

## **The complaint**

Mr J complains through a representative that Black Horse Limited (“Black Horse”) gave him finance without carrying out adequate affordability checks.

## **What happened**

In August 2019, Black Horse provided Mr J with a hire purchase agreement for a used vehicle through a credit intermediary. The cash price for the vehicle was £13,299 and Mr J didn't pay a deposit, so the full asking price was financed. There was also interest, fees and charges totalling £3,764.44 with Mr J having to repay a total of £17,063.44. Mr J was due to repay the loan through 48 monthly repayments of £236.03 followed by a final optional payment to own the vehicle of £5,734. The agreement was settled in March 2022.

Black Horse, reviewed Mr J's complaint and it gave reasons why it wasn't upholding it. Mr J's representatives then referred the complaint to the Financial Ombudsman.

The complaint was then considered by an investigator – who in the latest assessment didn't uphold it. The investigator said Black Horse's checks needed to go further due to the results of the credit search. However, had Black Horse carried out further checks, than it still would've lent to Mr J bearing in mind his current car finance was to be settled and replaced with this agreement.

Mr J's representative didn't agree, saying in summary Mr J was making larger payments to his credit card such as in May 2019 where he repaid £1,500. If these larger payments are averaged out than the loan isn't affordable. It then said, after it received a copy of the investigators income and expenditure review that Mr J wasn't left with sufficient disposable income to cover any unexpected cost.

The comments didn't change the investigator's mind about the outcome and as no agreement could be reached, the complaint has been passed to me, for a 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 irresponsible and unaffordable lending on our website. And I've used this approach to help me decide Mr J's complaint. Having carefully thought about everything I've been provided with, I'm not upholding Mr J's complaint. I'd like to 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 J 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.

As part of Mr J's application, he told Black Horse his gross annual salary was £26,000 which worked out at about £1,768 per month. Black Horse didn't just rely on what it was told, it said it cross-referenced Mr J's income using a tool provided by the credit reference agencies, and this indicated Mr J's income was more likely to be £2,100 per month. It was reasonable, for Black Horse to have relied on the results of this check and to use the larger income for its assessment.

Thinking about Mr J's living costs, Black Horse used the mortgage payment Mr J declared as being £550 per month. A cost-of-living payment of £397 was derived from the Office of National Statistics – to this it added the credit commitment payments that it discovered – this was based on Mr J paying a percentage of the total balance and this led to payments of around £3 per month. Overall, this left a disposable income of £818 per month. Based on Black Horse's calculation the loan looked affordable.

Black Horse did carry out a credit search, but it has explained the full raw data it received isn't available. While this isn't ideal, Black Horse has provided an overview of the results that it says it received. The credit report showed Mr J had just over £7,000 of existing debt. There were no defaults or CCJs recorded against him and there hadn't been any adverse payment markers reported within the last six months.

However, the summary documents suggest that Mr J's monthly credit commitments were already around £1,250 a month – significantly greater than the £3 which Black Horse accounted for. It could be, as the investigator said that this included the full mortgage cost each month rather than Mr J's declared share. But whatever the reason, Black Horse was on notice that potentially Mr J's monthly credit commitments were far greater than it had accounted for.

I've thought about all of this – but I don't think I can fairly, or reasonably, conclude the checks Black Horse carried out were proportionate. I say this bearing in mind the discrepancy Black Horse ought to have been aware of in relation to Mr J's credit commitments. So, Black Horse's checks needed to go further.

Black Horse could've gone about making more detailed checks a number of ways, it could've simply asked Mr J about his other non-discretionary living costs, asked for evidence from Mr J about his bills, or any other documentation it felt it may have needed. Or, as I've done here reviewed the bank statements Mr J has provided.

This didn't, and doesn't mean that, Black Horse had to undertake a full financial review of Mr J's circumstances – such as reviewing every transaction that Mr J was making from the account, merely it just needed to obtain an idea of what his living costs were – especially around his credit commitments. And I want to be clear that a line-by-line review of Mr J's bank statements wouldn't have been proportionate.

I accept had Black Horse conducted proportionate checks it may not have seen all the information that I have seen. But, in the absence of Black Horse conducting a proportionate check I do think it's fair and reasonable to consider statements that I now have access to.

The investigator carried out an income and expenditure assessment on the joint bank provided. Therefore, the investigator explained why they just considered the affordability of the household and that doesn't seem an unreasonable approach to have taken.

Mr J's representative has seen the income and expenditure review carried out by the investigator, and broadly agrees with it – in terms of the income used and the figures used for the outgoings. I would add that I've also reviewed the figures and I also broadly agree with what the investigator discovered.

This income and expenditure review showed the loan to be affordable – but Mr J's representative says that based on the assessment Black Horse would've likely discovered that after the loan payment and all other costs Mr J was left with just under £200 per month – which it didn't consider to be sufficient. It also raised some concerns about larger payments made by Mr J to his credit commitments that haven't been considered.

Firstly, in terms of the larger credit commitment payments, I agree with the investigator's interpretation of these. The payments Mr J was making appeared to be either one offs – and so wouldn't be counted as part of the regularly commitments and or Mr J was making payments significantly larger than the minimum required by the credit provider.

Add to this, the credit check results I've seen plus what I've said above – that being Black Horse didn't have to review bank statements, hasn't persuaded me to include all of those payments in any income and expenditure form.

Turning to the amount of income left over after Mr J's payments had been made. I appreciate why Mr J's representative wants some clarity over what is considered a sufficient amount of disposable income – after costs have been considered. I can't in this decision provide guidance as to what would or wouldn't be enough in every case – because that isn't my role.

But what I can say is there is no set line, where if a consumer falls under the Financial Ombudsman may uphold the complaint. It will depend on a number of factors – but not limited to, what any lender knew about the consumer, their living arrangements, existing debt, value of the loan, the term of the agreement, what was considered within the affordability costs and any amount left over. But to be clear this list isn't exhaustive but just a number of factors that may need to be thought about.

Ultimately, I have to make a decision, based on the individual circumstances of this complaint. And bearing in mind the income and expenditure review carried out by the investigator was comprehensive, and covers food, petrol and all the other living costs that could be interpreted from the bank statements. So Black Horse would've likely still approved the loan had it seen all that the investigator saw.

Considering the credit check results, what the bank statements showed and Mr P had repaid a previous hire purchase agreement, I'm persuaded that a proportionate check would've demonstrated to Black Horse that Mr J could afford his loan repayments.

I am therefore not upholding Mr J's complaint.

Finally, I've also considered whether the relationship might have been unfair under s.140A of the Consumer Credit Act 1974. However, for the reasons I've already given, I don't think Black Horse lent irresponsibly to Mr J or otherwise treated him unfairly in relation to this matter. I haven't seen anything to suggest that Section 140A would, given the facts of this complaint, lead to a different outcome here.

**My final decision**

For the reasons I've outlined above, I am not upholding Mr J's complaint.

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

Robert Walker  
**Ombudsman**