

Complaint

Mr G 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 ongoing difficulty.

Background

In December 2014, Black Horse provided Mr G with finance for a used caravan. The cash price was £24,617.18. Mr G didn't pay a deposit and entered into a 120-month hire-purchase agreement with Black Horse for the entire amount.

The loan had interest, fees and total charges of £14,834.82 (made up of hire-purchase charges of £14,524.42, a Credit Facility Fee (Part A) of £155, a Credit Facility Fee (Part B) of £145 and a £10 option to purchase fee) and the total amount to be repaid of £39,451.60 was due to be repaid in a first monthly payment of £483.62 followed by 1116 monthly repayments of £326.18 and then a final repayment of £461.18.

In March 2023, Mr G 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 resulted in ongoing difficulty.

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

Mr G's complaint was considered by one of our investigators. She 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 G. So she didn't think that Mr G's complaint should be upheld.

Mr G 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 G'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 said it was reasonable to interpret Mr G'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"). She also said that this complaint about an allegedly unfair lending relationship had been made in time.

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

I'm also in agreement with the investigator that Mr G's complaint should be considered more broadly than just the lending decision. I consider this to be the case as Mr G has not only complained not about the decision to lend but has also alleged that this finance caused ongoing difficulty.

I'm therefore satisfied that Mr G'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 G'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 G's case, I am required to take relevant law into account. As, for the reasons I've explained above, I'm satisfied that Mr G'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 G), 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 G's complaint, I therefore need to think about whether Black Horse's decision to lend to Mr G, or its later actions resulted in the lending relationship between Mr G and Black Horse being unfair to Mr G, such that it ought to have acted to put right the unfairness – and if so whether it did enough to remove that unfairness.

Mr G's relationship with Black Horse is therefore likely to be unfair if it didn't carry out reasonable and proportionate checks into Mr G'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 G.

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 G'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 G's complaint.

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

Black Horse says it agreed to Mr G's application after he provided details of his occupation and his employer. It says Mr G declared an annual income of £27,000.00 and expenditure of £1,383.00. It says it also carried out credit searches on Mr G. In its view, when reasonable repayments to the total amount Mr G owed and his living expenses were deducted from his monthly income the monthly payments were still affordable.

I've thought about what Black Horse has said.

While Black Horse has been able to tell us about some of the information it considered, it hasn't provided us with the original output of the data which it relied upon to determine that the repayments to this loan were affordable for Mr G. As this is the case, I haven't seen

anything to corroborate what Black Horse has said about the information it relied upon to reach the conclusion that this agreement was affordable for Mr G.

That said, given it has been over a decade since Mr G applied for this credit, I don't think that is surprising that it hasn't been able to provide this data. So I've not drawn any adverse conclusions as a result of Black Horse no longer having information I wouldn't necessarily expect it to have at this stage.

Nonetheless, the lack of corroborating evidence here means that I'm not in a position where I can reasonably conclude that Black Horse did take sufficient steps to understand whether Mr G could afford the monthly payments. So I'm not satisfied that it did complete proportionate checks before agreeing to provide this loan to Mr G.

As I've not seen enough to be satisfied that Black Horse carried out sufficient checks before entering into this agreement with Mr G, I've gone on to decide what I think Black Horse is more likely than not to have seen had it carried out proportionate checks. Bearing in mind the circumstances here, I would have expected Black Horse to have had a reasonable understanding about Mr G's actual regular living expenses as well as his income and existing credit commitments.

Having considered the information provided, I'm satisfied that Black Horse doing more here wouldn't have made a difference to its decision to lend in this instance. I say this because the information Mr G has provided from the time does appear to show that when his discernible committed regular living expenses and the credit commitments Black Horse is likely to have known about are deducted from his income, he did have the funds, at the time at least, to sustainably make the repayments due under this agreement.

In reaching my conclusions, I've noted that Mr G has now carried out a line-by-line analysis of his bank statements and has reached the view that he didn't have any disposable income at all, let alone sufficient funds to make the monthly payments he was committing to. However, I also have to keep in mind that Mr G's most recent submissions that he didn't have any disposable income are being made in support of a claim for compensation.

I think it's fair to say that notwithstanding what Mr G now says about his situation he nonetheless approached Black Horse for finance that he presumably wanted and any explanations Mr G would have provided at the time are more likely to have been with a view to persuading Black Horse to lend to him, rather than highlighting any unaffordability.

Furthermore, Mr G's analysis has been carried out with the use of bank statements and this includes all of his expenditure. Black Horse didn't obtain copies of Mr G's bank statements. This wasn't a requirement at the time of Mr G's application and it still isn't a requirement for a lender to request such information now.

To be clear, I've merely looked at the bank statements provided in order to get some idea of what Mr G is likely to have declared if asked, rather than because I'm looking at information that Black Horse should have requested. So while Mr G has referred to things such as having returned direct debits on his bank statements, I'm not persuaded that a proportionate check would have made Black Horse aware of this.

I note that Mr G is also unhappy that other credits have been included as part of his income and that his wife's income has also been taken into account, in order to determine what it is likely his existing commitments were. Mr G believes that this is unfair as he was the party lent to not his wife and therefore Black Horse should have conducted a review of his individual circumstances.

I've thought about what Mr G has said. However, by having a joint account with his wife, which both of their salaries were paid into, it is clear that their finances were inextricably linked. In reality, the household expenses were being paid from a joint shared pot and there wasn't any determining of the proportion Mr G, or his wife would pay. So any such attempt to now try and extricate Mr G's household expenditure from his wife's would create an artificial situation that simply wouldn't reflect the reality of Mr G's situation at the time.

In any event, I'm also mindful that Mr G was being provided with a caravan, rather than cash. This was likely to be used by his family and not just himself. So even if there was a split in how the household expenditure was covered and Mr G's and his wife contributions could and should be separated in the way that he now says they should be, I think it's likely that Mr G's contribution to the household expenses would likely flex up and flex down depending on the funds he had and in order to reflect that this hire-purchase agreement was providing a benefit for the family. This is despite the fact that the finance was taken solely in his name.

Overall and having considered everything, I don't think that Black Horse did anything wrong when deciding to lend to Mr G. It's possible that it carried out proportionate checks and reasonably relied on what it found out which suggested the repayments were affordable but cannot evidence this because it is more than ten years since it agreed to lend to Mr G. In any event, I've not been persuaded that it doing more to find out about Mr G's actual living costs at the time of the application, would have resulted in it making a different decision.

I've noted what Mr G has said about the fact that a lender shouldn't consolidate existing borrowing into a loan over a longer term as it is likely to be more expensive. There isn't a prohibition on consolidating borrowing where it could result in the total amount repaid being higher. Indeed, there are many reasons why a customer may prefer to consolidate existing borrowing over a longer term even where the overall cost may be higher. For example, because the monthly cost might be lower.

The important thing when doing so is for the lender to take reasonable steps to ensure that the new monthly payments are affordable. I've already explained why I'm satisfied that proportionate checks would more likely than not have shown the monthly payments to this agreement were affordable for Mr G. Furthermore, there's no indication that Mr G was unaware that his existing loan was being consolidated in this way either. Bearing in mind all of this, I don't think that Black Horse consolidating Mr G's existing finance was unreasonable.

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

So overall and having considered everything, while I can understand Mr G'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 G. 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 G's complaint.

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

Jeshen Narayanan
Ombudsman