

complaint

Mr P says that Black Horse Limited ('Black Horse') shouldn't have given him a hire purchase agreement because he couldn't afford it.

When I refer to what Mr P has said I'm also including those things said on his behalf.

background

Mr P says that the credit broker didn't do proper checks when he took out the agreement in April 2015. And if it had done it would've seen that he couldn't afford to pay for it. He wants to return the car, cancel the finance and get back his deposit.

Our adjudicator thought the loan was unaffordable at the point of sale. He said that Black Horse should cancel the finance and take back the car. However, after considering Mr P's use of the car he didn't think it was fair to refund the deposit or any instalments.

Black Horse doesn't agree. In summary, it says that Mr P paid a large deposit and the first instalment without obvious difficulties. And he confirmed to the broker that he was employed with earnings between £1,200 and £1,600 a month. Black Horse says that this is a case of '*change in circumstances/customer mis-representation at the point of sale*'.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Black Horse has sent other decisions by this service to show why it is right. I remind Black Horse that I decide each case on its own individual circumstances, and it is rare for two cases to be exactly alike. I also remind Black Horse that in this case it is responsible for the actions of the broker which arranged the finance at the dealership.

Mr P says that he was offered some building work with the prospect of earning up to £1,650 a month. Mr P says he told the credit broker this.

Black Horse says that Mr P misled the broker and confirmed he was employed and earning a good salary. However, I don't think he misled Black Horse just because the application form he filled out refers to '*employment*'. This is just the format of the application form the broker gave him - from what I can see there isn't a specific area to fill in for self-employment.

I find what Mr P has said to be credible and I note that on the form he filled in he says he is a '*building contractor*' - which backs up his story that he told the broker he was self-employed. And the '*time with employer*' box has been left blank, which shows that he hasn't started the work yet (or hasn't been doing the job very long).

From the information Mr P provided, including his projected monthly income, and considering the size of the loan and significant repayments I think that some questions could have reasonably been raised to check if the lending was sustainable. And had some checks been made to see if Mr P could meet the payments, it would have been quite clear that he wasn't earning anything when he took out the agreement. His bank statements prior to taking the finance show low or overdrawn monthly balances and no obvious regular wage. It would be quite clear that at the time the finance was sold he couldn't afford payments of £330 a month to finance the car.

I know that Mr P put down a large deposit – but this isn't an indication that the borrowing was affordable. It is reasonably explained that this lump sum was due to the sale of a car he received as a gift from a family member. In fact Mr P clearly couldn't sustain the borrowing as he only managed to make one payment before falling behind. I disagree with Black Horse that making this one payment shows that the lending was affordable at the point of sale – I think in this case it shows the opposite.

I understand that Mr P signed the agreement, and that he would probably have understood what he was signing up too. But it is the duty of the lender to ensure that it lends responsibly and that the repayments are sustainable. I don't think enough was done in this case, and ultimately I think that if more was done it would have been clear that the lending was unaffordable at the point of sale. And although he may have misjudged his potential earnings as a contractor I don't think that Mr P intentionally misled the broker, or prevented it from making reasonable checks based on the information he gave it.

I think that as the lending was unaffordable at the point of sale the finance should be cancelled and Mr P should be able to return the car. He says he has stopped using the car and has confirmed that it has been declared off road since November 2014. I note that Mr P appears to have been driving the car up until around this time and has covered around 5,000 miles since purchase. He has paid one instalment of around £330 but I don't think this is enough for his use. I think that Mr P's deposit of £1,500 fairly reflects his usage and Black Horse should be able to keep this.

However, as the loan should never have been given to Mr P I don't think it's fair that he should have information about it on his credit file. This is a bit different to what our adjudicator said, but I have told Black Horse about my thoughts and it hasn't provided anything to change my mind.

my final decision

I direct Black Horse Limited to cancel the finance agreement and take back the car at no further cost to Mr P. It should also remove any information about the loan from his credit file.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 11 February 2016.

Mark Lancod
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