

## **complaint**

Mr H complains on behalf of Ms H, a friend, of irresponsible lending by Black Horse Limited (trading as Landrover Financial Services (LRFS)) leading to negative information on Ms H's credit file. Ms H would like the negative data removed. And compensation to cover legal fees and the stress and strain she has been put under.

## **background**

Mr H has explained that Ms H (NB. Mr H is not Ms H's husband, as referred to in this decision) took out a Hire Purchase Agreement for a car through LRFS in November 2014. The car was for her husband, but for various reasons Ms H took out the finance in her own name. Mr H says Ms H's husband made the repayments but stopped doing so when they split up in 2015.

He says that Ms H already had two other loans and mortgage repayments to make. Those, combined with this new Hire Purchase Agreement, meant Ms H had monthly repayments of around £3,000. But she only worked part-time, and earned between £600-700 per month.

Mr H says that Ms H was unaware that her ex-husband failed to make some payments. She later understood the account had been in arrears, but this had been resolved when he traded-in the car.

Ms H was really surprised to find out in May 2016, when she was looking into getting a mortgage that she had a poor credit rating due to the agreement with LRFS being in default. He says at this stage Ms H contacted a solicitor to try to resolve matters, and started to incur legal fees. LRFS sent its first final response letter (FRL) to Ms H's solicitor, dated 23 February 2017.

Ms H then dispensed with her lawyer's services and contacted LRFS direct. She got a second final response letter (FRL), dated 17 April 2017. Ms H didn't find this response satisfactory, but as by this time her credit rating had gone from 'poor' to 'excellent', and the default had been removed, she didn't take her complaint any further at that time.

Unfortunately, in December 2017 Ms H got a text alert telling her credit file had altered. When she looked into this she realised the default was back on her file and her credit rating had reverted to 'poor'

So Ms H complained again to LRFS in January 2018, receiving a third FRL, dated 9 March 2018.

Mr H said that although LRFS had given, and Ms H accepted, £150 compensation for its failure to respond to some of her correspondence, she didn't feel this compensated her for stress and inconvenience she'd suffered.

Mr H said that Ms H was unable to get credit due to her poor credit rating and so couldn't get a mortgage.

He also noted that LRFS had been evasive over the return of the car; there were lengthy delays in correspondence; and he wasn't convinced LRFS had sent some of the arrears letters it claimed to have.

LRFS refused to give permission for us to look at the issues addressed in its FRLs of 2017, as Ms H was out of time to raise those complaints with us, under our jurisdiction rules. But it did agree that Ms H was in time to put in a complaint about the issues it responded to in its FRL of March 2018.

Our investigator issued a jurisdiction view, agreeing with LRFS that Ms H was out of time to raise issues that had been addressed in the 2017 FRLs.

She then considered the issues raised and dealt with in the FRL of March 2018. But as some of these, – specifically around irresponsible lending, had also been addressed by LRFS in its FRLs of 2017, she made it clear that she couldn't reconsider these as she had already found Ms H out of time.

In terms of the other issues Ms H raised, our investigator didn't find that LRFS had done anything wrong. She felt it was likely it hadn't received a letter that Ms H said she never had a response to; that its choice of words over the car being 'abandoned' could have been better; that LRFS was within its rights to take the car back; that voluntary termination (VT) wasn't an option due to arrears and the fact insufficient money had been paid to allow this; that LRFS had explained the differences between statement and default notice sums; that LRFS wasn't responsible for the state that the Data Subject Access Request (DSAR) material had been delivered in; that it had organised the DSAR without charge so Ms H could see the information it held; and that it had removed the default in error, but in her view it was right for it to be reinstated as it was important that credit files accurately reflect the conduct of accounts.

She also explained the term 'write off', and finally noted that Ms H's real concern was that the finance should never have been provided to her in the first place. But she explained that part of Ms H's complaint was out of our jurisdiction to consider on the basis of time, because it was referred too late.

LRFS accepted this view but Ms H didn't.

On Ms H's behalf, Mr H said that he had made it clear in March 2019 that there was no point in considering all of the issues in Ms H's complaint if the loan application figures were not to be looked at as well. And that Ms H couldn't have complained in 2017 as she wasn't in a position to do so – as she wasn't in possession of all the facts. He said as LRFS had given further information he felt that it shouldn't then be able to rely on a previous FRL to avoid the issue of irresponsible lending being looked at again.

