

Complaint

Mr L complains that Black Horse Limited ("Black Horse") unfairly entered into a hire-purchase agreement with him. He's said that the finance was unaffordable which resulted in him getting behind on his priority bills and almost losing his house.

Background

In October 2017, Black Horse provided Mr L with finance for a used car and some insurance products. The total price of the car and insurance was £10,503.45. Mr L paid a deposit of £4,500.00 and entered into a 60-month hire-purchase agreement with Black Horse for the remaining £6,003.45 he required for the purchase.

The loan had interest, fees and total charges of £2,044.35 (made up of interest of £2,034.35 and a £10 option to purchase fee) and the balance to be repaid of £8,047.80 (which does not include Mr L's deposit) was due to be repaid in 60 monthly repayments of £134.13. As I understand it, Mr L settled the finance in full in November 2022.

In January 2024, Mr L complained to Black Horse saying that it shouldn't have entered into this hire-purchase agreement with him, as it ought to have realised that it was unaffordable and this getting behind on his priority bills as well as almost losing his house.

Black Horse did not uphold Mr L's complaint. In the first instance, it considered that Mr L complained too late. Nonetheless, it was, in any event, satisfied that it had carried out proportionate checks at the time of Mr L's application and the results showed that it was reasonable to lend. Mr L was dissatisfied at this response and referred his complaint to our service.

Mr L's complaint was considered by one of our investigators. He reached the conclusion that proportionate checks would not have shown Black Horse that it shouldn't have entered into the hire-purchase agreement with Mr L. So he didn't think that Mr L's complaint should be upheld.

Mr L disagreed with our investigator and the complaint was passed to an ombudsman for a final decision.

My findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Basis for my consideration of this complaint

There are time limits for referring a complaint to the Financial Ombudsman Service. Black Horse has argued that Mr L's complaint was made too late because he complained more than six years after the decision to provide the finance as well as more than three years after he ought reasonably to have been aware of his cause to make this complaint.

Our investigator explained why it was reasonable to interpret Mr L's complaint as being one alleging that the relationship between him and Black Horse was unfair to him as described in s140A of the Consumer Credit Act 1974 ("CCA"). He also explained why this complaint about an allegedly unfair lending relationship had been made in time.

Having carefully considered everything, I've decided not to uphold Mr L's complaint. Given the reasons for this, I'm satisfied that whether Mr L's complaint was made in time or not has no impact on that outcome.

I'm also in agreement with the investigator that Mr L's complaint should be considered more broadly than just the lending decision. I consider this to be the case as Mr L has not only complained not about the decision to lend but has also alleged that making his payments to the agreement resulted in him getting behind on his priority bills and almost losing his house.

I'm therefore satisfied that Mr L's complaint can therefore reasonably be interpreted as a complaint about the overall fairness of the lending relationship between him and Black Horse. I acknowledge Black Horse still may not agree we can look Mr L's complaint, but given the outcome I have reached, I do not consider it necessary for me to make any further comment, or reach any findings on these matters.

In deciding what is fair and reasonable in all the circumstances of Mr L's case, I am required to take relevant law into account. As, for the reasons I've explained above, I'm satisfied that Mr L's complaint can be reasonably interpreted as being about the fairness of the lending relationship between him and Black Horse, relevant law in this case includes s140A, s140B and s140C of the CCA.

S140A says that a court may make an order under s140B if it determines that the relationship between the creditor (Black Horse) and the debtor (Mr L), 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 his 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. S140B 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 Mr L's complaint, I therefore need to think about whether Black Horse's decision to lend to Mr L, or its later actions resulted in the lending relationship between Mr L and Black Horse being unfair to Mr L, such that it ought to have acted to put right the unfairness – and if so whether it did enough to remove that unfairness.

