

complaint

This complaint is about a secured loan lent to Mrs A and Mrs B by Black Horse Limited ("Black Horse"). Mrs A and (on her behalf) Mr C complain that Black Horse lent irresponsibly, didn't give Mrs B life cover, and has not treated the borrowers fairly.

background

In 2007 Mrs A and her mother, Mrs B, took out a £38,000 secured loan with Black Horse over ten years, with associated life cover. Both borrowers were retired. Mrs A was 61 years old at that time and Mrs B was 87 years old.

Mrs B died in late 2009. Mrs A enquired about claiming on the life cover, but Black Horse told her Mrs B was not insured, and had not been eligible for life cover because of her age.

Black Horse said it had only insured Mrs A under the cover.

Mrs A had difficulty making loan repayments, and arranged to pay reduced amounts. In 2012 Mr C complained to Black Horse on Mrs A's behalf about the lack of life cover for Mrs B.

He also complained that Black Horse had lent irresponsibly to Mrs A and Mrs B, and that it had started legal action to possess Mrs A's home despite the payment arrangement.

Black Horse did not uphold the complaint. It said the loan documents showed that Mrs B was not insured, that the lending decision was reasonable, and that the decision to take legal action hadn't been in error. Black Horse offered to waive £530 of fees to settle the complaint.

Mr C then referred Mrs A's complaint to us. After discussion Black Horse made a further offer to Mrs A, which included: an undertaking not to take legal action against Mrs A; removing interest and charges from the loan account and resetting the balance at £38,000 minus the repayments made to date; freezing the debt and recovering it from any future sale of Mrs A's property; paying Mrs A £750 compensation for distress; and either leaving Mrs A's life cover in place, or refunding the premium she had paid for it.

Our adjudicator thought this offer was reasonable, but Mr C asked for an ombudsman to review the case. I then issued a provisional decision, on which Black Horse and Mr C have commented. I have taken their comments into account in my final decision.

my findings

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

I have first looked at the reasonableness of Black Horse's lending decision. I have then looked at what the loan was used for, and at Black Horse's conduct since the loan was made. And then I have considered what redress is appropriate.

the lending decision

Lending £38,000 to Mrs A and Mrs B over ten years in 2007 was a high risk. Mrs B was already 87 years old, and her income was likely to be needed to repay the loan. Black Horse

would only offer life cover to people borrowing for ten years if they would still be under 70 years old at the end of the loan. So the risk couldn't be managed by insuring Mrs B.

The loan was secured on Mrs A's home, so in the event of Mrs B dying before the age of 97, Mrs A would face losing her home unless she could repay the loan on her own. That effectively left Mrs A bearing most of the risk of the lending decision. The evidence indicates Black Horse did not properly consider this point or communicate it to the borrowers.

Mrs A has said that before taking out the loan she asked about affordability, and was told she and Mrs B would have to take out life cover as a condition of the loan. There is no recording of these discussions. Both Mrs A and Mrs B signed the life cover section of the credit agreement, although that section indicated that no cover was being provided to Mrs B.

The terms of the loan did not actually require Mrs B to take out life cover, and as noted above, Mrs B was not in fact eligible for life cover. In fact, given the terms of the life cover Mrs A herself was also ineligible, because she too will be over 70 at the end of the loan.

I find that on the balance of probabilities, Mrs A would *not* have entered into the loan on the terms she did if she had realised that Mrs B did not in fact have life cover. I think the risk of Mrs A being unable to repay the loan on her own in the event of Mrs B's death was so high, and the likely consequence (of Mrs A losing her home) was so severe, that Mrs A would not have wanted to take the risk. So I find that overall Black Horse did not treat the borrowers fairly in the way it arranged the loan and the life cover.

use of the loan

In my provisional decision I noted differing evidence about what the loan was used for. My provisional view was that nearly £34,000 of the loan was probably used to consolidate existing unsecured debt. The parties have not offered any further evidence on this, so I find that on the balance of probabilities, nearly £34,000 was used to pay off other debts.

after the loan was made

Black Horse is obliged to deal fairly with customers in financial difficulty. I find that when Mrs A had difficulty in servicing the loan after Mrs B's death, Black Horse did not meet that obligation. In particular, Black Horse treated Mrs A inconsistently, sometimes saying that her reduced payments were acceptable and sometimes starting legal action because of arrears. I find this has caused Mrs A material distress.

redress

Mr C wanted Black Horse to write off the entire loan. I said in my provisional decision that I didn't think that was fair, because Mrs A has had the benefit of the loan, and has mainly used it to consolidate existing debts. If Black Horse had not made the loan, Mrs A would still have had to pay back those debts.

Mr C argues in response that it *would* be fair for Black Horse to have to write off the debt. He says giving life cover to Mrs A was "*the most serious kind of mis-selling*" since Black Horse "*sold this product to Mrs A knowing that it would never be able to be successfully claimed against*". Mr C says the loan was therefore made under false pretences, and "*under no circumstances should a victim have to bear the burden of a dishonest act.*"

I have considered Mr C's comments carefully, and having done so I still find that writing off the loan completely would not be a fair outcome in this case. As far as possible, this service aims to put consumers back in the position they *would* have been in if the business had got things right. As I said in my provisional decision, an ombudsman's final decision is not a regulatory finding. It is not our role to impose punitive awards on businesses, and so I have not made any finding on Black Horse's motivation when it sold life cover to Mrs A. But it is clear that the cover should not have been sold.

The offer Black Horse made would effectively freeze the loan at its original value of £38,000, less the repayments that have been made since the loan was taken out. That balance (less any further repayments that Mrs A may choose to make) would remain outstanding until it can be recovered from the sale of the property in due course.

This is consistent with redress we have ordered in other cases of unfair secured lending to elderly customers. It will relieve Mrs A of the worry of losing her home, while ensuring the loan will eventually be repaid. In the circumstances I find it is the best way forward in principle. Mr C says it means Mrs A "*is still being asked to bear an unaffordable amount of debt*" without the security of having life cover, but Mrs A will not have to make any further payments towards the loan if she does not wish to do so.

I provisionally proposed that in the circumstances, Black Horse should write off around £4,000 of the loan before it is frozen, leaving a balance that is the same as the value of the unsecured debt Mrs A paid off with the loan. Black Horse has not objected to this, and I find that the loan should be frozen at just under £34,000, less the repayments that have already been made in respect of the loan and life cover.

I also find that Black Horse should pay the £750 compensation it has offered to Mrs A and should put the other elements of its offer in place, as listed below.

Black Horse's offer gave Mrs A the option of a refund of the life cover premium, or leaving the policy in place for the remainder of the ten year term. Since Mrs A wasn't actually eligible for life cover, I find the cover should not have been sold at all. The premium for the cover was added to the loan, but has not been included in the amount at which the loan is now to be frozen. And the loan is being frozen net of the loan repayments that have already been made, including payments in respect of the cover. So Mrs A will ultimately incur no costs in respect of the life cover, and I do not order any further refund in respect of it.

my final decision

For the reasons set out above, my final decision is to uphold this complaint and to order Black Horse Limited to:

- reset the loan balance at £33,983.36, less the repayments made since 2007 (including repayments relating to life cover), with no arrears balance;
- deduct from the new balance any future repayments Mrs A chooses to make;
- apply no further interest or charges to the account, and take no legal action against Mrs A, but seek to realise its charge from the sale of Mrs A's property in due course;
- pay Mrs A compensation of £750 for distress; and
- remove any adverse markers relating to this loan from Mrs A's credit file.

Tony Stafford
ombudsman