In relation to the specific issues raised in 2018, and to our investigator's view, Mr H responded to say a letter LRFS was unable to find had actually been signed for, and the fact it took numerous attempts for Ms H's solicitor to get responses to correspondence showed, he felt, that LRFS lacked organisation.

Mr H didn't feel that LRFS organising the DSAR was a positive thing, as he had made it clear they would be seeking this anyway. Also, that LRFS didn't give any information as to how to get the DSAR - it referred Ms H to the garage and the garage back to LRFS.

He said he found a comment our investigator made that Ms H didn't object to her ex-husband making payments towards the car objectionable, as the agreement had been set up with the ex-husband's bank details for a car he had sole use of. He said Ms H was unable to

keep the car under 'her control', as per her Hire Purchase Agreement, as her ex-husband had sole use of it, and her legal position was such that she had minimal contact with him.

He wasn't convinced that default and arrears letters had been sent, and found the discrepancies as to what had happened to the car remarkable in that it was in the garage from Sept 2015 to March 2016, but the garage said it hadn't had the car back since it had been sold.

He drew comparisons to the false income and expenditure details used to get finance for the agreement, and felt there was possibly something untoward going on between the garage and the ex-husband. He felt the investigator simply took LRFS at its word when it explained the difference between the amounts on the balance and default notice.

Finally, Mr H said that if Ms H had complained in 2017 that our investigation wouldn't have uncovered information that has since come to light. And without that we couldn't have made a fair judgement. He said the 2017 complaint was that the loan was unaffordable. The 2018 complaint was that the loan had been granted on the basis of fictitious financial information - which was a different matter.

Our investigator considered all of these points, but didn't change her view. She apologised for the time it had taken to deal with Ms H's case. She confirmed that she had concluded the 2017 complaints were out of time to consider, but had said in an email dated 6 March 2019 that she would consider the 2018 part. She pointed out Mr H could, at that time, have said he didn't want her to do this, but he didn't.

In response to Mr H's comments to her view, she made the following points. The fact that LRFS continued to respond to Ms H's queries, out of courtesy, didn't alter the fact the FRL's clearly stated there was a six-month time limit to bring a complaint to us. The many letters Ms H said her solicitor sent, and weren't responded to, in 2017 were part of the complaint that was out of time to consider. So our investigator couldn't comment on these, and also couldn't comment on the finance agreement being based on false financial information - since that related to unaffordable lending, which had also been addressed in 2017.

Ms H didn't accept this view. So the matter's come to me for a 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.

I do appreciate Ms H and her representative, Mr H, feel really strongly about these issues. And looking in general terms at the total of Ms H's complaint, I don't doubt the stress she has been put under by the financial agreement and the repercussions from it.

I do also appreciate, and Mr H has articulated very clearly, that he doesn't feel the less consequential issues in the 2018 complaint can be dealt with in isolation. And that the whole basis for the complaint is irresponsible lending on the part of LRFS, and that all the matters should be looked at together.

When Ms H first put in her complaint to our service, LRFS objected to the issues addressed in 2017 being looked into as Ms H was out of time to complain to us. This was because she came to us more than six months after the dates of the FRLs. Our investigator correctly

considered this issue of jurisdiction first. She found that Ms H was out of time to bring that part of her complaint to us. She wrote and gave this view in a letter date 1 March 2019; giving Ms H until 8 March to accept or not accept her view. And she made it clear in this letter that if Ms H didn't agree with her view there was an option for the issue to be looked at by an ombudsman for a final decision.

Neither Ms H, nor Mr H on her behalf, asked for an ombudsman's review. Mr H responded to say he wasn't, in his words, *'looking to have matters referred to in the 2017 correspondence looked at, it's clear that it is fruitless pursuing that'*. But he did say he wanted an assurance that new issues debated in 2018 with LRFS would be considered which would include the disputed application income and expenditure figures for the loan agreement.

In her response, our investigator made it clear that the issue of unaffordable lending had been covered in 2017. She also noted that Mr H had tried to raise a new complaint with LRFS in May 2018, but said it was too late to do that now. And she made it clear she would not be considering any matters relating to irresponsible lending, but she would consider the March 2018 complaint and respond to that in due course.

Mr H responded again, saying his new complaint was about incorrect figures being used for a credit application, and questioned if our service would walk away from a serious matter by classing this new information as part of other elements of the complaint that can't be considered as they are out of time.

In response to this email, our investigator said she would look at the matters she *could* consider and respond in due course, which she then did in her subsequent view on the issues arising from the 2018 complaint - but not including anything that referred back to the 2017 complaint, which was out of time.

