

complaint

Miss V complains that interest and charges Black Horse Limited added to a loan were unfair.

background

Miss V bought a used car in October 2004, financed by a five-year fixed-sum loan with Black Horse. She began struggling with repayments in 2005 and fell into arrears. In June 2007 Black Horse 'modified' Miss V's agreement. This reduced her repayments from £310.01 to £240.92 per month but added £1,560.52 interest and extended the loan's term by just over two years.

Miss V continued to struggle to meet her repayments and, in September 2009, told Black Horse that she was entering a debt management plan. Although Black Horse initially froze interest and charges on the account, it started adding these again in May 2010. Black Horse sold the debt to a third party in August 2012.

Our adjudicator upheld the complaint. He was satisfied that, in May 2010, Miss V's financial difficulties meant she could afford to pay only £50 per month towards the debt. In the circumstances, he concluded that late payment interest (LPI) and charges added to Miss V's account from May 2010 were unreasonable. He also found that Black Horse acted unreasonably by modifying the agreement in 2007. Whilst the modification reduced Miss V's monthly repayments, it increased her overall level of debt. He recommended that Black Horse:

- remove LPI and charges applied to the debt after May 2010; and
- remove the interest added to the loan when it was modified in 2007.

Whilst Black Horse agreed to the first of these recommendations; it did not agree to the second. As a result, the matter was referred to me.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Having done so, I uphold the complaint.

First, I can see that Miss V has repeatedly argued about the legality and/or enforceability of the original loan agreement. The Consumer Credit Act 1974 gives the courts discretion to decide whether a credit agreement is enforceable, however no comparable power is given to this service. If Miss V wishes to argue that her loan agreement is unenforceable, she must do so in court.

It is clear to me that Miss V struggled to meet her repayments from 2005 onwards. And it is also clear that the LPI and charges added to the account while Miss V was making significantly reduced payments were unreasonable. Taking one four month period as an example, Miss V paid Black Horse £20 from June to September 2011; Black Horse added over £400 in LPI and other charges to the account in the same period. In total, Black Horse added £3,308.93 in LPI and other charges between May 2010 and August 2012. It accepts that this was inappropriate and has agreed to remove these charges.

That just leaves the issue of the modified loan in June/July 2007 which added £1,560.52 to Miss V's debt. Black Horse says that it was drawn up to reduce Miss V's monthly payments

and with her agreement. Miss V says that the modification was presented as her only option; if she did not agree to it, she says Black Horse told her it would repossess the car. (I note here that this is a fixed-sum loan rather than a hire purchase agreement and the terms of the original agreement do not say that Black Horse may repossess the car.) Miss V also says she was unaware that the modification increased her total debt.

However, Black Horse did accept reduced repayments without modifying the agreement from 2008 onwards. As such, it is not clear why a modification to the original loan was necessary a year earlier. Nor is it clear how Black Horse satisfied itself that reducing repayments by just over 20% would make the loan affordable and sustainable for Miss V. Finally, it is not apparent from Black Horse's internal notes that any other option was discussed with Miss V, such as a temporary repayment plan.

On balance, I do not consider the modification to the loan was appropriate. It follows that Black Horse should remove the interest added to the modified loan in June 2007.

my final decision

My final decision is that I uphold the complaint and order Black Horse Limited to arrange with the third party that now owns Miss V's account to reduce the account balance by £4,869.45, representing:

- £3,308.93 in interest and charges applied since 1 May 2010; and
- £1,560.52 in interest added to the account in June 2007 when the loan was modified.

Simon Begley
ombudsman