

The complaint

Mr C complains that Black Horse Limited (“Black Horse”) provided him with a hire purchase agreement which wasn’t affordable.

What happened

Mr C entered into a hire purchase agreement with Black Horse in July 2022 to fund the acquisition of a car. The cash price was £20,450 and Mr C agreed to pay a deposit of £250 as well as 48 monthly payments of £376.54 and a final payment of £6,997. The total repayable was £25,320.

Mr C says that in the same month the agreement started his relationship ended, meaning that his monthly financial commitments increased significantly. He says he asked Black Horse for help but it didn’t assist him. He raised a complaint with Black Horse because he didn’t think it had carried out appropriate affordability checks and had failed to help him when he’d asked. He also said that Black Horse had unfairly attempted to recover the car several times, which had caused him anxiety.

Black Horse responded to the complaint in July 2023. In summary, it said that it was satisfied reasonable and proportionate checks of Mr C’s ability to repay the agreement had been carried out. It said it had offered to allow Mr C to return the car by way of voluntary termination at the point he made it aware his circumstances had changed, but Mr C had chosen not to do this. Lastly, it said that that it had acted fairly by attempting to recover the car, given that payments had not been made towards the agreement, and it believed Mr C was using the car.

Mr C referred the matter to this service, and in doing so he added that he believed the car had been misrepresented to him as it didn’t come with the service history he says he was led to believe it would. He also said that he had no income at the time of his application because the business he’d owned had ended sometime in 2020.

Our investigator made no finding on Mr C’s assertion of a misrepresentation because it wasn’t part of his complaint made to Black Horse, so it hadn’t had the opportunity to respond to it.

Our investigator highlighted that the checks that Black Horse carried out showed a significant discrepancy between the income Mr C had declared and what he appeared to be earning – Mr C declared an annual income of £87,000 per year but the checks Black Horse completed using data from a credit reference agency only found an annual income of £46,767, based on current account turnover. They also pointed out that Mr C’s credit history showed signs of recent financial instability in the run up to his application for this agreement. They said that Black Horse ought to have asked Mr C for more evidence or information about his income, rather than relying on data it received from a credit reference agency. So, they didn’t find that Black Horse had completed reasonable and proportionate checks of Mr C’s ability to meet the repayments under the agreement.

They went on to consider what Black Horse might have found if it had completed reasonable

and proportionate checks. They ultimately found that Black Horse had made a reasonable lending decision because it appeared that the agreement was affordable, based on what Mr C had demonstrated about his financial position at the time.

Our investigator also found that Black Horse had treated Mr C fairly by outlining various options he had to repay the agreement, and said that it had acted in line with the agreement in doing so. They also didn't think that Black Horse had treated Mr C unfairly by attempting to recover the car.

Mr C disagreed. He disputed that Black Horse had tried to help in the way our investigator had found and asked for an ombudsman's decision on the case.

The case has been passed to me to make a decision on it.

What I've decided – and why

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

Did Black Horse carry out reasonable and proportionate checks? If not, what would reasonable and proportionate checks have shown?

Black Horse will be familiar with the rules, regulation and good industry practice we take into account in considering complaints about unaffordable and/ or irresponsible lending. As a result, I don't find it necessary to set it all out in this decision. In any case, information about our approach to these types of complaint can be found on our website.

I agree with our investigator that in the particular circumstances of this case Black Horse didn't carry out reasonable and proportionate checks of Mr C's ability to repay the lending it gave him. I say this in the most part because I think it ought to have asked him further questions about his income, given that the checks it did appear to show that Mr C earned significantly less than he'd declared. Additionally, his credit history also showed recent signs of financial instability.

At the outset I acknowledge that it's clear to see that Mr C struggled in making repayments towards this agreement very early on in the agreement. It seems he initially accounted for that by explaining an unfortunate change of circumstances causing his outgoings to increase.

However, he's more recently said that he didn't have an income at the time of his application. I think it's fair to say that the information Mr C has presented hasn't been particularly consistent, particularly regarding his income and committed expenditure at the time of the application. And I think he's been given fair and ample opportunity to provide that evidence.

Our investigator asked Mr C to provide copies of bank statements for all of the accounts he used for living expenses in the run up to the application. He provided statements for one account, but not the other which is represented on his credit file as still open. He says it's closed and he has no access to those particular statements.

When the evidence is incomplete, inconclusive or contradictory – as it is in this case – I've made my decision on the balance of probabilities – that is, what I think is most likely to have happened given the available evidence and the wider circumstances.

