

## **The complaint**

Mr M is complaining about BMW Financial Services (GB) Limited trading as Alphera Financial Services (Alphera). He says they shouldn't have lent to him as the repayments were unaffordable.

## **What happened**

In July 2018, Mr M took out a hire purchase agreement with Alphera to finance the purchase of a vehicle. He borrowed £44,912.70 and paid a deposit of £4,990.30 – the cash price of the vehicle was £49,903. The agreement required Mr M to make 59 monthly repayments of £660.88, with an optional final instalment of £16,298.21 which would enable Mr M to keep the car. Mr M first missed an instalment in January 2019 and his payments after that were sporadic. The vehicle was repossessed in June 2022.

In the same month, Mr M complained to Alphera, saying he thought they shouldn't have lent to him. He said he had various financial commitments including having significantly increased his borrowing just before taking out the agreement.

In response, Alphera said they'd carried out a credit check before lending to Mr M, considering factors such as his credit score, indebtedness and use of credit, as well as his employment status. Alphera said the information they'd reviewed raised no concerns. Mr M wasn't happy with this response so he brought his complaint to our service.

When he did, Alphera told us they had done additional checks – they said they'd looked at Mr M's tax return because he was self-employed and they'd also obtained two months of bank statements but didn't look at these in detail because of the strength of the tax return and the fact that Mr M was replacing an existing hire purchase agreement.

Our investigator looked into Mr M's complaint and thought it should be upheld. She said she didn't think Alphera had done proportionate checks – and if they had, they'd have realised the agreement wasn't affordable for Mr M. So, she said, they should refund him any amounts he'd paid in excess of a fair usage amount. Alphera haven't responded to our investigator's view – so it's come to me for a decision.

## **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 upholding Mr M's complaint for broadly the same reasons as our investigator – I'll explain below.

The Financial Conduct Authority (FCA) sets out in a part of its handbook known as CONC what lenders must do when deciding whether or not to lend to a consumer. In summary, a firm must consider a customer's ability to make repayments under the agreement without having to borrow further to meet repayments or default on other obligations, and without the repayments having a significant adverse impact on the customer's financial situation.

CONC says a firm must carry out checks which are proportionate to the individual circumstances of each case.

*Did Alphera carry out proportionate checks?*

MFL said they carried out the following checks:

- reviewed Mr M's credit file;
- obtained his bank statements; and
- checked his income to his latest tax return.

Whether or not these checks were proportionate depends on various factors, including the size and length of the loan, and what Alphera found. At around £60,000, the total amount Mr M would have to repay was substantial, and the term of the loan was five years, so it was important the checks were thorough.

Alphera haven't provided the full credit report they reviewed, but they've provided a snapshot. As they've stated, this doesn't show any adverse markers. And it suggests Mr M didn't have significant amounts of credit. Mr M's copy of his credit file shows that he took out a mortgage in June 2018, with monthly repayments of £807. And he took out a loan of £20,000 in the same month, with monthly repayments of £421. This was the month before Alphera decided to lend to Mr M, which is likely why these credit commitments didn't show when Alphera checked Mr M's report.

One of the credit agreements which did show up was Mr M's existing hire purchase agreement – which required monthly repayments of £465. Mr M's new hire purchase agreement was replacing that one, which gave Alphera some comfort, as his repayments were increasing by around £200 per month rather than adding £660 to his monthly expenditure.

Mr M failed Alphera's automated checks, so a manual check was necessary. Alphera asked Mr M for copies of his bank statements for the preceding three months. He provided two months, April 2018 and May 2018 – but not the most recent month. Alphera said they didn't do a full review of these statements – they checked his existing hire purchase agreement was being paid from this account, and they looked at his overall balance. Taking these together with the income from his tax return, they were satisfied the agreement would be affordable.

Mr M's tax return showed his gross income was around £53,000 for the year ended 5 April 2018. He took most of this in dividends, with the tax payable showing as just under £5,000 for the year. It's not clear whether he was paying National Insurance Contributions (NICs) but either way, his tax return suggests his average net income across the year was around £3,500 - £4,000 per month.

