

complaint

Mr U complains that three hire purchase agreements that he entered into with Black Horse Limited were unaffordable for him and that it didn't do enough to check that they were affordable.

background

Mr U entered into three hire purchase agreements with Black Horse in September 2018 – two on the same day at the beginning of September and the third nine days later. A used car was supplied to him under each agreement. He agreed to make 60 monthly payments of £781.53, £359.02 and £612.53 under the agreements.

He complained to Black Horse in November 2018 that the agreements were unaffordable for him and that it hadn't checked that they were affordable. He wasn't satisfied with its response so complained to this service.

The investigator recommended that this complaint should be upheld in part. She said that Black Horse had asked about Mr U's income and expenditure and carried out checks to verify the information that he'd supplied and had found no concerns with those credit checks. She was satisfied that Black Horse had carried out proportionate checks before agreeing to lend Mr U the money and the dealer had said that there were no apparent signs which would make them question Mr U's capabilities in making any financial decisions. So she concluded that she was unable to uphold his complaint about the first two agreements.

But she thought that the dealer and Black Horse had a duty of care in assessing Mr U's third application and the need for a third agreement in a short space of time. And she thought that more care should've been taken when processing that application. So she recommended that the third agreement be unwound.

Black Horse has accepted the investigator's recommendations and has agreed to unwind the third agreement with nothing further owed, to refund the deposit of £5,000 that Mr U paid (with interest) and to remove any adverse information from his credit file in relation to that agreement.

Mr U has asked for his complaint to be considered by an ombudsman. He has provided payroll records for his company and information about his (and his wife's) bank accounts which he says demonstrate his financial inability to repay car loans of nearly £2,000 each month. And he says, in summary, that:

- his credit file shows that various credit checks were undertaken in August and September 2018 but because he didn't meet the lender's lending criteria he was refused car loans;
- no credit checks were undertaken by Black Horse;
- his annual income was only £5,000;
- he bought the first two cars for his friends and the third car for his wife;
- he was suffering mental health issues and wasn't in the right frame of mind at the time to take out car loans (and he's provided a letter from his pastor in support of this); and
- when he complained to Black Horse it said that his only option was to sell the cars but it didn't help him with that.

my findings

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

A credit provider should make proportionate checks about the affordability of any credit before providing that credit to a customer. What is proportionate will depend on the circumstances at that time.

Black Horse has provided evidence to show that Mr U told the dealer that his income was more than £80,000 a year and that he had monthly outgoings of about £850. It has also provided evidence to show that it completed credit checks which showed that Mr U was paying £712 each month towards his regular financial commitments and that he'd received a payment of £3,906 into his personal bank account (which verified the income information that Mr U had provided).

I consider that the income and expenditure information that had been provided by Mr U, which was verified by the credit checks that Black Horse had completed, were proportionate checks for the credit that it was to provide to Mr U under the first two agreements. And I don't consider that there was any requirement in these circumstances for Black Horse to obtain any further information about Mr U's financial situation or to ask him to provide it with copies of his bank statements. I consider that it was fair and reasonable, on the basis of those proportionate checks, for it to conclude that the credit was affordable for Mr U and to make the decision to provide the credit to him.

Mr U has described his mental health issues and he's provided a letter from his pastor to support what he says. I sympathise with Mr U for those issues. But I'm not persuaded that there's enough evidence to show that the dealer, or Black Horse, was aware of those issues in September 2018 or that Black Horse shouldn't have provided credit to him at that time because of his mental health issues.

For these reasons I'm not persuaded that there's enough evidence to show that the first two credit agreements weren't affordable for Mr U or that Black Horse shouldn't have provided the credit to him. So I find that it wouldn't be fair or reasonable for me to require Black Horse to cancel those agreements or to take any other action about them.

Black Horse has accepted the investigator's recommendations about the third agreement. And I find that it would be fair and reasonable in these circumstances for it to cancel that agreement, refund the deposit of £5,000 that Mr U paid for the third car (with interest) and to remove any information about that agreement from his credit file.

In its final response letter that Black Horse sent to Mr U in January 2019 it said that it was unable to cancel the agreements and it listed three options that Mr U might wish to consider: speaking to the dealer about returning the cars; selling the cars and settling the agreements; and voluntarily terminating the agreements.

A lender is required to respond to a customer's financial difficulties both positively and sympathetically. So Black Horse is required to respond to any financial difficulties that Mr U is suffering positively and sympathetically.

my final decision

For the reasons set out above, my decision is that I uphold Mr U's complaint in part. And I order Black Horse Limited to:

1. End the third hire purchase agreement and arrange for the third car to be collected from Mr U – both at no cost to him.
2. Refund to Mr U the deposit of £5,000 that he paid for the third car.
3. Pay interest on that deposit at an annual rate of 8% simple from the date of payment to the date of settlement.
4. Ensure that no adverse information about the third agreement is recorded on Mr U's credit file.

HM Revenue & Customs requires Black Horse to deduct tax from the interest payment referred to at 3 above. Black Horse must give Mr U a certificate showing how much tax it's deducted if he asks it for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr U to accept or reject my decision before 22 August 2019.

Jarrold Hastings
ombudsman