

Complaint

Mrs T, represented by a third party, complains that the hire purchase agreement (HPA) she entered into with Black Horse Limited was unaffordable.

Background

Mrs T entered into a HPA with Black Horse in May 2016 to acquire a caravan. She says that she only agreed to acquire the new caravan as she was put under pressure from the broker in regard to the situation with her previous caravan which she part exchanged as part of the transaction. She says that after viewing the caravan and being told the price she said that they wouldn't be able to get finance for the amount but the broker said he would sort it. He then said that he had the finance and Mrs T says she wasn't given time to review the documents. She says she didn't realise until after signing the HPA that it was just in her name.

Mrs T says that before acquiring the caravan she wasn't asked for any information about her income and expenditure and that and that she could not afford the repayments. She says that she made the payments for a number of months because she was worried about what would happen if these weren't made, but that this wasn't sustainable. She provided evidence to show that her income was less than the amount provided to Black Horse.

Black Horse says that Mrs T approached it at end of April 2016 for finance. At this time, it was told Mrs T had been retired for three years and was a homeowner. It says it was told she had an annual income of £20,000 and after looking at her credit search she had monthly credit commitments of £253 and living costs of £295. It says that the broker had confirmed that the information provided was given by Mrs T. It says based on the information provided Mrs T met its lending criteria.

Black Horse says Mrs T signed the HPA on 7 May 2016, a few days after the application, which meant that she had had a chance to review the agreement. It says it has been told Mrs T has had full use of the goods. It noted that Mrs T had maintained her payments up to the date of her complaint and didn't accept it had lent irresponsibly. It did say that a cheque for £50 would be sent to Mrs T's account in recognition of any distress she had been caused.

Our investigator didn't uphold this complaint. They thought that Black Horse had carried out proportionate checks and that based on these it was reasonable that the finance was provided.

Mrs T didn't accept our investigator's view. She reiterated that she hadn't provided information about her income and expenditure and that the numbers provided by the broker didn't come from her. She said our investigator had said that the broker had lost the records relevant for her transaction which she didn't accept should be the case as back ups should have been available. She also said that the broker had provided other factually incorrect information.

My provisional conclusions

I issued a provisional decision on this complaint. I concluded in summary:

- Mrs T signed the HPA and agreed to its terms and conditions. The HPA clearly shows that it is in Mrs T's name and the repayments and other financial details were clearly set out.
- Had Mrs T felt pressured into signing and then realised that the HPA wasn't as she had expected she had the right to withdraw from the agreement. This didn't happen and it wasn't until 2018 that Mrs T raised her concerns. Given this I didn't find that I had enough evidence to say a misrepresentation has occurred.
- The second part of Mrs T's complaint was that the lending was unaffordable. Mrs T's HPA application was automatically accepted and so further checks weren't carried out. I accepted that the credit check may not have raised concerns and that based on the information provided by the broker the disposable income was enough to cover the monthly repayment costs of £445, although I noted additional costs of caravan ownership such as site fees weren't included.
- The HPA was for a ten-year period and the total amount payable was over £50,000 (after the deposit payment). The monthly repayments accounted for over 30% of Mrs T's monthly income put forward to Black Horse. Given Mrs T's circumstances along with the size and term of the loan I would have expected Black Horse to have carried out further verification of the income and expenses to ensure that the HPA was sustainably affordable over the term.
- Had this happened, Black Horse would have realised that Mrs T's income was much lower than had been presented. Mrs T was receiving pension income of around £310 into her sole account and a weekly payment of around £100 a week into her joint account. This totalled a monthly income amount of around £750 rather than the £1,391 Black Horse had recorded. Deducting the expenses from this would have shown the HPA wasn't affordable. Given Mrs T was retired I didn't find there would be an expectation of her income significantly increasing over the ten-year term. Therefore, I found that had proportionate checks taken place, specifically to verify Mrs T's income and expenses, Black Horse would have realised that the HPA repayments weren't affordable.
- I found it reasonable that the HPA was cancelled with nothing further owing and said Mrs T's deposit payment of £10,700 should be refunded along with interest. I noted Mrs T had use of the caravan and also that she contacted Black Horse in June 2018 about the HPA not being affordable.

Given the circumstances of this complaint I found it fair that Mrs T was liable for her payments up to December 2018 only. Any payments made from that date should be refunded. I also found it reasonable that Black Horse covered the consequential costs of the caravan from December 2018 onwards (subject to details being provided). This meant that it should refund any payments Mrs T made for consequential costs such as site fees from December 2018 onwards or acted to settle any outstanding liabilities regarding these costs.

This situation caused Mrs T a lot of stress. As I found the lending wasn't affordable I thought this stress could have been avoided had appropriate checks taken place. Because of this I thought it fair that Black Horse paid Mrs T £250 compensation for the distress and inconvenience caused.

Neither party had any further evidence to add following my provisional 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.

As I set out in my provisional decision, I thought that given the term of the HPA and the amount Mrs T was paying that further checks should have been carried out to establish whether the repayments were sustainably affordable. Had these happened Black Horse would have realised that this wasn't the case and that the HPA was unaffordable.

Because no further evidence has been provided, my decision hasn't changed, and I find that Black Horse should take the actions set out below to put things right.

My final decision

My final decision is that I uphold this complaint. Black Horse Limited should:

1. cancel Mrs T's HPA with nothing further owing;
2. ensure Mrs T is no longer liable for any site fees or other cost associated with the caravan;
3. refund Mrs T her deposit of £10,700;
4. refund Mrs T any payments she has made from December 2018;
5. refund any consequential costs of the caravan from December 2018 onwards (subject to details being provided). This means that it refunds any payments Mrs T has made for consequential costs from December 2018 such as site fees or acts to settle any outstanding liabilities regarding these costs;
6. pay Mrs T £250 compensation for the distress and inconvenience she has been caused; and
7. remove any adverse information regard the HPA from Mrs T's credit file.

Items 3, 4 and 5 are subject to 8% simple interest from the date of payment to the date of settlement.

If Black Horse considers that it's required by HM Revenue & Customs to withhold income tax from that interest, it should tell Mrs T how much it's taken off. It should also give Mrs T a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs T to accept or reject my decision before 5 December 2020.

Jane Archer
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