

The complaint

Ms D, on behalf of the estate of Mrs D complains that Black Horse Limited was irresponsible in its lending to the late Mrs D.

What happened

This complaint was initially brought to this service by Mrs D represented by a family member, Ms D. However, Mrs D has since sadly passed away and so the complaint is now brought by her estate.

Mrs D entered into a hire purchase agreement with Black Horse in May 2013. A jurisdiction view was issued, and Black Horse consented to this service considering the merits of this complaint.

The hire purchase agreement was provided to finance the acquisition of a car. Mrs D said that the car was for her grandson, and she was pressured into agreeing to the finance. While Mrs D was told that her grandson would pay her for the repayments due under the agreement this didn't happen, and she had to make these.

Under the agreement, Mrs D was provided with credit for the acquisition of the car as well as a warranty and Gap insurance. The agreement term was 48 months and Mrs D needed to make 47 monthly repayments of around £290 followed by a final repayment of around £450. Mrs D said that adequate checks weren't carried out before the lending was provided. She said that she was 79 at the time the finance was provided and retired with limited income and regular outgoings. She said that she had needed to use her limited savings to make the repayments.

Mrs D raised a complaint but as this wasn't responded to by Black Horse her complaint was referred to this service.

Following contact from this service, Black Horse issued a final response. It said that before the finance was provided a creditworthiness assessment took place. It noted that Mrs D advised on her finance application that she was retired and said this would have been considered as part of its risk assessment. In this case, Black Horse said that Mrs D met its lending criteria, and her application was accepted. Black Horse reviewed the bank statements that Mrs D had provided as part of her complaint but said that these didn't show the agreement to be unaffordable at the point of supply.

Our investigator noted that Black Horse had said a credit assessment took place but that due to when this happened it wasn't able to provide a record of this. He also noted that an affordability assessment took place. He said that at the time of the lending Mrs D was 79 and retired. While he didn't think this meant the lending shouldn't have been provided, he thought that Black Horse should have done more to understand Mrs D's actual living expenses and sources of income.

Copies of Mrs D's bank statements for the months leading up to the agreement were provided. Our investigator considered these to understand what Black Horse would likely

have identified from proportionate checks. Based on the evidence provided he found that Mrs D had a monthly income of £1,400 and regular monthly bills for costs such as rent, utilities and phone of £800. Deducting the repayments due under the agreement, he thought this left sufficient disposable income to cover Mrs D's general living costs such as food, fuel and other expenditure. Because of this he didn't think that further checks would have shown the lending to be unaffordable and so he didn't uphold this complaint.

Ms D didn't accept our investigator's view on behalf of Mrs D. She said the income and expenditure calculations left Mrs D with only around 20% of her income for food, fuel, leisure, travel, insurance and any unexpected costs. She didn't think this was sufficient and confirmed that Mrs D had no other sources of income. She said that Black Horse should have asked more questions before lending and that the circumstances should have raised concerns that the car wasn't for Mrs D.

My provisional conclusions

I issued a provisional decision on this complaint the details of which are set out below.

Mrs D entered into a hire purchase agreement in 2013 and it is therefore the rules and guidance in place at that time that need to be considered when assessing this complaint. These included that the lender needed to make a reasonable assessment of whether a borrower can afford to meet repayments in a sustainable manner.

So, while there isn't a set list of checks a lender is required to carry out, I think it reasonable that Black Horse would have gathered enough evidence from Mrs D to ensure that she was able to sustainably maintain the repayments over the term of the agreement.

Black Horse has said that a credit worthiness assessment took place but that due to when this happened the record is no longer available. It has said that an affordability assessment would have been undertaken based on the information provided by Mrs D and data gained through the credit reference agencies, and that the information gathered would have included Mrs D's income and occupation, residential status and any rent/ mortgage payments. I note Ms D's comment about Black Horse not being able to provide evidence of the checks but as the agreement was taken out over 10 years before the complaint was raised, I do not find it unreasonable that it no longer holds this information.

While I find it reasonable to accept that checks were undertaken, as I don't have the results of these, I have looked through the other information available (specifically Mrs D's bank statements from the time) to see what proportionate checks would likely have identified. Mrs D declared she was retired, and so on a fixed income.