Our investigator noted that whilst there was no clear income being paid into the account for

which Mr C provided statements, there were significant sums paid in during the months leading up to the application which seem to have come from another account in Mr C's name. Mr C has not accounted for his ability to make those payments, nor the current account turnover which Black Horse's statistical checks identified as £2,920 per month. They also noted that Mr C appeared to be in receipt of a regular benefit payment too.

Our investigator also asked Mr C to account for his outgoings and sought clarity on his mortgage payments in particular. They noted a mortgage payment for £1,682 on Mr C's statement, more than double the amount that he'd told Black Horse about. Mr C told us that the payments had now increased to around £5,000. He's not provided evidence to support this, despite being asked. Our investigator also noted a number of payments out of the account Mr C provided statements for and asked him to account for what they were, but I don't think that Mr C has been able to do that.

Overall, using the evidence that's been provided, our investigator calculated that Mr C had a regular monthly committed expenditure of around £2,277 per month at the time of his application. From what he's said at the time of his application Mr C's commitment towards his mortgage was significantly less than £1,682, due to only having to pay a portion of it. Nonetheless, the figure our investigator calculated allowed a mortgage payment of £1,682 as well as other essential payments represented on his statements such as other debts, taxes and telecommunication accounts. Having reviewed the evidence provided, I agree that figure is likely accurate, based on what Mr C has provided.

The income which Black Horse found Mr C was receiving was £2,920 per month. I know that Mr C disputes having an income at the time, but I think there's persuasive evidence to suggest otherwise – both in the form of what Black Horse found by way of current account turnover using data from a credit reference agency as well as what our investigator found represented on Mr C's bank statements. I also don't think that Mr C has been able to adequately account for all of the sums being paid into the account he's provided statements for, nor given reliable evidence of his committed expenditure.

In reality, I don't think we've been provided a full picture of Mr C's financial position at the time. Despite being asked and given ample opportunity, I don't think he's been able to account for discrepancies regarding his income, nor has he provided reliable evidence regarding his committed expenditure.

Regardless, I think we've been provided with enough evidence to show that Mr C was likely receiving an income (or at least had sums available) of around £2,920 per month (if not in the region of £3,200 taking into account a benefit payment) at the time of his application. It would've left him with around £900 disposable income per month (if not more depending on the situation with his mortgage payment), which is a sufficient amount to say that the agreement in question was affordable to him at the time of his application. Based on what I've seen, I think that Mr C likely would've been able to demonstrate that to Black Horse if it had asked, and it ultimately and likely would've ended up at the same lending decision.

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

The evidence I've seen shows that Mr C told Black Horse he wasn't able to make repayments towards the agreement in September 2022. Black Horse's contact notes show that he'd asked to return the car but wasn't happy for the costs he'd incur in voluntary termination of the agreement.

The notes show that Black Horse set out options available to Mr C including voluntary termination, voluntary surrender, as well as the option of discussing a buy-back with the supplying dealer. It appears that Mr C wanted to be able to sell the car privately and for

Black Horse to waive any shortfall. It seems to me that Mr C and Black Horse were unable to reach an agreement.

Like our investigator, I've found that Black Horse acted in line with the terms of the agreement it had with Mr C in setting out the termination options available to him. I don't think there was any obligation for Black Horse to have short settled the agreement or to have let Mr C sell the car and write off a shortfall.

I'm aware that Mr C disputes that he was told some of the options to terminate the agreement and our investigator found was represented on Black Horses contact notes. But I've no reason to believe that those records are inaccurate. Ultimately, I'm persuaded that Black Horse treated Mr C fairly in respect of his request to sell the car and/ or terminate the agreement.

It's clear from what he's said that Mr C finds himself in an unfortunate position whereby he's struggling to make the payments required under the agreement – as far as I'm aware only one payment has been made to date. And I'm sorry to hear that he's been distressed by Black Horse's attempts to recover the car, which include visits from collection agents.

However, taking into account that the agreement is significantly in arrears and that Mr C does not seem to have accepted any of the termination options that are available to him, I don't think it's unfair that Black Horse has made attempts to recover the car. And based on what I've seen and from what Mr C has said, I don't think that any of the attempts that Black Horse has made have been unreasonable or in any way excessive.

Moving forward Mr C might want to consider engaging with Black Horse about the options available to him and I remind Black Horse of its obligations under relevant guidance to treat Mr C with due consideration and forbearance.

Lastly, I'm aware that Mr C asserts that the car was mis-sold to him on the basis that it didn't come with the service history he was told it would. That point was not addressed by Black Horse in its response to this complaint, so I make no finding on it. Mr C is free to raise it as a separate issue, should he wish.

My final decision

For the reasons explained above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 16 January 2024.

Stephen Trapp
Ombudsman