earned around £10,661 in income from subletting the caravan. So it said she'd benefitted from having the use of the caravan. It offered to pay a further £888 relating to the costs of getting the caravan ready to sublet.

In my provisional decision I said that in order to put Mrs M back to the position she was in before the agreement, it should refund her the difference between what she had paid under the agreement and what she received from subletting the caravan. Based on the information and evidence I'd seen, I calculated the income she received from subletting to be £10,661 less £888 in costs for setting up the subletting.

I set out an extract below:

"Black Horse has said that having looked into the complaint, there was evidence to show that had it carried out better checks she would not have had her application approved. It

therefore decided to uphold her complaint. It also agreed to take back the caravan and waive the balance due under the agreement once it had sold it back to the caravan site.

Black Horse has therefore accepted that Mrs M ought not to have been granted the finance and that it was foreseeable that she wouldn't be in a financial position to pay it back sustainably. I think Black Horse was right to uphold the complaint and take these steps to compensate Mrs M. But I also need to consider whether the proposed compensation is sufficient.

Given that Black Horse accepts it ought not to have approved the finance, I think it's right to approach the issue of redress on the basis that Mrs M should be put back into the position before she entered into the agreement to acquire the caravan.

Black Horse says that, whilst she may not have lived in the caravan, Mrs M nevertheless had some benefit from it. Black Horse suggests that given that she benefitted from income from subletting the caravan, that means she isn't entitled to any further compensation for the 17 months she was keeping up her monthly repayments.

I don't agree. The subletting income Mrs M received is less than the total sum of £15,744 she repaid over the period and so she is out of pocket. I therefore think that Black Horse should be paying additional compensation in the form of the difference between the amount Mrs M repaid under the agreement and the net amount she got from subletting, being the rental income of £10,661 less expenses of £888 (which comes to £9,773). I've not seen that Mrs M got any further benefit beyond subletting the caravan – for example, she says she couldn't afford to travel to the caravan site - and I don't think she personally used the caravan. But if I'm wrong about this, either party can let me know in their responses.

To summarise, I consider that Black Horse must take further steps so that Mrs M is put back to the position she'd been had it not approved her for the lending. That means refunding her the difference between what she paid and what she earned from subletting the caravan. Black Horse has already agreed it will pay £500 for the distress and inconvenience Mrs M was put through during the time she had the caravan."

Response to my provisional decision

Black Horse acknowledged receipt of my provisional decision and, having reviewed it, said it had nothing further to add at that point.

Mrs M said that the actual income she'd received from subletting the caravan was £1,896.84, which was repaid to her by the site in March 2024. She therefore believes that this is the only figure that should be deducted when the repayments she made under the agreement are refunded to her. She sent in sublet statements for the whole of the letting period in support of this. She also pointed out that she shouldn't have to pay for the cost of insuring the caravan as this was an additional cost that didn't show up in the statements provided by the site. She sent us evidence of these premiums having been paid.

I invited Black Horse to comment on this. Black Horse acknowledged there was a discrepancy between the letting statements it had been relying on and those provided by Mrs M. And it noted the surplus balance figure of £1,896.84 that had been paid to Mrs M in respect of the period when the caravan was being sublet. Black Horse also noted that a payment of £947.31 had been applied to the site account before the caravan was let out. Mrs M has confirmed that she allowed family members to use the caravan. She has estimated that these stays amounted to a total of 16 days of the caravan being in use.

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.

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

For the reasons I gave in my provisional decision, the principle remains that Mrs M needs to be put back to the position she would have been in had the agreement not been put in place.

With the additional evidence and information I now have, I've seen that in March 2024 Mrs M received £1,896.84 by way of profit after costs and expenses from letting out the caravan.

But since I issued my provisional decision, I have also received details of Mrs M gaining some benefit from the caravan when family members were allowed to use it. So, the value of that benefit – which I think it's fair to calculate based on the site letting cost – is something that Black Horse can deduct from the payments Mrs M made under the agreement which this decision requires it to return to her.

