

The complaint

Mr B complains through a representative that Black Horse Limited (“Black Horse”) gave him finance without carrying out adequate affordability checks. Had it done better checks it would’ve seen that the finance wasn’t affordable.

For ease of reading, I’ve referred to Mr B throughout the decision.

What happened

At the end of April 2023, Black Horse provided Mr B with a hire purchase agreement for a used vehicle through a credit intermediary. The cash price for the vehicle was £23,150 and Mr B paid a £650 deposit so £22,500 was financed. There was interest, fees and charges totalling £13,065.04 with Mr B having to repay a total of £35,575.04. Mr B was due to repay the loan through 47 payments of £555.32 followed by a final optional payment of £9,475.

Black Horse didn’t receive any payments from Mr B. The car was then recovered by the police in August 2023 and then Black Horse sold the car at auction in August 2024. As of October 2024, Mr B still owes Black Horse just under £4,000.

Black Horse, reviewed Mr B’s complaint and it gave reasons why it wasn’t upholding it. Unhappy with this outcome, Mr B referred the complaint to the Financial Ombudsman.

The complaint was then considered by an investigator who upheld it, they concluded Black Horse needed to carry out further checks before it entered into the agreement with Mr B given his age and lack of financial experience. Had further checks been made Black Horse wouldn’t have lent to Mr B given his income and his monthly expenditure – he didn’t have enough disposable income to afford the repayments.

However, as Mr B hadn’t made any of his payments, and based on the sales document and the report carried out by a third party in November 2023 the car had travelled over 8,500 miles while in Mr B’s possession. So, taking account of a fair usage fee, then Mr B’s outstanding balance would reduce to around £2,000.

Mr B didn’t agree with the outcome saying that despite the vehicle being sold he is still receiving letter and *“We are not happy with the outcome as it states that Blackhorse (sic) did make errors and should have done further checks before issuing (name removed) such a large loan for the finance”*

Black Horse didn’t agree saying despite being given copy bank statements there was a period of time of one week at the end of March 2023 which was missing and so couldn’t see the account transactions.

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.

I just want to make it clear that this decision solely deals with Black Horses decision to lend. I can see that Mr R has raised other complaints about the quality of the vehicle and how

Black Horse handled a subject access request. But those cases have been investigated under separate complaint reference numbers. I will only be making a decision on whether Black Horse did all it ought to have done before it lent to Mr R.

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 B's complaint. Having carefully thought about everything I've been provided with, I'm upholding Mr B'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 B 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.

Mr B's representative has provided details of his vulnerability as well as medical records to support this – I won't go into any further details here in order to protect Mr B's privacy. But I have read what has been provided and thought about this in the context of the complaint. Given what I've seen I think it's fair to say that Mr B may well have been vulnerable at the point the finance was granted but, as far as I can see, Black Horse wasn't told about it until after his representative raised the complaints with Black Horse.

And I also wouldn't have expected Black Horse to decline the lending purely because it may have known about his vulnerability – after all that wouldn't be fair or reasonable, and not in line with the regulations Black Horse needed to adhere to.

I also want to reassure Mr B that where I haven't commented on a specific issue which has been referred to, or a comment made, it's not because I've failed to take it on board and think about it. The reason I will not have commented on the issue is because I'm satisfied that I don't need to do so in order to reach what I consider to be a fair and reasonable outcome. For the sake of completeness, I would add that our complaint handling rules, which I'm required to follow, permit me to adopt such an approach.

I'd also add Mr B has said that he is still receiving letters and fines. I've not been provided with copies of these letters or fines. And the letters I can see that have been sent are in connection with the outstanding debt he has with Black Horse as well as a vehicle recall notice that he received from the car manufacturer. If Mr B is concerned that ownership of the vehicle may not have been transferred to the current owner correctly, he may in the first instance, want to take this up with Black Horse.

I've reviewed the information provide by both parties and I'm upholding the complaint for broadly the same reasons as those reached by the investigator and I've explained why below.