Mr L's relationship with Black Horse is therefore likely to be unfair if it didn't carry out reasonable and proportionate checks into Mr L's ability to repay in circumstances where doing so would have revealed the monthly payments to the agreement to have been unaffordable, or that it was irresponsible to lend. And if this was the case, Black Horse didn't then somehow remove the unfairness this created.

I'll now turn to whether Black Horse acted fairly and reasonably when entering into the hire-purchase agreement with Mr L.

What we consider when looking at complaints about irresponsible or unaffordable lending

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 L's complaint.

I think that it would be helpful for me to set out that we consider what a firm did to check whether payments to credit were affordable (asking it to evidence what it did) and determine whether this was enough for the lender to have made a reasonable decision on whether to lend.

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.

That said, I think that it is important for me to explain that our website does not provide a set list of mandated checks that a lender is expected to carry out on every occasion – indeed the regulator's rules and guidance did not and still do not mandate a list of checks to be used. It simply sets out the types of things that a lender could do.

It is for a lender to decide which checks it wishes to carry out, although we can form a view on whether what was done was proportionate to the extent it allowed the lender to reasonably understand whether the borrower could make their payments.

Furthermore, if we don't think that the lender did enough to establish whether the repayments to an agreement were affordable, this doesn't on its own mean that a complaint should be upheld. We would usually only go on to uphold a complaint in circumstances where we were able to recreate what reasonable and proportionate checks are likely to have shown – typically using information from the consumer – and this clearly shows that the repayments in question were unaffordable.

I've kept this in mind when deciding Mr L's complaint.

Was Black Horse's decision to enter into a hire-purchase agreement with Mr L fair and reasonable?

Black Horse says it agreed to Mr L's application after he provided details of his income. It says it also carried out credit searches on Mr L which showed his mortgage payments and that he had non-mortgage existing debts of just over £20,000.00. Furthermore, Mr L had no significant adverse information – such as County Court Judgments ("CCJ") or defaulted accounts - recorded against him.

In its view, when reasonable repayments to the total amount Mr L owed plus a reasonable amount for Mr L's living expenses were deducted from his monthly income the monthly payments were still affordable.

I've thought about what Black Horse has said.

The first thing for me to say is given Mr L's income, his existing commitments and the amount of the monthly payment in this instance, there is a reasonable argument for saying that the checks that Black Horse carried out went far enough. After all, Black Horse took steps to cross check Mr L's declaration of income, his mortgage payment was ascertained from the credit search and most importantly of all the £4,500.00 advance payment Mr L was making was equivalent to over three years of monthly payments. In my view, it wasn't unreasonable for Black Horse to have used statistical data to have found out about Mr L's other living expenses in this instance.

For the sake of completeness and in any event, even if I were to say that Black Horse ought to have done more here, at best, all I would have expected it to do was find out a bit more about Mr L's committed living costs. However, Mr L hasn't been able to provide any information on his circumstances at the time that he applied for this finance agreement.

Therefore, I simply don't have the information to be able to say that Black Horse finding out about Mr L's actual living costs, rather than using statistical data, would have shown it that monthly payments for this agreement were as a matter of fact unaffordable for Mr L.

I appreciate that Mr L may feel that it is unreasonable and unfair to expect him to provide information which he doesn't have and cannot reasonably be expected to have. But I also have to take into account that it was Mr L who chose to complain in February 2024. As this is the case, I have to decide the complaint on what I have before me.

Equally, it is only fair and reasonable for me to uphold a complaint in circumstances where a firm failed to carry out reasonable and proportionate checks and carrying out those checks would have shown that any credit provided was unaffordable.

In this case, there's a reasonable argument for saying that Black Horse's checks were proportionate. In any event, I'm not persuaded that Black Horse doing more here would have made a difference, as I've not been provided with sufficient evidence that corroborates what Mr L has said about not being able to afford the monthly payments.

