

The complaint

Mr A is complaining about BMW Financial Services (GB) Limited trading as Alpheria Financial Services (Alpheria). He says they were irresponsible in lending to him as the repayments were unaffordable. A representative has raised Mr A's complaint on his behalf but for ease I've written as if we've dealt directly with him.

What happened

In April 2017, Mr A took out a hire purchase agreement with Alpheria to finance the purchase of a vehicle. He borrowed £39,234 and paid a deposit of £100 – the cash price of the vehicle was £39,334. The agreement required Mr A to make 47 monthly repayments of £622.29, with an optional final instalment of £17,085 which would enable Mr A to keep the car. Mr A first missed an instalment in September 2017 when his direct debit was rejected. Several further direct debits were rejected and he fell into arrears from early 2018. The agreement was terminated in May 2018 and Mr A returned the car.

Mr A complained to Alpheria in July 2022, saying his personal finances weren't sufficiently checked to make sure he'd be in a position to pay back the loan. He said he had some difficulties with his mental health and that it was clear from his bank statements that he couldn't afford the repayments.

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

Our investigator looked into Mr A's complaint and thought it should be upheld. She said she didn't think Alpheria had done proportionate checks – and if they had, they'd have realised the agreement wasn't affordable for Mr A. So, she said, they should refund him any amounts he'd paid in excess of a fair usage amount. Alpheria 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 A'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?

Alphera said their checks were limited to an automated assessment which would normally include looking at a customer's credit score, payments to other lenders, use of payday lenders and credit cards, age, employment status and proposed monthly payment. They said they'd also have asked Mr A if he expected any change in his financial circumstances over the life of the agreement.

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 £46,500, the total amount Mr A would have to repay was substantial, and the term of the loan was four years, so it was important the checks were thorough.

I've seen no evidence of the checks Alphera carried out, and they haven't explained what factors informed their decision. This was a loan with a term of four years and monthly repayments of well over £600. I've seen limited evidence of Mr A's existing credit commitments at the time of his application but he had a mortgage and a significant loan, with monthly repayments for the two totalling over £500. He was also using credit cards and his bank account was overdrawn for much of the few months preceding the lending decision.

Given the size of the loan and the amount of Mr A's existing credit commitments I don't think Alphera could have carried out proportionate checks without making a reasonable estimate of Mr A's income – his monthly repayments before taking into account any other living costs would have been well over £1,100. I've not seen any evidence that Alphera made any attempt to determine Mr A's income. So I can't say their 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 A's income, credit commitments and expenditure to determine whether he'd be able to make the repayments in a sustainable way.

Mr A's told us he was employed full time until February 2017, after which he had to reduce his hours due to his health and his income decreased. His bank statements show his income was around £1,200 in January and February, around £800 in March and around £400 in April 2017. As I've noted above, his mortgage and loan repayments were over £500 per month. Before taking into account any other expenditure it's clear that monthly repayments of over £600 were completely unaffordable for Mr A.

I'm satisfied that if Alphera had done proportionate checks they could not have reasonably decided to lend to Mr A. So I'm upholding his complaint.

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 A had use of the vehicle for around 14 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 A's case I've thought about the amount of interest charged on the agreement and Mr A's overall usage of the car. In doing so, I think a fair amount Mr A should pay is £500 per month, or a total of £7,000. To settle Mr A's complaint, Alphera should do the following:

- Refund the deposit of £100, adding 8% simple interest per year from the date of payment to the date of settlement.

- Refund all the payments Mr A has made in excess of £7,000, adding 8% simple interest per year from the date of each overpayment to the date of settlement.
- Terminate the agreement with nothing further to pay and remove any adverse information recorded on Mr A's credit file regarding the agreement.

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

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 19 December 2023.

Clare King
Ombudsman