

The complaint

Mrs M complains Black Horse Limited (Black Horse) didn't complete appropriate checks when lending to her.

What happened

In November 2021, Mrs M acquired a used car, financed through a hire purchase agreement (A1) with Black Horse. She was required to make 48 monthly repayments of £691.85, and then a final repayment of £19,393.

Mrs M settled A1 in January 2022, at the same time as taking out a new hire purchase agreement (A2) also with Black Horse for a different used car. A2 required Mrs M to make 48 monthly repayments of £684.76, and then a final repayment of £21,270.

Shortly after A2 commenced, Mrs M's circumstances changed, and she got into difficulties making her repayments.

After A2 fell into arrears, Mrs M complained to Black Horse that on both occasions they'd mis-sold the finance to her because much higher than previous repayments had been agreed, without appropriate checks, specifically stress tests, having been made.

Black Horse didn't uphold the complaint saying they felt confident the checks completed showed sufficient disposable income for them to provide the loans. Because Mrs M remained unhappy, she referred her complaint to the Financial Ombudsman Service. Mrs M was also unhappy Black Horse refused to provide underwriting notes to her as part of a Data Subject Access Request (DSAR) she made which she says would support her complaint.

One of our Investigators looked into things, but didn't think Black Horse had acted unfairly because he was satisfied reasonable and proportionate checks had been completed prior to them agreeing to provide both A1 and A2 to Mrs M.

Our Investigator also said he'd not seen any evidence Black Horse had withheld personal information when completing Mrs M's DSAR, and he didn't think they needed to provide her anything further relating to their underwriting procedures.

Mrs M disagreed saying Black Horse failed to complete stress tests before agreeing to lend to her and had they done, they would've clearly been able to see that a change in circumstances would've made the finance unaffordable. Mrs M also said her concerns about the subsequent arrears relating to A2 had not been addressed.

Our Investigator said completing a stress test wasn't a requirement of Black Horse when agreeing this type of lending. He also said Mrs M should raise her concerns about Black Horse's response to her financial difficulties with them, allowing them the opportunity to investigate and respond directly.

As no agreeable resolution could be reached, this case has been passed to me to decide.

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.

Having done so, I'm not upholding it. I realise this will be a disappointment to Mrs M, so I'll explain why.

But first, I'm aware I've summarised this complaint in less detail than has been provided, and I've done so using my own words. No discourtesy is intended by this. Instead, I've concentrated on what I think are the key issues here. Our rules allow me to do this.

This reflects the nature of our service as an informal alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every detail to be able to reach what I think is the right outcome reasonable in the circumstances of this complaint.

I've carefully looked at everything Mrs M has said and provided, but I also must consider what Black Horse knew at the time of the application and take into account the relevant rules put in place by The Financial Conduct Authority (FCA), the regulator at the time.

How we handle complaints about irresponsible and unaffordable lending is explained on our website. It's this approach I've used when deciding Mrs M's complaint. Black Horse needed to ensure that it didn't lend irresponsibly which in practice, means they needed to carry out proportionate checks to be able to understand whether any lending was affordable for Mrs M before agreeing to provide it.

The rules that apply to credit agreements are set out in the FCA's consumer credit sourcebook (CONC). Section 5.2A of CONC is relevant here, as – among other things – it talks about the need for businesses like Black Horse to complete reasonable and proportionate creditworthiness assessments before agreeing to lend someone money.

For both A1 and A2 I've considered the rules by asking the following questions:

- 1) Did Black Horse complete reasonable and proportionate checks to satisfy themselves Mrs M would be able to meet the repayments of the borrowing without experiencing significant adverse consequences?
 - If they did, were their decisions to lend to Mrs M fair?
 - If they didn't, would those checks have shown that Mrs M could've done?
- 2) Did Black Horse act unfairly or unreasonably in some other way?

Did Black Horse complete reasonable and proportionate affordability checks?

A1

Mrs M told Black Horse she received an annual salary of £36,000. They completed a third-party affordability check to verify Mrs M's income. The check uses several sources such as current account turnover and previous credit applications to help verify the stated income. I've seen a screen shot from Black Horse's systems at the time which indicated the check returned a high level of confidence in the information they'd been provided.

Black Horse also completed a credit check to help them understand how Mrs M managed

both her current and existing finances. I've seen this informed Black Horse she held a clean credit history with multiple active credit relationships and a good repayment history – with all payments having been made on time in the previous six months. From the credit check results I've seen; I find it reasonable that this led Black Horse to conclude the risk of lending was low.

