

Complaint

Mr H complains that Black Horse Limited (“Black Horse”) unfairly entered into a hire-purchase agreement with him. In essence, he’s said that he was never able to make the payments to this agreement and so he shouldn’t have been lent to.

Background

In July 2015, Black Horse provided Mr H with finance to facilitate the purchase of a nearly new car. The purchase price of the vehicle was £28,049.00. Mr H paid a deposit of £1,000.00 and entered into a personal contract purchase style hire-purchase agreement with Black Horse, which had a term of 49 months, for the remaining £27,049.00.

The loan had interest charges of £5,793.84 and a £10 option to purchase fee. This meant that the total amount to be repaid of £32,852.84 (not including Mr H’s deposit) was due to be repaid in 48 monthly instalments of £488.58 followed by an optional final payment of £9,401.00 which Mr H only had to pay if he wished to keep the vehicle.

I understand that in 2017 the vehicle was involved in an accident and the insurance company considered it a total loss. The insurance company made a payment to Black Horse as per the terms of the hire-purchase agreement but this was insufficient to cover the outstanding balance and Mr H was left with an amount to repay. In May 2019, Mr H then entered into an Individual Voluntary Arrangement (“IVA”) and the outstanding balance was included in this.

In July 2023, Mr H complained that the monthly payments for this agreement were unaffordable and so Black Horse should never have agreed to lend to him. Black Horse didn’t uphold the complaint. It said it was its view that Mr H had complained too late and, in any event, it did not agree that the information supported that the agreement was unaffordable for Mr H.

Mr H has also made a complaint that Black Horse failed to disclose the commission it paid the motor dealer which introduced him and the effect that this had on what he had to pay under his agreement. But we’ve already explained that this matter is being looked at separately and we’ve therefore not considered anything to do with the commission as part of this complaint.

Mr H’s complaint was considered by one of our investigators. He eventually reached the conclusion that the hire-purchase agreement was unaffordable for Mr H and so Black Horse shouldn’t have provided it to him. So he recommended that the complaint was upheld.

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

My provisional decision of 25 October 2024

I issued a provisional decision – on 25 October 2024 - setting out why I wasn’t intending to uphold Mr H’s complaint.

In summary, I was not to uphold Mr H's complaint as I was satisfied that reasonable and proportionate checks would have shown the monthly payments for this agreement to be affordable.

Black Horse's response to my provisional decision

Black Horse confirmed receipt of my provisional decision and said that it had nothing further to add.

Mr H's response to my provisional decision

Mr H responded to say that he disagreed with my provisional decision. He initially asked for a copy of the information that Black Horse supplied us with. After Black Horse said that it was not prepared to authorise the release of this information as it contained screen shots from its computer records our investigator provided a summary of the information from the screenshots.

Mr H responded across multiple emails and in summary he said, he:

- never declared that he was earning £35,000.00 a year as he was not earning that much as shown by his bank statements.
- had far more debt than £11,000.00 as he had two loans with a bank, plus a student loan, an overdraft and an existing car finance agreement.
- cannot see that the final payment was optional.
- did not make out that his situation was better than it was. He was merely told that Black Horse could lend.
- had defaulted on previous credit commitments and provided a copy of a credit report from 2018.

Please note that while I've summarised Mr H's emails, I've read and considered everything that he has said.

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 H's complaint.

Having carefully considered everything, including the responses to my provisional decision, I'm still not upholding Mr H'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 H 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's submissions

Black Horse says it agreed to Mr H's application after Mr H provided details of his monthly income, his employer and some details on his expenditure. It says it also carried out searches with credit reference agencies which not only showed that Mr H's bank account received monthly credits consistent with the income declared, but also that Mr H had no significant adverse information such as defaults or County Court Judgements ("CCJ") recorded against him. And the credit that Mr H did have outstanding, at a comparatively modest £11,500, and against a declaration that he was earning £35,000.00, was being well maintained too.

In Black Horse's view, when reasonable repayments to the credit Mr H already had were combined with the monthly payment for this agreement as well as the amount Mr H declared for his rent and this was then deducted from his monthly income, he still had sufficient funds to meet any other reasonable expenses. So it considers that the payments for the agreement were affordable as a result.

Mr H's arguments

On the other hand, Mr H says that he was only earning £1,500.00 a month had an existing car finance agreement, two bank loans, a student loan and an overdraft which he'd been in for a period of time. So the payments to this agreement were unaffordable and there was no way he was going to be able to maintain them.

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

Why I've decided not to uphold Mr H's complaint

As I explained in my provisional decision, both our investigator reached the conclusion that as Mr H's bank statements show that the monthly hire-purchase payments were, as a matter of fact, unaffordable, the complaint should be upheld. I've seen that Mr H has reiterated this and has said that this is the reason why Black Horse shouldn't have lent to him.

