

complaint

Mr W and Miss H's complaint concerns two loans, one secured one unsecured taken with Black Horse Limited. They consider that the amount they repaid to a secured loan when settling it early was too high – and that Black Horse failed to properly explain the early settlement provisions or the related payment protection insurance (PPI).

Mr W and Miss H are also unhappy with a joint unsecured loan as they consider it was irresponsible of Black Horse to agree it when Mr W had an outstanding unsecured loan in his sole name. They are also unhappy that the unsecured loan has been sold to a third party and feel Black Horse could have reacted to their financial difficulties more sympathetically.

our initial conclusions

Our adjudicator did not recommend that the complaint should be upheld. He explained that Black Horse had not received a complaint with regard to PPI on the secured loan and told Mr W and Miss H that they would have to give it the opportunity to resolve the complaint before this service could become involved.

Our adjudicator was satisfied that the redemption of the secured loan had been calculated correctly and in line with the Consumer Credit Act 1974 (CCA). Given Mr W and Miss H's declared income and expenditure he was not persuaded that Black Horse had acted irresponsibly when agreeing the joint unsecured loan. Further, he was satisfied that Black Horse had responded in a positive and sympathetic manner – by reducing and stopping interest – when made aware of Mr W and Miss H's financial difficulties.

Mr W and Miss H responded to say that they have now raised a PPI complaint with Black Horse. They believe the method used for calculating the early settlement of the secured loan is overly complicated and say that Black Horse did not explain the terms and conditions of either loan. By their calculation they overpaid Black Horse by approximately £900 when settling the secured loan early. Mr W and Miss H have conceded that the unsecured loan might have appeared affordable when they applied but have explained that their situation changed and that they have since advised Black Horse of this through a third party.

my findings

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

the settlement of the secured loan

Mr W and Miss H are unhappy that after making eight repayments to the loan of £20,000 they still had to pay £20,954.64 when they settled it early in September 2008. On the face of it, that does seem unreasonably high – if the loan was for £20,000. However, the loan also had an attached payment protection insurance (PPI) policy that was paid for by a single premium at the inception of the loan. That meant that the amount borrowed by Mr W and Miss H was in fact £28,562.19. So, as well as repaying the capital borrowed, Mr W and Miss H were also repaying the PPI element of the loan.

I am satisfied that the loan agreement made clear that any early settlement would be calculated in line with the Consumer Credit Act 1974. The complaint centres on the Consumer Credit (Early Settlement) Regulations 2004. The Regulations themselves are

complex and the formula set out in them does not make it easy for consumers to work out the figures for themselves. That is something outside Black Horse's control – the Regulations are issued by the Government and Black Horse has no discretion to change them or apply the formula differently. But my review of the calculations satisfies me that the correct figure has been charged.

Mr W and Miss H have told us that they now have complained about the sale of the PPI policy and I should make clear that I have not considered the sale of PPI. But if that complaint is ultimately upheld they may be put back into the position they would have been in had they not taken PPI. If that is the case they might receive refunds of all the repayments that they made to the PPI element of the loan. I would expect that any such refund – if paid – would bring the total loan repayments down to a figure much more in line with Mr W and Miss H's expectations.

the affordability of the unsecured loan

Mr W and Miss H now seem to accept that the unsecured loan did appear affordable when they applied, but say that it became unaffordable as their circumstances changed. However, for the sake of completeness, I should also say that I consider that to be the case.

Black Horse was obliged to assess Mr W and Miss H's application to ensure that it appeared affordable at the outset. Having reviewed the information collated by Black Horse on Mr W and Miss H's income and expenditure before it agreed the unsecured loan of £9,000 in February 2009 I am satisfied that the borrowing did appear affordable at inception – even when taking Mr W's sole loan into account. The income and expenditure information shows that Mr W and Miss H had a number of credit card debts as well as a hire purchase agreements and unsecured loans. Moreover, Black Horse recorded that the disputed loan was to be used to consolidate existing debt. I am satisfied therefore that the unsecured debt should not have increased Mr W and Miss H's overall indebtedness. Further, taking into account the rates of interest normally applicable to credit card accounts I find it is more likely than not that by taking the loan Mr W and Miss H reduced the amount they needed to pay each month to their overall debts.

While I note that Mr W and Miss H's direct debit payment was frequently returned unpaid, I note that a monthly repayment was made every month until February 2010. Given the overall circumstances it follows that I cannot reasonably conclude that Black Horse lent irresponsibly or that Mr W and Miss H's joint unsecured borrowing appeared unaffordable at inception.

Black Horse did treat Mr W and Miss H positively and sympathetically

When consumers fall into financial difficulties the lender has an obligation to deal with those problems in a sympathetic and positive manner. Having reviewed the notes on their accounts and the loan statements I am satisfied that Black Horse did respond both sympathetically and positively. I say this as it is clear that it considered Mr W and Miss H's reduced income and took steps to assist. Those steps included reducing the applicable rate of interest, accepting reduced repayments and, ultimately, freezing interest when it passed the account to its collections department and later sold the debt.

Black Horse was entitled to sell the debt and did appear to have contacted Mr W and Miss H about this

I understand that Mr W and Miss H are also unhappy that they were not made aware the debt was sold to Hillesden Securities Limited. Lenders are generally able to pass on the responsibility for the collection of a debt or to sell a debt and I am satisfied that the terms of the unsecured loan allowed Black Horse to do so in this case. Further, I am satisfied that Hillesden Securities and Black Horse informed Mr W and Miss H that the debt had been sold.

my final decision

My final decision is that I do not uphold the complaint.

Joyce Gordon
ombudsman