Mr L's comments regarding the outcome of other complaints he's made and inconsistency

In reaching my conclusions, I've noted that Mr L has queried how it is possible for us not to uphold this complaint in circumstances where he's had complaints about other loans (including at least one provided not too long before this one) upheld. I can understand why Mr L might find it strange that he's received a different outcome on this complaint which he perceives to be materially the same.

But it's important for me to explain that we consider complaints on an individual basis and looking at the individual circumstances. As I've already explained, what will constitute a proportionate check will very much depend on the particular circumstances of the individual application. A proportionate check, even for the same customer, could look different for different applications.

Furthermore, I'm not bound by the outcomes reached on different cases. Ultimately, I'm required to consider the facts of a case and reach my own conclusion on what's fair and reasonable in all the circumstances. So the outcome Mr L has referred to receiving on other cases cannot and does not bind me into reaching the same conclusion on this case.

That said, consistency is important and with a view to providing some clarity and reassurance to Mr L, it might help for me to explain that there are some key differences between this complaint and the main loan complaint we considered for Mr L.

Having looked at Mr L's main loan case, it's clear that he was advanced a higher amount at a much higher rate of interest, which meant that he had to pay higher monthly payments. Furthermore, Mr L wasn't paying a significant deposit like he did when applying for this hire-purchase agreement either. As this was the case, this significantly influenced the level of checks that firm was reasonably expected to carry out and what it was expected to have known about Mr L at the time of his application.

For the sake of completeness, I think it's also worth me stating as the loan complaints Mr L has referred to were upheld, the compensation he will have received has effectively placed him in the position he would be had he not been provided with that credit in the first place. As this correction has been made and that is effectively the position that Mr L is now in, it would not be fair and reasonable for me to now 'double count' this, by considering whether he could afford to make the payments to this agreement, as well as make payments to any loans he's already been placed in the position of not having.

To do so, would seek to place Mr L in the position he would be in had he not been provided with any credit, because Mr L was in a position where he couldn't afford to repay any credit at all. I don't think that this is the position that the checks carried out showed Mr L was in, neither do I think that further checks will have shown that this was the position that Mr L was actually in either.

As this is the case, while I'm not required to replicate the outcomes reached on other cases, nonetheless I don't consider that my answer here is incompatible or inconsistent with the ones Mr L received on other loan complaints, notwithstanding the differing outcomes.

Finally, I've noted that Mr L has said that he was unfairly charged for moving his repayment date. Having looked at Mr L's statement of account, I can see a number of instances where Mr L's repayment date was changed. Indeed, the result of these changes saw the payment date gradually move from the start of the month to the end of the month.

I can only see a single charge of £7.43 was applied in October 2020. I think that this was to cover any additional accrued interest at that point. Furthermore, given the amount of the charge relative to the overall costs of the agreement and the fact that there isn't anything to indicate that Mr L told Black Horse that he need to change his payment date because he was struggling to make his repayments, I don't think that this charge was unfair.

Overall and having considered everything, I don't think that Black Horse did anything wrong when deciding to lend to Mr L - it arguably carried out proportionate checks and reasonably relied on what it found out which suggested the repayments were affordable. And, in any event, I've not been provided with sufficient evidence to be persuaded that it doing more to find out about Mr L's actual living costs at the time of the application, would have resulted in it making a different decision.

In these circumstances, I don't find that the lending relationship between Mr L and Black Horse was unfair to Mr L. I've not been persuaded that Black Horse created unfairness in its relationship with Mr L by irresponsibly lending to him when it entered into this hire-purchase agreement with him. And I don't find Black Horse treated Mr L unfairly in any other way either based on what I've seen.

So overall and having considered everything, while I can understand Mr L's sentiments and appreciate why he is unhappy, I'm nonetheless not upholding this complaint. I appreciate that this will be very disappointing for Mr L. But I hope he'll understand the reasons for my decision and that he'll at least feel his concerns have been listened to.

My final decision

My final decision is that I'm not upholding Mr L's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 25 July 2025.

Jeshen Narayanan
Ombudsman