

Complaint

Miss S complains that Black Horse Limited (“Black Horse”) unfairly entered into a hire-purchase agreement with her. She’s said that the finance that was unaffordable and this caused ongoing difficulty going forward particularly as she had to borrow to make the final repayment.

Background

In March 2017, Black Horse provided Miss S with finance for a used car. The purchase price of the vehicle was £20,885.00. Miss S paid a total deposit of £5,000.00 (made up £1,500.00 and a part exchange of £3,500.00 she received for her existing car) and entered into a 48-month hire-purchase agreement with Black Horse for the remaining £15,885.00 she required.

The loan had interest, fees and total charges of £4,991.16 (comprising of interest of £4,881.16 and an option to purchase fee of £10), and the balance to be repaid of £20,876.16 (which does not include Miss S’ deposit) was due to be repaid in 47 monthly instalments of £286.28 followed by a final payment of £7,421.00 which Miss S had to pay if she wished to keep the car.

In October 2024, Miss S complained to Black Horse saying that the agreement was unaffordable and therefore Black Horse shouldn’t have entered into it with her. After eight weeks had passed and she had not received a final response, Miss S referred her complaint to our service.

Miss S has also complained about the commission Black Horse paid the broker that introduced her. We’ve explained that Miss S’ commission complaint is being looked at separately and so far we’ve only considered matters relating to whether Black Horse acted fairly and reasonably in agreeing to enter into this hire-purchase agreement with Miss S.

When it responded to our service, Black Horse explained that it believed that Miss S had complained too late. Miss S’ complaint was subsequently considered by one of our investigators. He reached the conclusion that proportionate checks would not have shown Black Horse that it shouldn’t have provided Miss S with the finance. So he didn’t think that Miss S’ complaint should be upheld.

Miss S 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 Miss S' complaint was made too late because she complained more than six years after its decision to provide the finance as well as more than three years after Miss S ought reasonably to have been aware of her cause to make this complaint.

Our investigator explained why it was reasonable to interpret Miss S' complaint as one alleging that the relationship between her and Black Horse was unfair to her 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 Miss S' complaint. Given the reasons for this, I'm satisfied that whether Miss S' complaint about the hire-purchase agreement was made in time or not has no impact on that outcome.

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

I'm therefore satisfied that Miss S' complaint can therefore reasonably be interpreted as a complaint that the lending relationship between herself and Black Horse was unfair to her. I acknowledge Black Horse may still disagree that we can look Miss 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 Miss S' case, I am required to take relevant law into account. As, for the reasons I've explained above, I'm satisfied that Miss S' complaint can be reasonably interpreted as being about the fairness of the lending relationship between her 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 (Miss S), 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 Miss S' complaint, I therefore need to think about whether Black Horse's decision to lend to Miss S, or its later actions resulted in the lending relationship between Miss S and Black Horse being unfair to Miss S, such that it ought to have acted to put right the unfairness – and if so whether it did enough to remove that unfairness.

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

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 Miss S' complaint.

I think that it would be helpful for me to set out that we consider what a firm did to check whether repayments 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 it 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 a for a lender to decide which checks it wishes to carry out, although we can form a view on whether we think 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 a 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 Miss S' complaint.

Was Black Horse's decision to enter into the hire-purchase agreement with Miss S fair and reasonable?

Black Horse says it agreed to Miss S' application after Miss S provided details of her income which it cross checked against information from credit reference agencies on the amount of funds going into her main bank account. It says it also carried out credit searches on Miss S which showed that she didn't have any significant adverse information – such as defaulted accounts or county court judgments (“CCJ”) – recorded against her. Finally, the credit search also showed that the amount Miss S owed to existing creditors was low.

In Black Horse's view, when reasonable repayments to the credit commitments Miss S already had were combined with the monthly repayments to this agreement and then deducted from her income, she had enough left over to be able to meet her living costs and other non-discretionary expenditure.

On the other hand, Miss S has said that the repayments were unaffordable for her and this created ongoing financial difficulties.

I've thought about what Black Horse and Miss S have said.

The first thing for me to say is that the information Black Horse obtained at the time does suggest that it was reasonable for it to conclude that when Miss S' existing credit commitments were deducted from what she received each month, she did have the funds, at the time at least, to sustainably make the repayments due under this agreement.

I say this because not only was the amount that Miss S owed elsewhere was low, but she was paying a cash deposit of over five months' worth of the monthly payments. When this is taken together with the fact that Miss S wouldn't have much else in terms of credit commitments apart from the hire purchase repayments, I think that it would be reasonable to conclude that she would likely have sufficient funds left over to meet her other essential non-discretionary expenditure.

In any event, and perhaps for the sake of completeness, I should add that at best, even if I were to accept that further checks were necessary, which I'm not necessarily persuaded is the case here, any such checks would only have gone as far as finding out more about Miss S' regular living costs. And, the information provided doesn't show me that Miss S' regular living costs meant that she couldn't afford the monthly payments.

I'm also mindful that Miss S' most recent submissions are being made in support of a claim for compensation and at the time of the application at least, Miss S would have wanted the car. So, in my view, any explanations she would likely have provided to Black Horse at the time are more likely to have been with a view to persuading it to lend her, whereas now she's trying to show that the agreement was unaffordable.

Equally, it is only fair and reasonable for me to uphold a complaint in circumstances where I can see that any credit provided was unaffordable. I'm satisfied that the available information show me that proportionate checks would more likely than not have shown that Miss S could make the monthly payments that she had to make to this agreement in a sustainable manner.

The final payment Miss S had to make to take ownership of the car

In reaching my conclusions, I've also noted that Miss S has said that she wasn't able to afford the final payment on the agreement. I don't know whether or not this is the case as Miss S did as a matter of fact make the final payment and take ownership of the car. In any event, whether or not Miss S could make the final payment as I explained in the background section of this final decision, the final payment was optional.

As Miss S wasn't required to make this payment, Black Horse wasn't required to ensure that Miss S was able to make this payment as part of its affordability assessment. So even if Miss S did have to borrow the funds to make the optional final payment, as it would have been Miss S' decision to keep the car at the end, even though she didn't have to, I'm not persuaded that this means her complaint should be upheld. Indeed, the rules do not require a firm to establish that an optional final payment can be made without the customer borrowing further in order for an agreement to be affordable.

For the sake of completeness, I would also add that I'm satisfied that any argument that Miss S should have been given a regular hire-purchase agreement, instead of this one which had an optional final payment, would not succeed either.

I say this because the absence of a larger optional final payment would mean that a regular hire-purchase agreement would have had higher monthly payments, which Miss S would have been obliged to make. In circumstances, where she alleges that the monthly payments on her agreement were unaffordable, it would be irrational and illogical for me to conclude that she would have opted for an agreement with higher monthly payments that she would have been obliged to make under the terms of the agreement.

Overall and bearing in mind everything I've set out, I don't find that the lending relationship between Miss S and Black Horse was unfair to Miss S. I've not been persuaded that Black Horse created unfairness in its relationship with Miss S by irresponsibly lending to her when it entered into this hire-purchase agreement with her. And based on what I've seen, I don't find Black Horse treated Miss S unfairly in any other way either.

So while I can understand Miss S' sentiments and appreciate why she is unhappy, I'm nonetheless not upholding this complaint. I appreciate that this will be very disappointing for Miss S. But I hope she'll understand the reasons for my decision and that she'll at least feel her concerns have been listened to.

My final decision

Your text here

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 16 February 2026.

Jeshen Narayanan
Ombudsman