As part of Mr B's application, he told Black Horse his gross annual salary was £20,000 which Black Horse worked out to be about £1,431 per month. Black Horse didn't just rely on what it was told, it said it cross referenced Mr B's income using a tool provide by a credit reference agency, and this indicated Mr B's declaration about his income was likely to be accurate.

Black Horse carried out a credit search and it has provided an overview of the results that it says it received. The credit report showed Mr B had other debt of £2,700 across three active accounts. There were no defaults, CCJs or any missed payments. The results indicated that Mr B wasn't overindebted and hadn't been taking out lots of new credit.

Black Horse says Mr B informed it that he was living at home with parents. Black Horse then used a combination of credit file data and Office of National Statistics information to work out what Mr B's likely monthly outgoings were – before the loan. And taking account of his shared living costs and credit costs these came to £513 per month.

This then left £918 to cover the Black Horse loan cost, vehicle running costs and anything else Mr B may have had. I can understand why, after carrying out this check, Black Horse thought the agreement was affordable for Mr B.

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 would add that while the investigator said Mr B's age ought to have been a concern I don't think it is or should've been. After all there is no barrier to lending to a young person as long as proportionate checks are carried out. The same would apply in that we'd not say a lender was wrong to lend to an elderly consumer. But, in saying that, Black Horse was aware that Mr B didn't have extensive credit experience and didn't owe very much debt to other sources. He was also committing to paying a significant sum each month for a period of four years towards a vehicle.

It's worth saying here that after the loan repayment was deducted from the disposable income figure calculated by Black Horse he would've been left with around £362 to cover insurance – which may well have expensive given Mr B's lack of driving experience due to his age, and the vehicle he purchased.

So Black Horse may have, on the face realised that the loan wouldn't have been affordable once petrol, insurance costs and servicing costs were considered. So, I do agree with the investigator that there was a heightened risk in this case that Mr B may not have been able to afforded his repayments.

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

This didn't, and doesn't mean that, Black Horse had to undertake a full financial review of Mr B's circumstances – such as reviewing every transaction that Mr B was making from his account, merely it just needed to obtain an idea about what his living costs were. And I want to be clear that a line-by-line review of Mr B'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. 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.

Had Black Horse taken a closer look at his finances, it may well have discovered that Mr B's monthly income fluctuated and wasn't as high as Black Horse believed after carrying out its check. But whether Black Horse would've known about this doesn't make a difference to the outcome I've reached as whether it used the checked income or Mr B's actual income – the outcome is the same – Black Horse ought to have realised the loan wasn't affordable.

And having looked at Mr B's existing costs including, car insurance, road tax, gym membership and existing credit commitments – to name a few – this came to just over £900 per month. But this is of course not including the cost of the Black Horse agreement – which when added together would've brought his monthly outgoings to just over £1,470 per month. Which is more than the income figure used by Black Horse.

And while I accept that there is around a week missing from the bank statements there isn't anything else in the rest of the information which suggested Mr B's financial position was materially different in that time. So, although it would've been preferable to have the information, given everything else I've seen I don't think the missing statements are needed to reach a fair outcome.

Overall, I'm satisfied that had Black Horse made further enquiries with Mr B it would've on balance, realised the agreement wasn't likely to be affordable for him and so shouldn't have granted it. I am therefore upholding Mr B's complaint.

What is fair compensation

I've carefully considered what Mr B has said in response to the assessment by the investigator. I think the crux of the issue here is that the complaint has been upheld by the investigator and yet Mr B will still have a balance to pay.

I've thought about what amounts to fair compensation in this case. In broad terms, where I find that a business has done something wrong, I'd normally expect that business – in so far as is reasonably practicable – to put the consumer in the position they *would be in now* if that wrong hadn't taken place. In essence, in this case, this would mean Black Horse putting Mr B in the position he'd now be in if the agreement hadn't been entered into.

