

Complaint

Mr V complains that Black Horse Limited ("Black Horse") unfairly entered into a hire-purchase agreement with him. He's said that the finance was unaffordable which resulted in him getting behind on his priority bills and he was never able to recover financially.

Background

In July 2017, Black Horse provided Mr V with finance for a used car. The purchase price of the vehicle was £8,900.11. Mr V didn't pay a deposit and entered into a 49-month hire-purchase agreement with Black Horse for the entire amount he required for the purchase.

The loan had interest, fees and total charges of £3,058.65 (made up of interest of £3,048.65 and a £10 option to purchase fee) and the balance to be repaid of £11,958.76 was due to be repaid in 48 monthly repayments of £187.87 followed by an optional final payment of £2,941.00 which Mr V had to pay if he wished to keep the car. As I understand it, Mr V settled the finance in full in May 2020.

In January 2024, Mr V complained to Black Horse saying that it shouldn't have entered into this hire-purchase agreement with him, as it ought to have realised that it was unaffordable and this resulted in him having to borrow further to make his repayments.

Black Horse did not uphold Mr V's complaint. In the first instance, it considered that Mr V complained too late. Nonetheless, it was, in any event, satisfied that it had carried out proportionate checks at the time of Mr V's application and the results showed that it was reasonable to lend. Mr V was dissatisfied at this response and referred his complaint to our service.

Mr V's complaint was considered by one of our investigators. She reached the conclusion that proportionate checks would not have shown Black Horse that it shouldn't have entered into the hire-purchase agreement with Mr V. So she didn't think that Mr V's complaint should be upheld.

Mr V 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.

Basis for my consideration of this complaint

There are time limits for referring a complaint to the Financial Ombudsman Service. Black Horse has argued that Mr V's complaint was made too late because he complained more than six years after the decision to provide the finance as well as more than three years after he ought reasonably to have been aware of his cause to make this complaint.

Our investigator explained why it was reasonable to interpret Mr V's complaint as being one alleging that the relationship between him and Black Horse was unfair to him as described in s140A of the Consumer Credit Act 1974 ("CCA"). She also explained why this complaint about an allegedly unfair lending relationship had been made in time.

Having carefully considered everything, I've decided not to uphold Mr V's complaint. Given the reasons for this, I'm satisfied that whether Mr V's complaint was made in time or not has no impact on that outcome.

I'm also in agreement with the investigator that Mr V's complaint should be considered more broadly than just the lending decision. I consider this to be the case as Mr V has not only complained not about the decision to lend but has also alleged that agreement resulted in him getting behind on his priority bills and he was never able to recover financially afterwards.

I'm therefore satisfied that Mr V's complaint can therefore reasonably be interpreted as a complaint about the overall fairness of the lending relationship between him and Black Horse. I acknowledge Black Horse still may not agree we can look Mr V's complaint, but given the outcome I have reached, I do not consider it necessary for me to make any further comment, or reach any findings on these matters.

In deciding what is fair and reasonable in all the circumstances of Mr V's case, I am required to take relevant law into account. As, for the reasons I've explained above, I'm satisfied that Mr V's complaint can be reasonably interpreted as being about the fairness of the lending relationship between him and Black Horse, relevant law in this case includes s140A, s140B and s140C of the CCA.

S140A says that a court may make an order under s140B if it determines that the relationship between the creditor (Black Horse) and the debtor (Mr V), arising out of a credit agreement is unfair to the debtor because of one or more of the following, having regard to all matters it thinks relevant:

- any of the terms of the agreement;
- the way in which the creditor has exercised or enforced any of his rights under the agreement;
- any other thing done or not done by or on behalf of the creditor.

Case law shows that a court assesses whether a relationship is unfair at the date of the hearing, or if the credit relationship ended before then, at the date it ended. That assessment has to be performed having regard to the whole history of the relationship. S140B sets out the types of orders a court can make where a credit relationship is found to be unfair – these are wide powers, including reducing the amount owed or requiring a refund, or to do or not do any particular thing.

Given Mr V's complaint, I therefore need to think about whether Black Horse's decision to lend to Mr V, or its later actions resulted in the lending relationship between Mr V and Black Horse being unfair to Mr V, such that it ought to have acted to put right the unfairness – and if so whether it did enough to remove that unfairness.