Based on Mrs D's bank statements her monthly income was around £1,400 and her monthly payments for costs such as rent, council tax, utilities and communications, were around £825. The repayments due under the agreement were for around £290 which would leave Mrs D with around £285 a month for her general living costs such as food, transport, other day to day items and any unexpected expenditure. This is a limited amount of disposable income to cover all other living costs (including the cost of running a car) and so I think it would have been reasonable to ask further questions to understand fully her situation.

Mrs D's bank statements show her spending large amounts each month at supermarkets (over £400 a month). It has been explained that Mrs D was buying food for other family members (and a suggestion she was being pressured to do this) which explains the high spend amount. While I cannot say for certain what would have been identified, I think that had further questions been asked at the time about Mrs D's expenses, these would have identified that Mrs D's general living costs were higher than the disposable income left after

the repayments under the hire purchase agreement had been made. I think this should have raised concerns that the repayments due under the Black Horse agreement may not be sustainably affordable for Mrs D over the agreement term.

I am sorry to hear of the experience Mrs D had. As this involved her family, I can appreciate it is a particularly upsetting situation. However, I have nothing to show that Black Horse was aware that Mrs D was under pressure to enter into the agreement on behalf of her grandson. I understand the comment made about Mrs D's age and the type of car she was acquiring, and I agree this could have been cause for further questions, but I cannot say that Mrs D's age meant that such an agreement shouldn't have been provided.

That said, as I think that the circumstances meant thorough checks should have been undertaken to understand Mrs D's regular income and outgoings and had these happened, they would have raised concerns about the affordability of the agreement, I am upholding this complaint.

Black Horse responded to my provisional decision noting that Mrs D had around £17,000 of savings at the time the agreement was provided and so she could have settled the agreement in full had she wished. It further noted that Mrs D had made all repayments due under the agreement.

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.

I am sorry to hear of Mrs D's passing and I wish to send my condolences to her family. I acknowledge that due to these circumstances this complaint is now brought on behalf of Mrs D's estate.

I set out in my provisional decision my reasons why I was upholding this complaint. I note Black Horse's response to my decision, but this hasn't changed my conclusion for the following reasons.

I considered that Mrs D had savings prior to the agreement being entered into and these were shown on her bank statements. But I also note that the savings in her everyday saver account appeared to be removed at some point in April 2013. But that aside, as I set out in my provisional decision, I considered what I thought proportionate checks would have shown.

When Mrs D took out the agreement, she was 79 and the agreement was for 48 months. She was retired and so on a fixed income. Her income was around £1,400 a month. She had sold her home and so her savings were the result of that, and she was renting. As such she needed to have sufficient funds (after paying for the agreement) to maintain her rent and her other housing and living costs. Her statements show that she was transferring regular amounts to her current account from her savings account suggesting that she wasn't able to cover her costs prior to the agreement being set up. At the rate the transfers were occurring her savings would have diminished quickly.

Therefore, I considered what checks would have shown about her income and expenses. As I set out, I think that checks would have shown that with the cost of the agreement, Mrs D would be spending more each month on her committed expenditure and general living costs than she received in income.

Based on this, I think that proportionate checks would have raised concerns about the

agreement being sustainably affordable for Mrs D over its term.

So, while I appreciate that Mrs D had savings when she entered into the agreement, I do not find in this case, due to the reasons set out above that this changes my conclusion that the agreement shouldn't have been provided.

In my provisional decision, I said that Black Horse shouldn't be able to charge any interest, fees or charges on the agreement and I find this is the fair outcome. I also said that a refund above the cash price of the car should be provided. However, in this case the agreement also included insurances which were available for the duration of the agreement. Therefore, I think it fair that the that refund should be for any amount above the cost of the car and insurances (excluding interest and charges).

Putting things right

As I do not think that Black Horse should have provided Mrs D with the agreement, I do not find that it should be able to charge any interest, fees or charges on the agreement. I note that the agreement has been settled.

Therefore, to settle this complaint Black Horse should:

- Refund the estate of Mrs D any payments made above the cash price of the car and cost of insurances (in the agreement the car cash price is recorded as £11,999 and warranty and insurance as £948).
- All refunds should have 8% simple interest per year* added from the date of payment to the date of settlement.

*HM Revenue & Customs requires Black Horse to deduct tax from this interest. It should give the estate of Mrs D a certificate showing how much tax it's deducted if it asks for one.

My final decision

My final decision is that Black Horse Limited should take the actions set out above in resolution of this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mrs D to accept or reject my decision before 28 March 2025.

Jane Archer
Ombudsman