

complaint

Ms D has complained Black Horse Limited granted her a hire purchase agreement without carrying out proper affordability checks.

background

In 2016 Ms D took out a hire purchase agreement with Black Horse for a holiday home. The home cost £100,000 including park services and fees. Ms D paid a deposit of £20,000 and took out credit for the remainder. The hire purchase agreement she signed was for a 10 year period. Ms D would be paying £1,115.46 a month. Over the full period of the agreement, she would be repaying nearly £134,000 for the £80,000 credit granted.

At the time, Ms D had retired from work and bank statements show she was receiving a monthly income of just under £675.

Within a couple of years, Ms D was finding the agreement unaffordable. There were also issues she'd taken up with the holiday park managers about the condition of the home, including the cladding. Ms D complained to Black Horse about the agreement being unaffordable. Black Horse believed Ms D had been earning £27,600 a year and that she was able to pay the deposit in cash so didn't agree this was unaffordable. They also pointed out Ms D hadn't complained about affordability aspects when she'd complained about the condition of the holiday home.

Ms D brought her complaint to the ombudsman service.

Ms D fell further into arrears. Black Horse took action to repossess Ms D's holiday home. The agreement was terminated in April 2019. Black Horse was asking Ms D to repay £31,272.02; the outstanding amount.

Ms D was also concerned at the action around repossession. She'd not been given an opportunity to take her belongings out of the structure and these had been strewn around the caravan park. Black Horse offered to pay Ms D £50 for their error.

Initially our investigator didn't think there were any affordability issues. However a further review highlighted some inconsistencies. Although Black Horse confirmed Ms D had stated her annual earnings in a phone call with them, there was no other evidence – including bank statements – which supported this was the case. Our investigator thought Black Horse had failed to carry out the proper checks. Subsequently the hire purchase agreement had proven to be unaffordable.

He asked Black Horse to waive any outstanding debt and refund interest Ms D had paid from the start of the agreement. 8% simple interest needed to be added to all refunds.

Black Horse didn't agree with this outcome. They pointed out that Ms D had benefitted from an inheritance and she'd had a considerable sum available to her in her bank accounts when taking out the hire purchase agreement.

Ms D's complaint has been passed to an ombudsman for 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.

Having done so, I explain below why I've reached the outcome I have.

There are a number of different strands to this complaint. These include the complaints Ms D made about the condition of her holiday home and the action Black Horse took to re-possess Ms D's property. When Ms D first brought her complaint to our service, it's clear she was concerned about the pressure put on her to take out the hire purchase agreement. I've also seen two different quotations for the holiday home Ms D eventually bought.

However the central part of Ms D's complaint is about unaffordability. These aspects dictate the resolution I believe is fair and reasonable.

In reviewing the affordability aspects, I've considered – amongst other things – the rules and guidance for lenders set out in the Consumer Credit Sourcebook (CONC) within the Financial Conduct Authority's handbook.

I'm also aware that our investigator completed a detailed view dated 18 January 2021. I won't be repeating all the points there: only those things that explain the decision I've made.

I think there are two overarching questions I need to consider in order to decide what's fair and reasonable in the affordability circumstances of this complaint. These questions are:

1. Did Black Horse complete reasonable and proportionate checks to satisfy itself that Ms D would be able to repay the borrowing in a sustainable way?

- a. If so, did it make a fair lending decision?
- b. If not, would reasonable and proportionate checks have shown that Ms D could sustainably repay the borrowing?

2. Did Black Horse act unfairly or unreasonably in some other way?

If I think Ms D has been disadvantaged in any way by Black Horse's actions, I'll go onto consider what I think is a fair way to put things right.

Did Black Horse complete reasonable and proportionate checks to satisfy itself that Ms D would be able to repay the borrowing in a sustainable way?

Before granting credit, Black Horse were required to carry out a reasonable and proportionate assessment of Ms D's ability to sustainably repay the debt. This is often referred to as an 'affordability check'. This check had to be borrower-focussed. This means it needed to be concerned with whether Ms D could sustainably afford the borrowing (considering her specific circumstances), rather than how statistically likely she was to repay.

The latter is the risk posed to Black Horse as the lender, or their 'credit risk' but this is not necessarily the same as an assessment of affordability.

What's considered reasonable and proportionate will vary depending on a number of factors such as, but not limited to:

- The amount of credit;
- The total repayable and the size of the regular repayments;
- The duration of the agreement;
- The cost of the credit; and
- The consumer's individual circumstances.

What this means is that there isn't a one-size-fits-all approach to what is considered proportionate as any of these factors (or others) might influence what a reasonable and proportionate check ought to be.

Ms D took out a hire purchase agreement with Black Horse. The total amount repayable for the agreement, taken out in May 2016, was nearly £135,000 repayable over ten years. The APR was 11.9% and Ms D was paying just over £1,115 a month.

This was therefore a long-term and costly commitment. My starting point is that any reasonable and proportionate assessment of affordability ought to have been quite thorough.

Black Horse has provided us with details of the checks carried out prior to lending to Ms D. These helped them to understand what Ms D's current credit commitments were and to see how she was managing them. There appears to have been about nine other credit commitments. Ms D was up-to-date with all her payments and had not missed recent payments.

Black Horse has told us that they were aware of Ms D's salary of £27,600 and this was confirmed in the telephone conversation they had with her prior to granting hire purchase. Because of the time that has passed, there's no other record of this call apart from Black Horse's lending notes. The problem here is that Ms D was definitely not earning that level of salary and a cursory look at her bank statements around this time would have verified this.