Mr V's relationship with Black Horse is therefore likely to be unfair if it didn't carry out reasonable and proportionate checks into Mr V's ability to repay in circumstances where doing so would have revealed the monthly payments to the agreement to have been unaffordable, or that it was irresponsible to lend. And if this was the case, Black Horse didn't then somehow remove the unfairness this created.

I'll now turn to whether Black Horse acted fairly and reasonably when entering into the hire-purchase agreement with Mr V.

What we consider when looking at complaints about irresponsible or unaffordable lending

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 V's complaint.

I think that it would be helpful for me to set out that we consider what a firm did to check whether loan payments were affordable (asking it to evidence what it did) and determine whether this was enough for the lender to have made a reasonable decision on lending.

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.

That said, I think that it is important for me to explain that our website does not provide a set list of mandated checks that a lender is expected to carry out on every occasion – indeed the regulator's rules and guidance did not and still do not mandate a list of checks to be used. It simply sets out the types of things that a lender could do. It is a for a lender to decide which checks it wishes to carry out, although we can form a view on whether we think what done was proportionate to the extent it allowed the lender to reasonably understand whether the borrower could make their payments.

Furthermore, if we don't think that the lender did enough to establish whether the repayments to an agreement were affordable, this doesn't on its own meant that a complaint should be upheld. We would usually only go on to uphold a complaint in circumstances where we were able to recreate what reasonable and proportionate checks are likely to have shown – typically using information from the consumer – and this clearly shows that the repayments in question were unaffordable.

I've kept this in mind when deciding Mr V's complaint.

Was Black Horse's decision to enter into a hire-purchase agreement with Mr V in July 2017 fair and reasonable?

Black Horse says it agreed to Mr V's application after he provided details of his income and some details of his living costs such as his rent/mortgage. It says it also carried out credit searches on Mr V which showed that he had existing debts of just over £7,300.00. Furthermore, Mr V had no significant adverse information – such as County Court Judgments ("CCJ") or defaulted accounts - recorded against him.

In its view, when reasonable repayments to the total amount Mr V owed plus a reasonable amount for Mr V's living expenses were deducted from his monthly income the monthly payments were still affordable. I've thought about what Black Horse has said.

The first thing for me to say is given Mr V's income, his existing commitments and the amount of the monthly payment in this instance, there is a reasonable argument for saying that the checks that Black Horse carried out went far enough. After all, Black Horse took steps to cross check Mr V's declaration of income, he declared the amount of his monthly rent/mortgage payment and his existing indebtedness wasn't at a level that suggested that he fell outside the profile of the average borrower. I don't think that the single late payment,

which was quickly brought up to date, changes this. So, in my view, it wasn't unreasonable for Black Horse to have used statistical data in this instance.

For the sake of completeness and in any event, even if I were to say that Black Horse ought to have done more here, at best, all I would have expected it to do was find out a bit more about Mr V's committed living costs. And I don't think that doing that here would have made a difference. I say this because the information Mr V has provided about his living expenses now don't show me that they were higher than the estimates that Black Horse used at the time. So I don't think that Black Horse finding out about Mr V's actual living expenses, rather than relying on statistical data, would have made a difference here.

Overall I'm satisfied that Black Horse gathered a reasonable amount of information from and about Mr V as part of its assessment of affordability. There is also a reasonable argument for saying that it carried out a reasonable assessment of this information and made a fair decision to lend to Mr V.

In any event, at the absolute best it could be argued that it might have been prudent for Black Horse to ask Mr V more about his actual living expenses. However, I'm satisfied that even if Black Horse had done this, this won't have stopped it from providing these funds, or entering into this hire purchase agreement with Mr V.

In these circumstances, I don't find that the lending relationship between Mr V and Black Horse was unfair to Mr V. I've not been persuaded that Black Horse created unfairness in its relationship with Mr V by irresponsibly lending to him when it entered into this hire-purchase agreement with him. And I don't find Black Horse treated Mr V unfairly in any other way either based on what I've seen.

So overall and having considered everything, while I can understand Mr V's sentiments and appreciate why he is unhappy, I'm nonetheless not upholding this complaint. I appreciate that this will be very disappointing for Mr V. 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 that I'm not upholding Mr V's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr V to accept or reject my decision before 31 March 2025.

Jeshen Narayanan
Ombudsman