However, as I explained in my provisional decision, there wasn't and still isn't a requirement for a lender to request bank statements and/or payslips from a customer when deciding whether to lend. It is down to the lender to decide what checks it wishes to carry out. So while I accept Black Horse could have asked for Mr H for his bank statements, it didn't actually need to do this. And it therefore does not follow that Mr H's complaint should be upheld just because of what his bank statements show.

Mr H's agreement, its payment structure and what this means for proportionate checks

As I've previously explained, I also don't agree with the investigator's reasons for referring to Mr H's bank statements in the first place. Our investigator referred to Mr H's bank statements as he said that Black Horse ought to have done more because it was increasing Mr H's indebtedness to 129.44% of his income. And reviewing Mr H's bank statements would have shown that he earned less than he declared and had other commitments which didn't show up on the credit checks.

However, our investigator's findings were based on a misunderstanding that Black Horse was providing £33,852.84 in finance. It was not. It was providing Mr H with £27,049.00 in

credit. Mr H would only have to repay £33,852.84 if the agreement ran to term *and* he also decided to exercise his option to make the final payment and take ownership of the car.

Mr H says his agreement doesn't show that the final payment was optional. However, the goods return section of Mr H's agreement was completed and a guaranteed future value of £9,391.00 (which was the amount of the final payment minus the option to purchase fee) is stated in this section.

Clause 6 of the terms and conditions of Mr H's agreement clearly state that should the goods return option be completed, on the agreement, he could elect to return the goods instead of making the final payment. As the relevant section was completed, in the way I've set out above, this means that the goods return option applied to Mr H's agreement.

As the goods return option applied to Mr H's agreement, I remain satisfied that Mr H wasn't obliged to make the final repayment if he decided that he didn't wish to keep the car. In these circumstances, I still don't agree that Black Horse was necessarily increasing Mr H's debt to income ratio to 129% as the investigator has said.

Mr H's existing hire-purchase agreement

In my provisional decision, I said that even if Mr H's total indebtedness had reached 129% of his income most of this would have been made up of a loan which was secured on an asset, which like I've said had an optional final payment. Mr H has disputed this saying that he already had a finance agreement in his name and has provided a copy of a credit report from 2018 which shows that this was taken out in November 2014.

However, as I've previously explained, this agreement does not appear in Black Horse's credit search. Furthermore, it's also worth noting that according to the credit report Mr H has provided, the hire-purchase agreement he is referring to was registered to a completely different address, at least at the time of the credit report, from the two addresses listed on Mr H's Black Horse's agreement.

Indeed, Mr H's agreement states he lived at his current address for 1 year and prior to that he lived at his previous address for 19 years. What's also somewhat strange is that address Mr H used for this Black Horse application is not listed as either his current address, previous addresses, or even as a linked address on the copy of credit report provided. So according to the credit report Mr H has provided, he was never registered as living at the address he used for this finance application.

I can't see any mention of the address that the November 2014 hire-purchase agreement was registered to, at least at the time of the credit report Mr H has supplied, in any of the documentation for the Black Horse application either. I accept that Mr H did not personally complete this agreement. However, the information on the agreement must have come from somewhere.

Equally, unlike the screenshots from Black Horse's systems which Mr H disputes the accuracy of, a copy of this agreement was provided to Mr H at the sale. So I don't think it unreasonable to expect him to have queried any errors or inaccuracies at this time. Indeed, I note that Mr H's agreement even states the following:

"When you applied for finance you provided the personal information shown above. We have used this information to assess your creditworthiness and decide whether to enter into this Agreement. By signing this Agreement you confirm that the personal information is correct"

The rest of the section states why it is important to check this information is correct. I say all of this because I suspect the reason why Black Horse's searches did not show Mr H's November 2014 agreement is because the address it was registered to is different from the address Mr H said he was living at when he made this application for finance.

In any event, regardless of the reasons, and most importantly I'm satisfied that Black Horse is unlikely to have been aware of this and so couldn't have taken the agreement into account.

The rest of the information gathered at the time and whether this was sufficient for Black Horse to make an informed decision

I'm also mindful of the information that Black Horse did obtain from Mr H at the time and what this indicated about his circumstances. The evidence provided appears to show that Mr H declared that he had an annual salary of £35,000.00. Black Horse determined that this meant Mr H received close to £2,250.00 a month. Mr H has disputed this and said that he was not receiving this as a salary into his account each month.

I appreciate that there is a dispute over what happened. However, where there is a dispute over what happened (such as there is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in light of the available evidence and the wider circumstances.

Mr H says that he didn't declare that he earned £35,000.00 he was merely told that Black Horse could lend. I've thought about what Mr H has said. However, as I explained in my provisional decision, Black Horse's screenshot does show that its assessment of the affordability of the agreement was made on the basis that Mr H did earn £35,000.00.

The screenshot also shows that the income figure used was cross-checked against information from credit reference agencies on the amount of funds which went into Mr H's account each month. And this cross checking indicated that Mr H's account was receiving funds of this level into it each month. As I explained, this cross checking is not the same as full verification (such as obtaining a payslip would have been) and this is likely to have included all funds going into Mr H's account.