Black Horse has said that their creditworthiness checks gave them a reasonable level of confidence that the stated salary of £27,600 resulted in monthly living costs of £520. Ms D's net monthly income was assessed to be £1,821.

I can't see that Black Horse undertook any further income and expenditure checks nor is it clear that her bank statements were reviewed.

I'm aware that more recently Black Horse has provided further information about Ms D's current and savings accounts at the time. They believed she was in receipt of a large inheritance and had more than £90,000 at her disposal. I've seen nothing which shows they specifically checked whether Ms D might have been responsible for dispersing share of a family inheritance to her wider family. That would certainly explain why she had a high balance in her account for a time.

I can see Black Horse – based on what they believed was her disposable income – assessed her as able to meet the monthly repayment of £1,115, despite this being about 60% of Ms D's complete income. It's worth restating that Black Horse sought no evidence of Ms D's salary. Whilst they may have carried out checks through a third party, I can't see they asked for evidence from Ms D apart from what they state was a verbal confirmation. I also note the hire purchase agreement at the time stated Ms D was retired and had no employer.

I accept Black Horse's argument that an income of £27,600 can be received through a pension. But I'd add that this would suggest Ms D had a very reasonably-sized pension pot, far higher than the average. This fact, too, suggests further checking would have been appropriate.

Overall, I don't think Black Horse completed reasonable and proportionate checks when thinking about the amount of information and supporting evidence they gathered to assess Ms D's creditworthiness. Particularly as Ms D was borrowing a high amount, I'd have expected them to have carried out further checks to assess Ms D's affordability.

Did Black Horse make a fair lending decision?

So having looked at further information – which Black Horse didn't gather – I have significant concerns about their decision the lending was affordable and sustainable.

It's clear that within two years of taking out an extremely high-value credit agreement, Ms D was unable to continue making regular repayments. What I'd have expected Black Horse to have been considering is what ability Ms D had to meet any financial shocks or life changes. I can see no evidence they did this.

Ms D's bank statements for 2016 show she was only in receipt of a small monthly pension. This was for less than £675 a month. These statements don't suggest Ms D was in a financially robust position.

Even based on what Black Horse believed, they assessed Ms D to be using 85% of her disposable income to make her monthly repayments. This seems to be an extremely high percentage leaving Ms D with very little money. Particularly as Ms D had nine other credit agreements according to Black Horse's credit check.

How Black Horse came to the conclusion that Ms D's financial situation indicated a further long-term credit agreement was sustainable and affordable is baffling.

Overall, I don't think Black Horse took appropriate consideration of the information they had gathered – or could have gathered – about Ms D's financial circumstances.

Black Horse has pointed out Ms D may have benefitted from an inheritance to the value of £95,000. This is at odds with the evidence provided by her representative who states Ms D got £48,000 and used £20,000 of that for her deposit. Ms D has rightly wondered why she'd have taken out credit at all if she'd got that amount as paying in cash would have saved her more than £50,000 in cost of credit.

I can only state that even if Black Horse is correct, Ms D is still somewhat short in terms of being able to meet a complete financial commitment of nearly £155,000 over 10 years.

In correspondence with Black Horse prior to completing my final decision, I highlighted their statement *"Ultimately it was for the customer to decide if the repayments were affordable based on her proposed expenditure patterns which she has the ability to control and influence through discretionary, non-essential household expenditure"*. I don't agree nor do I believe this reflects the requirements placed on lenders by the regulator. In fact the decision and burden for that decision is placed mostly on the lender as they have the ability to make the proper and measured assessment of someone's financial position.

It's worth remarking that I've read Black Horse's detailed submission of 15 March 2021. I can see they've alleged Ms D lied to them when confirming a salary which has turned out not to be the case. And that they've suggested we've only seen a few details of Ms D's bank statements. I can reassure them I believe our investigations have been thorough. I'm also not convinced it's fair and reasonable for them to hold Ms D liable for issues when they have not undertaken sufficient checks.

Given all of the above, I don't think Black Horse made a fair lending decision and they shouldn't have approved the hire purchase agreement.

Black Horse needed to ensure Ms D could afford to sustainably repay the borrowing without causing her financial difficulty or the need to borrow further. I think they didn't collect sufficient information during the application process to realise Ms D was not in a position to sustainably repay this agreement. And if they had carried out those additional checks, they wouldn't have granted the borrowing.

Did Black Horse act unfairly or unreasonably in some other way?

Black Horse has already admitted the re-possession of Ms D's holiday home wasn't managed well. They've offered £50 in compensation.

Ms D's representative has said their belongings were strewn around the holiday park. However I've seen a letter from the holiday park management which confirmed they'd held onto their personal belongings which were available for collection. Overall I believe £50 is fair and reasonable.

Putting things right

As Black Horse shouldn't have granted a credit agreement to Ms D, I think it would be fair and reasonable for it to now write off the outstanding balance and refund the interest Ms D has paid on the agreement.

Ms D made payments for nearly two years before getting into financial difficulties. 8% simple interest will need to be added to the money to be refunded.

my final decision

For the reasons I've given, my final decision is to instruct Black Horse Limited to:

- Write off any outstanding balance from Ms D's hire purchase agreement;
- Refund Ms D's deposit of £20,000;
- Refund interest and charges from the monthly payments Ms D made; and
- Remove any negative data relating to this agreement from Ms D's credit record.

Black Horse should pay 8% simple interest a year on all refunds calculated from the dates of payment to the date of settlement, less any tax lawfully deductible.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms D to accept or reject my decision before 20 June 2021.

Sandra Quinn
ombudsman