I have considered all of this correspondence very carefully. It's clear to me that Mr H, on Ms H's behalf, wasn't happy with the jurisdiction view. But if he didn't agree with that he should have asked for an ombudsman's view at the time. He didn't.

It's also clear to me that the issues Mr H wants us to revisit all form part of the complaint about irresponsible lending, which was dealt with in 2017, and which our investigator decided were out of time to consider, with no exceptional circumstances to allow us to do so. I don't agree with Mr H's point that had Ms H complained in time that information that is now available wouldn't have been available then. It would have been our role to find out all the information we needed.

So, unfortunately, I have concluded that the decision on jurisdiction has already been made, and accepted, and it's not for me to revisit this here.

Our investigator noted in her view those issues that had been raised in 2018 that she couldn't consider, as they related to irresponsible lending covered in the, 2017 complaint. And I agree with her assessment of what she could, and couldn't, respond to. So I'm not going to go back over those points again here.

This decision, therefore, will only focus on those relevant issues that I can consider that Ms H raised in 2018.

The outstanding issues that Mr H raised with our investigator after her view seem to be;- the letter LRFS misplaced; the provision of the DSAR; comments from the debt recovery

company; the statement the car had been abandoned; the provision or otherwise of default notice and arrears letters; and the differing amounts on the statements and default notices. And I've looked at these carefully.

I can't be sure what happened to the letter that Ms H sent to LRFS by recorded delivery. It's unfortunate, but sometimes correspondence can go missing or get overlooked. As other correspondence has been responded to, I think it's likely this was just a genuine mistake on someone's part. I accept that this must have been frustrating, but don't see that this in itself confirms Mr H's view of LRFS's general lack of organisation.

With regard to the provision of the DSAR information. I accept Mr H says that he and Ms H always intended to get this themselves. I have seen the letter Mr H referred to where they were referred on to the garage to get the DSAR, so I can also appreciate their frustration over this.

With reference to the comments our investigator made about Ms H's experience with the debt recovery firm, I agree it's difficult to comment on anything that was said at the time as there's no record we can refer to.

I don't believe that the investigator's comment about Ms H not objecting to her ex-husband making payments towards her agreement was intended to be insensitive or offensive, and I'm sorry if Ms H and Mr H found it so. I felt the comment was superfluous, and didn't need to be made, so it's unfortunate that it was.

In terms of the car being described as 'abandoned', our investigator said LRFS's choice of words could have been better since it wasn't abandoned, but was taken to a dealership. Her comment that under the terms of her agreement, Ms H was supposed to keep control of the car is accurate. But I do appreciate that given the personal circumstances Mr H has outlined, this would have been difficult for Ms H given, legally, she was supposed to have minimum contact with her ex-husband.

Mr H feels there has been some sort of 'cover up' over the whereabouts of the car. He says it was in the garage from September 2015 to March 2016, but LRFS says it only became aware of this when Ms H's ex-husband wrote to let it know in March 2016. But Mr H says the garage stated it had never had the car back in its possession since its sale. I'm not sure this constitutes grounds for some sort of 'cover up'. It feels to me more like a lack of communication between the parties involved.

I appreciate Mr H is sceptical as to whether any default or arrears letters were sent. We have been given copies of some of these. They're correctly addressed, and I've no reason to believe they weren't sent. These letters aren't required to be sent by recorded or other means of delivery. I don't feel that just because one letter Ms H sent by recorded delivery seems to have gone missing is grounds to say other letters weren't sent.

Looking at all of these issues, I do think some of the administration and communication by LRFS could have been better. I think LRFS has acknowledged this by already paying compensation for its level of service, and that is an appropriate gesture to have made. I don't think it should pay any more.

I do appreciate that Ms H has found the whole situation very stressful, and that she would also like the adverse information taken off her credit file. But it feels to me that the significant source of her stress is the finance and agreement. And the subsequent impact on her credit

file. Unfortunately, for the reasons already explained, these are not issues I can take a view on, as they were referred too late and are out of jurisdiction.

And there's nothing in the issues I've been able to consider that makes me feel it would be reasonable to ask LRFS to pay any additional compensation, or to alter any information on Ms H's credit file.

I appreciate this will be disappointing to Ms H, but I hope I've clearly explained why I've reached this decision.

**my final decision**

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms H to accept or reject my decision before 25 July 2019.

Bridget Makins  
**ombudsman**