

complaint

Mr and Mrs M complain that Black Horse Limited have overcharged them for interest due on their secured loan. They also complain that the debt has been sold to another company. Mr and Mrs M want the loan written off, a refund of overpayments made and their credit files amended.

background

Mr and Mrs M took out a secured loan with Black Horse, together with payment protection insurance ("PPI"). They received documents setting out the interest rate and how much overall they would pay to Black Horse. Later, Mr and Mrs M made a PPI claim and ended the policy. Black Horse refunded the money paid under the PPI policy and later sold the loan to I Ltd.

Mr and Mrs M complained that they'd paid more interest than they should have after the PPI policy ended, and they'd paid more overall than Black Horse originally said they would. Black Horse had also recorded the arrears on the account on their credit files. Mr and Mrs M said Black Horse had failed to answer either their letters or I Ltd's letter asking the same questions.

Black Horse said it had correctly worked out the interest due on Mr and Mrs M's loan – it charged the agreed rate of interest on the amount left to pay. If Mr and Mrs M had paid the monthly amount each month, which was higher than originally planned due to the arrears, the loan would've been paid off on the date it was due to end. Black Horse pointed out when there were arrears, the total interest due would be higher than originally stated as the sum left to pay would be higher too. It said it had written off a large amount of fees and charges to help Mr and Mrs M. Black Horse also said that it was able to sell loans to another company under the terms and conditions of the loan, even in this case where payments weren't being made on time by Mr and Mrs M.

Mr and Mrs M complained to us. The adjudicator's view was that Black Horse had acted fairly and reasonably – he thought it was able to sell the loan to I Ltd, and the interest had been calculated correctly as there were arrears on the account and Mr and Mrs M didn't pay every month as required. The fact that it was taking longer to pay the loan than planned also increased the interest due. The adjudicator said Black Horse had sent annual statements and that the statements had the required information.

Mr and Mrs M disagreed. They said Black Horse told them the arrears had been cleared with the PPI compensation. They also thought it shouldn't charge interest when regular statements hadn't been received and the one statement they had didn't say overpayments were possible. Mr and Mrs M thought it was possible Black Horse shouldn't have lent them the money in the first place.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I can't deal with the new complaint about the decision to lend to Mr and Mrs M and the relationship between Black Horse and other lenders as that wasn't part of the original complaint and hasn't been investigated.

I appreciate Mr and Mrs M have spent a lot of time trying to calculate what they owe and why. Mr and Mrs M are right in believing the confusion started with the PPI refund. Before the PPI refund, Mr and Mrs M were in arrears. They hadn't paid the monthly payment in full every month since the loan was taken out.

When the PPI refund was paid, Black Horse made a mistake. It told Mr and Mrs M that it had used part of the money to clear the arrears, but it didn't. It only paid part of the arrears and gave Mr and Mrs M too much money. It isn't my role to punish businesses when they make mistakes; my role is to ensure consumers are put back into the position they should've been all along if the mistake hadn't happened. In this case, when Black Horse realised its mistake it wrote off the fees which should have been paid using the PPI compensation. It also let Mr and Mrs M keep the overpayment. I think this was fair and reasonable, even though it meant Mr and Mrs M financially profited from the mistake.

But Mr and Mrs M were in arrears after receiving the PPI refund anyway as they didn't pay the monthly payment for the next few months. And there were still unpaid arrears of £611.82 due from before the PPI compensation was paid. I think it's fair and reasonable for Black Horse to refuse to write off the earlier arrears as Mr and Mrs M owed the money. Its mistake in saying the arrears were cleared doesn't mean the money isn't owed. Mr and Mrs M aren't in a financially worse position by being asked to pay what they owe, particularly as Black Horse dealt with the mistake by writing off fees and letting them keep the overpayment.

Mr and Mrs M more recently have missed several monthly payments too. Their calculations haven't taken into account how arrears are dealt with when working out interest. Under the terms and conditions of the loan, Black Horse works out the interest due monthly. If payments are missed, the amount owed under the loan increases. This means the amount of interest due increases. Having looked at the evidence, I think Black Horse has correctly calculated the interest due and the amount Mr and Mrs M have left to pay.

I have also considered the annual statements and arrears statements Black Horse sent to Mr and Mrs M. I accept Mr and Mrs M may not have received the statements, but that isn't Black Horse's fault. I think it's more likely than not the statements were sent. Mr M has pointed to decisions where Black Horse's statements have been found not to comply with the regulations. Those decisions were about a different type of lending. Having looked at the statements and considered the regulations dealing with secured loans, I think Black Horse's statements do contain the required information. For example, Mr M sent a statement which he said didn't explain overpayments were possible – in my view, the statement did say overpayments could be made and who to contact about that.

Mr and Mrs M aren't happy that their loan has been sold to another company, but Black Horse is able to sell loans under the terms and conditions of the loan due to the arrears history. I can't say Black Horse has been unfair or unreasonable in deciding to sell this loan.

The credit file I have seen correctly records that Mr and Mrs M were in arrears with their loan repayments. I can't say it's unfair or unreasonable for Black Horse to have recorded this as it is required to pass on this information.

I am aware Mr and Mrs M recently have been told they will get more PPI compensation. The letter sent to them doesn't explain clearly whether this is because of recent court decisions or for other reasons. But the extra compensation wouldn't have been enough to clear the arrears and if paid at the same time as the original PPI compensation would've have been handed over to Mr and Mrs M due to Black Horse's mistake. I can't say this extra compensation changes the position of Mr and Mrs M.

my final decision

My final decision is that I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs M to accept or reject my decision before 9 November 2015.

Claire Sharp
ombudsman