DRN-5777313

The complaint

Mr H is complaining about Black Horse Limited. He says they were irresponsible in lending to him as the repayments were unaffordable. A representative has been dealing with Mr H's complaint but for ease I've written as if we've dealt with Mr H directly throughout.

What happened

In February 2019, Mr H took out a hire purchase agreement with Black Horse to finance the purchase of a vehicle. The cash price of the car was £12,434, and Mr H borrowed £11,312.23. The agreement required him to make 47 monthly repayments of £213.85, with an optional final instalment of £4,330 which would enable Mr H to keep the car. Mr H's statement of account with Black Horse shows a lot of rejected direct debits but he settled the agreement in February 2023 as expected.

Mr H complained to Black Horse in April 2024, saying they hadn't carried out an appropriate affordability assessment before lending to him. He said he was reliant on credit at the time as was evident from his credit report.

Black Horse didn't uphold Mr H's complaint. They said before lending to Mr H they'd carried out a credit check and an income and expenditure assessment and determined he had enough disposable income to comfortably make the repayments under this agreement.

Our investigator looked into Mr H's complaint and thought it should be upheld. He said he didn't think Black Horse had done proportionate checks – and if they had, they'd have realised the agreement wasn't affordable for Mr H. So, he said, they should refund him any amounts he'd paid in excess of the cash price of the car. In response, Black Horse maintained their position that they'd done enough checks. They also reviewed the bank statements Mr H provided and disagreed with our investigator's assessment of his disposable income. Black Horse also said Mr H hadn't previously raised any concerns about the affordability of the agreement at inception. Our investigator and Black Horse were unable to reach an agreement, so the matter's come 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.

Having done so, I'm upholding Mr H's complaint for broadly the same reasons as our investigator – I'll explain below.

The Financial Conduct Authority (FCA) sets out in a part of its handbook known as CONC what lenders must do when deciding whether or not to lend to a consumer. In summary, a firm must consider a customer's ability to make repayments under the agreement without having to borrow further to meet repayments or default on other obligations, and without the repayments having a significant adverse impact on the customer's financial situation.

CONC says a firm must carry out checks which are proportionate to the individual circumstances of each case.

Did Black Horse carry out proportionate checks?

Black Horse said Mr H told them his annual income was £30,000. They verified this using an automated tool provided by a credit reference agency, and his income was confirmed with high confidence. They said in respect of expenditure, they used statistical data from the Office for National Statistics (ONS) to estimate Mr H's essential living costs, and they said they used his credit report to estimate what he needed to pay each month towards his revolving credit. Black Horse said Mr H had told them his mortgage contribution was £250, and he had other material expenses of £150. Black Horse then deducted all of this from his monthly income to arrive at a figure of disposable income which appeared to be high enough that the new borrowing would be affordable. It appears that Black Horse didn't deduct Mr H's payments towards his fixed-term credit – only his revolving credit.

Black Horse also said they'd carried out a credit check and this showed he had at least nine active credit relationships, was up to date on all payments and hadn't missed any payments in the prior six months.

Mr H needed to pay Black Horse over £15,500, and over a period of four years, so I'd expect their checks to have been thorough. But CONC allows a business to use automated income verification and to rely on statistical data for expenditure, so whether or not these checks were proportionate depends on what Black Horse found.

From what I've seen, Black Horse didn't include any repayments towards non-revolving credit in their income and expenditure assessment, only repayments towards revolving credit. And Black Horse haven't sent a copy of the credit report they reviewed – only a summary.

So I've looked at the credit report Mr H sent, which shows that at the time of lending, he had three credit cards, a mail order account, an overdrawn current account, seven unsecured loans, and an existing hire purchase agreement. His total credit was around £12,000. I can't see Mr H missed any payments on any of the accounts. But I can see he had several short-term, high-cost loans at the time of his application. And he'd used this type of credit extensively in the twelve months prior to his application to Black Horse.

In this context, I'm not persuaded Black Horse's checks were reasonable and proportionate. Mr H's credit file suggests he was likely reliant on credit, and therefore suggests that his expenditure might be higher than the averages shown in the statistical data. And, if Black Horse had included repayments for unsecured loans as well as the repayments on revolving credit, they'd have determined that Mr H had no disposable income. I'm therefore of the opinion that Black Horse should have done more to understand Mr H's financial circumstances at the time.

That doesn't necessarily mean I can uphold Mr H's complaint – I need to consider whether they'd have been able to fairly decide to lend to Mr H if they had done proportionate checks.

If Black Horse had done proportionate checks, what would they have found?

A proportionate check would have involved Black Horse finding out more about Mr H's income, credit commitments and expenditure to determine whether he'd be able to make the repayments in a sustainable way.

Mr H's bank statements show his net income averaged around £2,700 per month – taking into account his weekly pay and his monthly pension. Black Horse calculated Mr H's payments to existing creditors were around £1,368 per month. It's likely this would have included the £157 Mr H was paying towards his existing hire purchase agreement, which he settled when he took out this one. Deducting that would have left him with around £1,211 in payments to existing creditors.

Looking then at Mr H's other expenditure, I can see from his bank statements that he paid around £560 per month in council tax, utilities, and insurance, and around £120 per month for TV and communications. And he paid around £200 per month in other regular monthly payments (including subscriptions, payments to debt recovery companies, bank fees, and road tax). Mr H also made regular contributions to family members, totalling around £250 per month. Taking all this into account, it looks as though Mr H would have had around £350 per month leftover before taking into account any costs of food and fuel, and before taking into account the payments needed under this agreement, which were nearly £214 per month.

On balance then, I'm satisfied that if Black Horse had carried out reasonable and proportionate checks, they'd have found that this new agreement was unlikely to be sustainably affordable for him. I appreciate Mr H was making some payments to savings accounts. But the bank statements also show that he had very little in his savings accounts. And overall, I've seen very little evidence of discretionary spending. This aligns with the level of short-term, high-cost credit he was taking out. In summary, then, I'm not satisfied Black Horse carried out reasonable and proportionate checks, and if they had, I'm not persuaded they'd have been able to fairly decide to lend to Mr H.

Putting things right

Because Black Horse shouldn't have approved the loan, it's not fair that they retain any interest or other charges under the agreement. But Mr H has had use of the vehicle and it's fair he pays for that use. So, to settle Mr H's complaint, Black Horse should do the following:

- Refund to Mr H all payments he made in excess of £12,434, being the cash price of the car. Refund any overpayments, adding 8% simple interest per year from the date of each overpayment to the date of settlement.

- Remove any adverse information recorded on Mr H's credit file regarding the agreement.

If Black Horse consider tax should be deducted from the interest element of my award, they should provide Mr H a certificate showing how much they've taken off so that Mr H can reclaim that amount, assuming he is eligible to do so.

My final decision

As I've explained, I'm upholding Mr H's complaint. Black Horse Limited need to take the steps I've outlined above to settle the matter. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 20 October 2025.

Clare King
Ombudsman