DRN-5573125

Financial Ombudsman Service

The complaint

Mr D, through his representative, complains that Black Horse Limited lent to him irresponsibly when it approved two agreements to finance vehicle purchases in 2017 and 2019.

What happened

Mr D took two car finance agreements with Black Horse and here is a brief table of them.

Agreement	Capital sum	Term	Total to repay	Repayment sums	Status
First 5 July 2017	£11,099	48 months	£12,116	£258 a month	Settled 6 November 2019
Second 7 November 2019	£11,699	60 months	£13,865	£219 a month	Settled 25 August 2021

The first agreement settled early following a total loss claim.

Mr D paid deposits for each agreement.

Black Horse has said that for the second agreement Mr D made the repayments satisfactorily until February 2021 when a change in his employment circumstances meant it was difficult for him. This was the tail end of the Covid pandemic. Payment holidays were approved for him until the agreement settled in August 2021.

Mr D's representative complained about both agreements and Black Horse responded in May 2024 with a separate final response letter (FRL) for each agreement. Mr D's complaints about both agreements were referred to the Financial Ombudsman Service. One of our investigators looked at both and these have been passed to me

Our investigator was aware that there was a jurisdictional element to resolve in relation to Agreement 1. He said that he thought we could look at it. Black Horse has not objected or made any further submissions surrounding that and so I do not consider that I need to review the jurisdiction part of the investigator's view.

Our investigator did not think that either of the finance agreements were approved by Black Horse irresponsibly. He did not uphold the complaints. Mr D disagreed and they were referred to me to decide. Mr D's representative has made submissions surrounding Mr D's use of payday loans after he took the first agreement and before he entered the second. It has submitted that Black Horse ought to have appreciated that Mr D was reliant on that sort of borrowing.

Mr D currently is the subject of an Individual Voluntary Arrangement (IVA). The Insolvency Practitioner (IP) connected to the IVA has confirmed that they have an interest in these complaints.

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 D's complaint about both agreements. I am aware that the wording of the Financial Conduct Authority (FCA) Consumer Credit Sourcebook (CONC) altered in November 2018. So, the agreements were approved where the wording, but not the concept of irresponsible lending, differed and I have accounted for that.

In general, Black Horse needed to make sure that it didn't lend irresponsibly. In practice, what this means is that it needed to carry out proportionate checks to be able to understand whether any lending was sustainable for Mr D 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 – suggesting the lender needed to know more about a prospective borrower's ability to repay.

Agreement 1

At this stage in July 2017 Mr D Informed Black Horse that he earned around £23,000 a year and had monthly expenditure costs of around £589 a month. Black Horse's FRL said that it calculated Mr D had £988 a month left over as disposable income. So, it considered that Mr D could afford the £258 (rounded figure) each month for the car finance.

There is not a great deal of information from either party surrounding this agreement for this part of the complaint. And from what I have seen, it seems reasonable.

I've considered Mr D's representatives submissions in response to our investigator's view of the complaint. The points raised all relate to high cost loans in or around 2019 - after this agreement had started. The representative hasn't provided any further commentary regarding this first agreement so I've taken that to mean the outcome here is not disputed.

I do not uphold the complaint about the first agreement.

Agreement 2

Mr D needed a new car after the previous car was the subject of a total loss claim. In November 2019 Mr D paid a deposit of £1,179 and told Black Horse that he earned £24,000 a year. It has submitted the Income and Expenditure (I&E) assessment it did for this agreement. This included carrying out a credit search to discover the current commitments Mr D had.

Black Horse used £1,655 a month after tax for Mr D's income. Black Horse has explained that it used credit bureau information based on current account turnover (CATO) and data arising out of credit applications. It also used a credit bureau index of average incomes by postcode. So, it submitted that this was a '*good reasonableness test*.' The income level does not appear to have been disputed by Mr D and in any event no evidence has been submitted that this was not Mr D's income in 2019. So, I say no more about it.

Black Horse had a figure for his share of the rent of £210 and for his living costs it used a figure of £411 which was based on income, age and living status.

Black Horse has said to us that the use of the model for essential living costs within the affordability assessment complies with CONC 5.2A.19G (1), which says '*for the purpose of considering the customers non-discretionary expenditure under CONC 5.2A.17R, the firm may take into account statistical data unless it knows, or has reasonable cause to suspect, that the customers non-discretionary expenditure is significantly higher than that described in the data or that the data are unlikely to be reasonably representative of the customers situation.'*

I am familiar with these provisions.

The credit report it obtained informed Black Horse that his monthly credit commitment cost for revolving credit (which includes credit and store cards) was low at £28. This likely was a minimum repayment of 3% of the total balance. So, Black Horse calculated that Mr D's total outgoings were £649. That would have left Mr D with around £1,006 a month with which to pay for the car finance (£219 a month) and food and other expenses.

However, there is information in the system notes supplied by Black Horse that Mr D had outstanding balances of between £5,667 and £6,803 (excluding a mortgage) over 5 active accounts which was costing him £403 a month. There was no adverse history recorded.

This £403 monthly cost to Mr D does not correlate with the previous page in the system notes for the I&E on the Black Horse notes. But even if I use the £403 a month as being Mr D's credit commitment cost, the car finance still looked affordable.

Black Horse summarised its position as: '*Mr D's good credit score, clean credit file and good payment history, modest existing debts and affordability assessment (described above) meant we were comfortable to extend lending.'*

And as this was the second agreement then I do understand that Black Horse would have reviewed Mr D's repayment history during the first agreement. It seems that the earlier agreement was repaid satisfactorily and on time until the total loss claim. So, his good repayment history would have assisted in the assessment it did for the second agreement.

Mr D's representative has made submissions surrounding his use of high cost short term loans between taking the two agreements. Its point was that it was an indicator of financial stress. I've looked at all of those points, the personal credit report dated April 2024, and Black Horse's responses to questions about these high cost loans. And I am not persuaded by these submissions.

Black Horse has said it knew that Mr D had taken these loans and it appears to me that the credit search it carried out in November 2019 included these sums. Further, when asked, Black Horse has confirmed exactly that – it did know of the outstanding sums – whether revolving or non-revolving credit. And it has explained that it included the active loans (including high cost loans) into that assessment.

Mr D's representative is seeking to persuade me that the existence of the high cost loans in his history and/or some or all of them still being 'live' at the time of the November 2019 application by him, ought to have led Black Horse to refuse the car finance application and/or ask for further information. I disagree. Black Horse has explained the situation and what it did and what it discovered. And I consider those to have been proportionate checks for a person seeking to finance a car. And this was not a cash loan – it was for a vehicle which I anticipate was a requirement to facilitate Mr D's lifestyle and/or assist towards his employment or commute to his job having recently had to get rid of the first car.

In line with the regulatory framework I am satisfied that Black Horse based its assessment on sufficient information of which it was aware at the time it was carried out; and that it obtained information from Mr D and where necessary from a credit reference agency, and the information enabled it to carry out a reasonable creditworthiness assessment.

I do not uphold the complaint.

I’ve also considered whether Black Horse acted unfairly or unreasonably in any other way and I have 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 it lent irresponsibly to Mr D 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

I do not uphold the complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr D to accept or reject my decision before 26 September 2025.

Rachael Williams
Ombudsman