In the same way, the cost of the metered gas used before the caravan was let out, which Mrs M has been charged for by the site in the sum of £947.31, ought to be deducted. This is because this pre-dates the letting out of the caravan and arises from when the caravan was in use.

As regards the insurance cover Mrs M put in place for the caravan, having such cover meant that Mrs M would have been covered for insurable losses whilst it was being used by family members. On that basis, I think Mrs M should bear 50% of the cost of the premiums, with Black Horse being responsible for the other 50%.

I've considered whether the relationship between Mrs M and Black Horse might have been unfair under S.140A of the Consumer Credit Act 1974. However, I'm satisfied the redress I have directed should be carried out for Mrs M results in fair compensation for her in the circumstances of her complaint. I'm satisfied, based on what I've seen, that no additional award would be appropriate in this case.

Putting things right – what Black Horse needs to do

As Black Horse has already agreed it ought not to have approved the lending, I don't think it's fair for it to be able to charge any interest or charges under the agreement. Mrs M ought to be put back in the position as if the agreement hadn't taken place. Mrs M has already returned the caravan to Black Horse and ended the agreement with nothing further to pay. Mrs M has also made efforts to reduce her financial difficulties by letting out the caravan. However, Mrs M still ought to be compensated in relation to the payments she made to Black Horse during the time she had the caravan, to the extent that the amount she received from letting it out doesn't cover them.

I have also seen that Black Horse has said it won't refund site fees paid directly to the site. I should point out that these fees have already been factored into the calculation when working out the profit that Mrs M ultimately received from letting out the caravan.

Fair Usage

Mrs M benefitted from being able to allow family members to use the caravan before it was let out, so I think it's fair she pays for that use.

I think a fair way to work out what a fair usage should be is the amount the caravan could be let for by the site. Mrs M thinks that family members used it for 16 days. Having noted the daily letting rates that have been charged over the same calendar months of the year, I think a deduction of £1,750 to cover this usage is a fair figure.

I will also deduct for fair usage the metered gas costs of £947.31 that were incurred before the caravan was let, as this would be a cost Mrs M was responsible for when the caravan was being used.

This results in a fair usage reduction of £2,697.31 for the benefit Mrs M received from the caravan.

Interest

The interest that is normally paid (at 8% per year simple) is designed to compensate a consumer for the time they are out of pocket. Given that, the period of interest should run from the time Mrs M made a payment to Black Horse that put her out of pocket. Here, Mrs M entered the credit agreement and the caravan sub-let agreement which she otherwise would not have done. So it is the net payments (after rental) she made arising from entering into both of those agreements - that she otherwise would not have paid - that attract interest. To simplify matters, this means that in the months when Mrs M received a rental payment, the rental should be deducted from the loan repayment before adding interest to any remaining amounts.

I understand that all sums owing under the agreement have been cancelled.

For the reasons given above, I uphold this complaint and direct Black Horse to:

- Refund all the payments Mrs M has made towards the agreement, after deducting;
 - the sum of £1,896.84 she received by way of net income from the time she was subletting the caravan;
 - the total sum of £2,697.31 for fair usage when the caravan was being used by family members (£1,750) and metered gas costs arising from that usage (£947.31).
- Give credit for 50% of the cost of insuring the caravan. The total sum is £412.13 – so £206.07 to be allowed for this.
- I understand the caravan deposit has already been refunded in full, with interest.
- Pay Mrs M 8% simple interest per year, calculated in line with the way I've set out above.*
- Pay Mrs M the sum of £500 as compensation for distress and inconvenience.

- Remove any adverse information from Mrs M's credit file in relation to the agreement (if it has not done so already).

*HM Revenue & Customs requires Black Horse to take off tax from this interest. Black Horse must give Mrs M a certificate showing how much tax it's taken off if she asks for one.

My final decision

My final decision is to uphold this complaint and direct Black Horse Limited to put things right in the manner set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 4 March 2025.

Michael Goldberg

Ombudsman