

## **The complaint**

Mr Z, who is represented by a third party, complains that Black Horse Limited ('Black Horse') irresponsibly granted him three hire purchase agreements he couldn't afford to repay.

## **What happened**

In May 2014, Mr Z acquired a used car financed by way of a hire purchase agreement from Black Horse. The amount borrowed was £4,995. He paid a deposit of £1,500. Mr Z was required to make a first monthly payment of £145 followed by 58 monthly payments of £107.53 and then a final payment of £292.53. The total repayable under the agreement was £8,174.27.

Then, in March 2016, Mr Z acquired another used car that was again financed by way of a hire purchase agreement from Black Horse. The amount borrowed was £19,900 and he paid a deposit of £345. Mr Z was required to make 49 payments of £299.17. The total repayable under the agreement was £24,467.16.

Finally, in March 2018, Mr Z acquired a used car financed by way of a hire purchase agreement from Black Horse. The amount borrowed was £24,028.40 and he paid a deposit of £714.60. Mr Z was required to make 48 payments of £405.35. The total repayable under the agreement was £30,028.92. Mr Z settled this agreement early, in September 2020.

Mr Z complained to Black Horse in September 2024 about these agreements. Essentially, he complained that for each agreement Black Horse failed to carry out fair and proportionate checks before agreeing the finance. As a result, he says his overall financial situation got worse.

Black Horse looked into the complaint and said it was confident that for each agreement it had carried out reasonable and proportionate affordability checks which showed the new agreement was likely to be affordable and therefore Black Horse hadn't acted irresponsibly.

Our investigator first explained that each of these complaints had been made too late under the time limit rules put in place by the Financial Conduct Authority. This was because each lending decision - and most of the interest and charges that was applied to each agreement - had taken place more than six years before the complaint was made. But they also thought that all of Mr Z's complaint could be interpreted as being about an unfair credit relationship as described in Section 140A of the Consumer Credit Act 1974 (s140) which is in time under the rules. However, our investigator didn't think Black Horse had acted unfairly or unreasonably by approving each of the three agreements. He also didn't think Black Horse had acted unfairly or unreasonably in any other way.

As Mr Z doesn't agree, his complaint has been passed to me for a final 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.

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 Mr Z's complaint.

Our investigator explained why it was reasonable to interpret the complaint as being about unfair relationships as described in Section 140A of the Consumer Credit Act 1974, and why on that basis this complaint about three allegedly unfair lending relationships had been referred to us in time.

Seeing as I've decided not to uphold Mr Z's complaint – and I'll go on to explain the reasons for this - whether each of the three decisions made by Black Horse to provide credit to Mr Z happened more than six years ago in time or not has no impact on that outcome. Like our investigator, I think Mr Z's complaint should be considered more broadly than just the decisions to provide the finance, given that he has complained not just about the decision to lend but also the impact this had on him over the course of his relationship with Black Horse. Mr Z's complaint in this respect can therefore reasonably be interpreted as a complaint about the fairness of his relationship with Black Horse.

In deciding what is fair and reasonable I am required to take relevant law into account. Because Mr Z's complaint can be reasonably interpreted as being about the fairness of his relationship with Black Horse, relevant law in this case includes s.140A, s.140B and s.140C of the Consumer Credit Act 1974.

S.140A says that a court may make an order under s.140B if it determines that the relationship between the creditor (Black Horse) and the debtor (Mr Z), 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 their 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.

S.140B 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 what Mr Z has complained about, I therefore need to think about whether Black Horse's decisions to lend to him or its later actions created unfairness in the relationship between him and Black Horse such that it ought to have acted to put right the unfairness – and if so whether it did enough to remove that unfairness.

Mr Z's relationship with Black Horse during these agreements is therefore likely to be unfair if in each or any lending decision it didn't carry out proportionate affordability checks, where doing so would have revealed its lending to be irresponsible or unaffordable, and if it didn't then remove the unfairness this created somehow.

When assessing affordability, there isn't a set list of checks that Black Horse needed to complete, but they needed to be borrower focussed and proportionate to things like the type of lending, the cost of the lending as well as the amount, and the period of time over which Mr Z would need to make repayments.

In much the same way as our investigator, I'll first look at the checks Black Horse carried out before agreeing to lend to decide if they were fair and proportionate. In this complaint, for reasons I'll explain, I don't think they were for the first lending decision. So for that lending decision – but not the second and third - I'll then look at what reasonable and proportionate checks were likely to have shown.

### *First agreement*

This lending decision took place in May 2014. Black Horse has said that it completed both credit and affordability checks before deciding to lend to Mr Z. But it hasn't provided a copy of the credit check it completed and nor have I seen any of the affordability data it relied upon. That's not totally surprising on the basis that this lending decision was made almost eleven years ago.

Therefore, as I can't make finding about what Black Horse saw at the time, I therefore need to consider what Black Horse might have seen.