But when it comes to complaints about irresponsible lending this isn't straightforward. Mr B did enter into the agreement and *was*, at least, given the car in question. He also had use of the car for a number of months and covered over 8,500 miles in it. So, in these circumstances, I can't undo what's already been done. And it's simply not possible to put Mr B back in the position he would be in if he hadn't been given the agreement in the first place.

I therefore have to think about some other way of putting things right in a fair and reasonable way bearing in mind all the circumstances of the case. Our website sets out the main things we consider when looking at putting things right in cases where we conclude that a lender did something wrong in irresponsible/unaffordable lending complaints.

We typically say the borrower should repay the amount lent and the lender refunds any interest, fees and charges the borrower paid. This is because the borrower will have had the benefit of the credit they were provided with and it's usually the extra paid over and above this – any interest fees and charges – that will have caused the consumer to lose out.

In this case, this would limit Mr B to paying back the amount he was originally lent through the agreement. But I don't think that a refund of the interest fees and charges is appropriate here. Mr B no longer has the vehicle and indeed Black Horse has sold it at auction. It would clearly be inappropriate for him to repay an amount which he'd clearly not had the full benefit of.

I've therefore given careful thought to how else it might be fair and reasonable to put things right for Mr B bearing in mind he was provided with an agreement he shouldn't have been provided with.

In circumstances where a borrower was provided with finance to purchase a car they were unable to afford to make the payments for, it's usually appropriate for the car to be returned and the agreement ended. Which has already happened here – so I don't need to make a finding about whether Mr B should return the car.

I also have to consider that Mr B was given a car, used it without paying anything for it and covered a number of miles in a relatively short period of time. So, while I accept that the agreement was unaffordable – nonetheless, I have to consider that Mr B had the use of a car that he seems to have needed.

I now turn to what it would be fair for Mr B to pay for the use of the vehicle. It's fair to say there isn't an exact formula for working out fair usage. But in deciding what's fair and reasonable I've thought about the amount of interest charged on the agreement, Mr B's usage of the car and what sort of costs he might have incurred to stay mobile in an equivalent car. As I've explained, Mr B had use of the car for no more than five months.

The investigator suggested a monthly payment of around £450 and capping it at £2,050 doesn't seem unreasonable considered the monthly cost of the agreement, the type of car Mr B and how old it was. So, I do think a fair usage figure is the £450 the investigator recommended. This means, Mr B will need to pay this to Black Horse.

However, as Mr B never made a payment to Black Horse and had use of the car then it therefore follows that this is going to be a balance owing to Black Horse even though the complaint has been upheld. There isn't anything unusual about this, it just reflects of the fact that Mr B has up until now had used the car and not paid anything for it.

My remit extends to being fair and reasonable to both parties, and so Mr B only having to pay a fair usage fee for the months that he had use of the car is fair and reasonable in the circumstances of the complaint. I appreciate that this will lead Mr B to having to discuss his situation with Black Horse but I would remind Black Horse that it's not fully aware of Mr B's vulnerability and it will need to treat him fairly and with forbearance.

I've also considered whether the relationship might have been unfair under s.140A of the Consumer Credit Act 1974. However, I'm satisfied the redress I have directed above results in fair compensation for Mr B in the circumstances of his complaint. I'm satisfied, based on what I've seen, that no additional award would be appropriate in this case.

Putting things right

In order to put things right for Mr B Black Horse should:

- Re-work Mr B's total outstanding balance to take account that Black Horse can only charge him £450 for each month that he had use of the vehicle and this should be capped at £2,050.
- An outstanding balance will still be due so I would remind Black Horse of its

obligation to treat Mr B fairly and with forbearance with discussing a way forward in order to try and come to a mutually agreeable repayment plan.

- Remove any adverse information once the agreement has been settled.

My final decision

For the reasons I've outlined above, I am upholding Mr B's complaint.

Black Horse Limited should put things right for Mr B as directed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 11 July 2025.

Robert Walker
Ombudsman