Black Horse also completed their own affordability check using a range of data including information gathered from Mrs M, the credit check results and statistical data. This showed against a monthly income of £2,343, Mrs M had monthly expenses of £533 leaving her a pre-lending disposable monthly income of £1810.

Having looked through the results from the credit check, I don't think it returned anything Black Horse ought to have been concerned about. I think the checks completed by Black Horse, against the stated income which they were given confidence was accurate, showed Mrs M was left with a substantial amount of disposable income even after allowing for the lending commitment.

As such, I find the affordability check completed to have been reasonable and proportionate.

A2

A2 was completed less than two months after the application for A1 was agreed and resulted in Mrs M committing to a marginally lower monthly repayment. That said, I'd still expect to see Black Horse complete reasonable and proportionate checks to satisfy themselves her circumstances hadn't changed.

Mrs M told Black Horse she continued to receive an annual salary of £36,000. Black Horse again completed the same third-party affordability check to verify the income stated which I've seen indicated to them the same high level of confidence in the information they'd been provided.

Black Horse also completed a credit check to help them understand how Mrs M managed both her current and existing finances. I've seen this informed Black Horse she held a clean credit history with multiple active credit relationships and a good repayment history – with all payments having been made on time in the previous six months. From the credit check results I've seen; I find it reasonable that this led Black Horse to again conclude the risk of lending was low.

Black Horse again completed their own affordability check using a range of data including information gathered from Mrs M, the credit check results and statistical data. This showed against a monthly income of £2,343, Mrs M had monthly expenses of £522 leaving her a pre-lending disposable monthly income of £1821.

Having looked through the results from the credit check, I don't think it returned anything Black Horse ought to have been concerned about. I think the checks completed by Black Horse, against the stated income which they were given confidence was accurate, showed Mrs M was left with a substantial amount of disposable income even after allowing for the lending commitment.

As such, I find the affordability check completed to have been reasonable and proportionate.

Did Black Horse make fair lending decisions?

I've considered the evidence obtained by Black Horse at the time of approving both A1 and A2. I'm satisfied from the information provided that it was reasonable for Black Horse to

conclude that Mrs M had more than sufficient disposable income to meet the monthly repayments. I'm also satisfied from the information and evidence available to Black Horse, it was reasonable for them to also conclude she'd have more than sufficient money left over each month for emergency or unexpected costs.

Mrs M declared to Black Horse at the time of both A1 and A2 being agreed that her monthly housing and mortgage commitment was zero. I appreciate Mrs M says her mortgage was clearly visible on her credit history at the time, and I understand she feels strongly that had stress tests have been undertaken, Black Horse should've rejected her for both A1 and A2 on the scenario of if issues should arise.

But a lender is required to complete a stress test when they need to take into account the effect of potential future interest rate rises on the lending provided. Both A1 and A2 were fixed rate agreements so it wasn't a requirement for Black Horse to consider potential rate rises as these wouldn't impact Mrs M's repayments.

A stress test isn't designed to account for potential changes in circumstances. A borrower's circumstances could change at any time such as an unexpected change to their employment status. A lender can only be expected to take into account the circumstances they are advised of, at the time of reaching their decision.

That said a lender is required to check that proposed lending is sustainable, and I'm satisfied they did this. Mrs M was in permanent employment, on a full-time salary at the time. She had sufficient disposable income and there was no indication to Black Horse that her circumstance might change that in the future.

While I don't doubt Mrs M has found herself in difficult circumstances since taking out A2 and I'm sorry to hear this, based on the evidence provided, I'm satisfied Black Horse did complete reasonable and proportionate checks prior to agreeing the finance and I don't think they acted unfairly by lending to him.

From everything I've seen I can't reasonably say Black Horse acted unfairly when approving either finance agreement for Mrs M.

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

Taking into consideration everything I've seen; I'm not persuaded that Black Horse acted unfairly or unreasonably in some other way.

Mrs M has an outstanding balance owed under A2 and she has been advised to contact them regarding any financial difficulty she currently might find herself in. I'd remind Black Horse of its obligation to treat any contact from her with forbearance and due consideration.

DSAR

Our investigator concluded he'd seen no evidence any personal information had been withheld from Mrs M during their completion of her DSAR request, which is what they are required to provide her.

Mrs M didn't provide further comment on this issue following our Investigators view, but I've considered all the information and evidence available to me, and I've not seen anything that persuades me to reach a different decision, so I don't find Black Horse need to do anything to put things right here either.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 1 September 2023.

Sean Pyke-Milne
Ombudsman