Mr Z has been able to send us copy bank statements for the period leading up to the lending decision. I can see that he was receiving a net monthly income of around £1,100 each month and, like are investigator, I see he was regularly receiving income from other parties of around £600. I can see a number of credit repayments and evidence of other spending on food and a mobile phone account. I've also seen that he was keeping his account in credit, for the most part, and wasn't having to rely on an overdraft facility. I can't see details of other household expenses, such as a mortgage and/or rent and utilities, so I've taken the view that these weren't costs he had to pay at the time.

I've also kept in mind that whilst Mr Z was taking on a five-year commitment with the new finance, the monthly repayments would represent a low proportion of his overall income.

Whilst I would have expected Black Horse to have obtained evidence and information that showed Mr Z's income and typical monthly expenditure, based on what I've seen I think Black Horse would likely have viewed the new finance as being affordable if it had completed proportionate checks.

Overall, and based on the available evidence, I don't find that Mr Z's relationship with Black Horse was unfair. I'm not able to make a finding that Black Horse created unfairness in its relationship with him by lending to him irresponsibly. Also, given that Mr Z met his obligations to repay the monthly sums due without incident up to the point he took out the next agreement, I can't see that it treated him unfairly in any other way based on what I've seen.

For this reason, I don't think it acted unfairly in approving the finance.

### *Second agreement*

I've seen some of the information that Black Horse gathered before granting the next finance agreement in March 2016. Again, Black Horse say they carried out a credit check alongside an affordability assessment. For this agreement, Black Horse was able to provide more detail about those checks. And so I think Black Horse gathered a reasonable amount of evidence and information from Mr Z about his ability to repay. However, just because I think it carried out proportionate checks, it doesn't automatically mean it made a fair lending decision.

I've therefore thought about what the evidence and information showed. Having done so I'm satisfied that the checks that were completed showed that the agreement was likely to be

affordable to Mr Z. I say this because I can see the results of the credit check which show he had seven credit accounts, including his existing Black Horse agreement. He owed around £8,000 in credit, including the agreement, and was having to find around £200 each month to meet those obligations. That amount would be closer to £80 once the old agreement had been settled.

In terms of other income and expenditure, Mr Z supplied details of his annual and monthly income, rent and living costs. Given that he said he was earning around £1,400 each month and his committed spending was found to be around £1,000, he had around £400 to fund the new agreement of £299 per month. I've also taken into consideration that Mr Z had already been a Black Horse customer for almost two years, during which he had demonstrated a consistently reliable payment record with his previous finance agreement.

Those representing Mr Z have suggested that he was left with an insufficient level of disposable income. I disagree. Having established that Mr Z was able to meet his committed expenditure each month, including his existing credit commitments, he was still left with £123 available for non-discretionary spending. Given that Mr Z had chosen to take a vehicle that would require a higher level of repayments, I would have expected him to have thought about whether he could afford the repayments. In any event, the sale paperwork prompted him to think about this. It may well be he would have to budget to a greater extent than before and that instances of sudden or emergency spending would arise. But having carried out reasonable and proportionate checks that showed he could meet the repayments and still have around 10% of his monthly income available, I don't consider that Black Horse needed to do anything more.

For these reasons, I don't think Black Horse acted unfairly when approving the finance application.

Again, given that Mr Z met his obligations to repay the monthly sums due without incident up to the point he took out the next – the third - agreement, I can't see that it treated him unfairly in any other way based on what I've seen. And I've seen nothing to suggest that Mr Z was in contact with Black Horse seeking help or support from them.

### *Third agreement*

Before granting the finance for the third agreement in March 2018, I think Black Horse gathered a reasonable amount of evidence and information from Mr Z about his ability to repay. I say this because it again completed a credit check that didn't show any adverse markings on Mr Z's credit file. It also carried out an affordability check based on information Mr Z provided about his income. Mr Z had told Black Horse that he was receiving around £1,500 in net monthly income and that his total monthly costs were around £800. However, just because I think it carried out proportionate checks, it doesn't automatically mean it made a fair lending decision. So, I've thought about what the evidence and information showed.

I've reviewed the information and evidence Black Horse gathered. And I've kept in mind that by this point, Black Horse was able to look back at a four-year history of meeting monthly repayments. Having done so I'm satisfied that the checks that were completed showed that the agreement was likely to be affordable to Mr Z. I say this because, although he was now having to pay a significantly higher monthly repayment, Black Horse's proportionate checks suggested it was affordable with Mr Z now having a good level of disposable income in the region of £700. Although Black Horse didn't need to carry out further checks in my view, the bank statements I've seen broadly support that Mr Z was able to fund his committed expenditure each month without becoming overindebted, whilst still having income available for discretionary spending. For these reasons, I don't think Black Horse acted unfairly when

approving the finance application. And I don't find that it treated him unfairly in any other way based on what I've seen.

I think it's important to say here that I've also thought about the testimony Mr Z has provided and I'm sorry to hear about the difficult circumstances he's told us about. But unfortunately, it doesn't affect my finding that each of the three decisions to lend was fair. I'm sorry to have to disappoint Mr Z on this occasion.

### **My final decision**

For the reasons I've given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr Z to accept or reject my decision before 23 May 2025.

Michael Goldberg

**Ombudsman**