Mr M's bank statements showed much higher income than this, suggesting his income wasn't evenly distributed across the year. During April and May 2018, his balance was often several thousand pounds, although he did dip into his overdraft for a short period. A cursory look at the two months' statements Mr M provided to Alphera shows he was making significant and numerous payments to credit providers. And it shows a payment of £465 to a mortgage company – despite the fact there was no mortgage on his credit file at the time.

Taking together the fact that Mr M didn't provide his most recent bank statement, the size of the loan, and the indicators that Mr M likely had credit commitments that weren't appearing on his credit file, I'm not satisfied Alphera's checks were proportionate.

*If Alphera had done proportionate checks, what would they have found?*

A proportionate check would have involved Alphera finding out more about Mr M's financial commitments and his expenditure to determine whether he'd be able to make the repayments in a sustainable way, rather than assuming his income was sufficient.

I've looked at statements for Mr M's bank accounts for the three months leading up to his finance application. We've also spoken to Mr M about his circumstances at the time. I'm not saying Alphera needed to obtain bank statements as part of their lending checks. But in the absence of other information, bank statements provide a good indication of Mr M's commitments and expenditure at the time the lending decision was made.

Mr M's bank statement for June 2018 is the one that was missing when Alphera asked for the statements from Mr M. This statement shows Mr M obtaining a loan of £20,000. And it also shows him paying over £11,000 to a solicitor – because he was buying a house. From this statement it's clear that Mr M's committed expenditure was about to increase significantly.

When it's reasonably foreseeable that a customer's expenditure will increase during the term of an agreement, CONC 5.2A.17 requires a business to estimate what that increase will be. Mr M would have known at the time what his mortgage, council tax and utilities bills were likely to be. And he'd have been able to estimate the increase in his car insurance costs and road tax costs resulting from his change in vehicle.

I've estimated Mr M's expenditure using a combination of the information available from his bank statements, his credit file, and what he's told us about his utilities costs at the time. His mortgage was £807 per month and council tax, utilities and water totalled around £370 per month. Mr M was spending around £190 on phone, TV and internet services, and around £170 per month on fuel. He paid £287 per month in child support and £80 per month for storage services. Looking at the type of vehicle, it's likely the road tax and insurance for his new car would have totalled around £350 per month. He had a family of five, with an additional child on the way, so an estimate of around £450 per month for food and other essentials seems reasonable.

In addition to these costs, Mr M needed to make payments against his loans totalling around £650 per month.

Adding everything together suggests Mr M would have monthly non-discretionary expenditure totalling around £3,350. When adding on monthly repayments for this agreement of £660, his total non-discretionary expenditure would exceed his income, suggesting the agreement was unaffordable for him.

In conclusion, if Alphera had done proportionate checks, they'd have found the loan was unaffordable for Mr M and it wouldn't have been fair and reasonable to lend to him.

### **Putting things right**

Because I don't think Alphera should have approved the loan, I don't think it's fair for them to charge any interest or other charges under the agreement. But Mr M had use of the vehicle for around 47 months so it's fair he pays for that use. There isn't an exact formula for working out what amount would reflect a customer's fair usage of a car. But in deciding what's fair and reasonable in Mr M's case I've thought about the amount of interest charged on the agreement and Mr M's overall usage of the car. In doing so, I think a fair amount Mr M should pay is a total of £22,414.68. To settle Mr M's complaint, Alphera should do the following:

- Refund all the payments Mr M has made in excess of £22,414.68, adding 8% simple

interest per year from the date of each overpayment to the date of settlement.

- If Mr M has paid less than £22,414.68, Alpheria should arrange an affordable and sustainable repayment plan for the outstanding balance.
- Terminate the agreement and remove any adverse information recorded on Mr M's credit file regarding the agreement.

If Alpheria consider tax should be deducted from the interest element of my award they should provide Mr M a certificate showing how much they've taken off so that Mr M can reclaim that amount, assuming he is eligible to do so.

### **My final decision**

As I've explained above, I'm upholding Mr M's complaint. BMW Financial Services (GB) Limited trading as Alpheria Financial Services need to take the steps outlined above to settle the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 5 December 2023.

Clare King  
**Ombudsman**