I also have to keep in mind that while Mr H says he was merely told that Black Horse could lend and regardless of what he has reiterated about his situation, he was nonetheless in a dealership contemplating acquiring a nearly new prestige car and presenting with a £1,000.00 deposit. And, in these circumstances, I think that Mr H, is at the very least, more likely than not to have given an indication that he could afford the payments – particularly as he clearly wanted the car.

In these circumstances, I remain satisfied that it is more likely than not that Mr H declared he received an annual salary of £35,000.00 a year. And given that the cross checking indicated that this was not only plausible but realistic, I'm satisfied that Black Horse was entitled to rely on this.

Furthermore, as I've explained the credit checks Black Horse carried out showed that Mr H had total existing balances of around £11,500.00. For the reasons, I've explained, I don't think that this will have included the November 2014 hire-purchase agreement and it would not have included Mr H's student loan either, as student loans aren't typically reported to credit reference agencies. I don't think that this was an excessive amount and I remain satisfied that the £250 or so Black Horse assigned to repay these commitments each month was also reasonable.

When Mr H's declared rent of £600 (which Mr H hasn't disputed) is added to the £250 assigned for credit commitments and then subtracted from the £2,250 Black Horse was reasonably entitled to believe that Mr H was earning, it seems to me that Mr H had sufficient funds left over to make his monthly payments and also meet any other reasonable living costs. Furthermore, Black Horse was even more entitled to believe this was the case as Mr H was paying a deposit of £1,000.00.

There is an argument for saying that Black Horse perhaps, at the absolute most, should have found out more about Mr H's living costs rather than simply assumed that he would have had enough left over to meet them. But it seems to me that Mr H's regular living costs were low, he's said that his rent included most of his bills. So I'm not persuaded that Black Horse doing any more would have resulted in it reaching a different decision here.

I do accept Mr H's actual circumstances at the time might have been worse than this. For example, I can see that Mr H earned less than I think it is more likely than not Black Horse was led to believe and he had some other debts – such as a loan taken out in the same month as this finance – which will not have shown on Black Horse's credit checks. However, I can only reasonably expect Black Horse to have taken into account what it knew.

Furthermore, while I've seen that Mr H has referred to having defaulted accounts, this simply didn't show up in the information that Black Horse had. I say this not only because of the screenshots Black Horse has provided, but also because my experience of considering lending complaints tells me it is unlikely that Black Horse would have agreed to lend to Mr H at an APR of 7.9%, if it was aware of any defaulted accounts.

Equally, while Mr H might have been using his overdraft 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 H's arguments suggests he believes to be the case.

Furthermore, as I explained in my provisional decision, I also need to consider Mr H's most recent submissions in the context that they are being made in support of a claim for compensation. Whereas at the time of sale, at least, Mr H clearly wanted the car he had chosen and any explanations he would have provided are more likely to have been with a view to persuading Black Horse to lend to him, rather than highlighting any unaffordability.

Indeed, Mr H was the only party with the knowledge of everything that he has said. Yet he nonetheless considered it a reasonable time to complete this purchase. So I can only assume that he, at the time at least, believed that he was able to make the monthly payments. In these circumstances, I don't think Mr H would have looked to have shown Black Horse the payments were unaffordable, in circumstances where the information obtained suggests that Black Horse was reasonably entitled to consider that they were.

Overall and having carefully considered everything, including the submissions made in response to my provisional decision, I remain satisfied that Black Horse's checks before entering into this hire-purchase agreement with Mr H probably did go far enough. But even if they did not, I'm, in any event, satisfied that any further checks would not have involved obtaining bank statements from Mr H.

At best, further checks would have involved finding out more about Mr H's discernible living expenses. And if Black Horse had attempted to do this, I'm satisfied that doing so will not have prevented it from providing these funds, or entering into this agreement with Mr H.

S140A of the Consumer Credit Act 1974 ("CCA")

In reaching my conclusions, I've also considered whether the lending relationship between Black Horse and Mr H might have been unfair to Mr H under section 140A CCA.

However, for the reasons I've explained, I'm satisfied that Black Horse did not irresponsibly lend to Mr H or otherwise treat him unfairly in relation to this matter. And I haven't seen anything to suggest that section 140A CCA or anything else would, given the facts of this complaint, lead to a different outcome here.

So while I've considered everything that Mr H has said, I don't think that Black Horse acted unfairly or unreasonably towards him. And I'm not intending to uphold this complaint. I appreciate that this will be disappointing for Mr H – particularly as he appears to feel strongly about this matter and the investigator, albeit erroneously, suggested that his complaint should be upheld. But I hope he'll understand the reasons for my decision.

My final decision

For the reasons I've explained above and in my provisional decision of 25 October 2024, I'm not upholding Mr H's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 16 December 2024.

Jeshen Narayanan
Ombudsman