

Complaint

Mr S complains that BMW Financial Services (GB) Limited (trading as “Alphera” Financial Services) unfairly entered into a hire purchase agreement with him.

He’s said that the monthly payments to this agreement were unaffordable and he shouldn’t have been accepted for it.

Background

In December 2018, Alphera provided Mr S with finance for a used car. The purchase price of the vehicle was £48,296.00. Mr S paid a deposit of £3,428.25 and entered into a 48-month hire purchase agreement with Alphera for the remaining £44,867.75.

The loan had interest and charges of £8,668.05 and a 48-month term. This meant that the total amount to be repaid of £12,803.36 was due to be repaid in 47 monthly instalments of £771.13 and an optional final repayment of £21,428.00.

When considering Mr S’ complaint Alphera agreed that it could have carried out further checks before providing Mr S with agreement. As a result it was prepared to refund Mr S his deposit, unwind the agreement and also remove any adverse information from his credit file as long as Mr S returned the vehicle.

Mr S refused the offer saying that he’s already paid half the amount of the credit so he shouldn’t have to return the vehicle and asked us to look into whether he should have been provided with the agreement and in the first place and the potential result of this.

As a result, Mr S’ complaint was then considered by one of our investigators. She didn’t think that proportionate checks would have shown Alphera that it shouldn’t have lent to Mr S. So she didn’t think that Alphera had done anything wrong or treated Mr S unfairly and didn’t recommend that Mr S’ complaint should be upheld.

Mr S disagreed with our investigator and the complaint was passed to an ombudsman for a final 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.

We’ve explained how we handle complaints about irresponsible and unaffordable lending on our website. And I’ve used this approach to help me decide Mr S’ complaint.

Having carefully thought about everything I’ve been provided with, I’m not upholding Mr S’ complaint. I’d like to explain why in a little more detail.

Alphera needed to make sure that it didn't lend irresponsibly. In practice, what this means is that Alphera needed to carry out proportionate checks to be able to understand whether any lending was sustainable for Mr S before providing it.

Our website sets out what we typically think about when deciding whether a lender's checks were proportionate. Generally, we think it's reasonable for a lender's checks to be less thorough – in terms of how much information it gathers and what it does to verify that information – in the early stages of a lending relationship.

But we might think it needed to do more if, for example, a borrower's income was low, the amount lent was high, or the information the lender had – such as a significantly impaired credit history – suggested the lender needed to know more about a prospective borrower's ability to repay.

Alphera says it agreed to this application after Mr S provided details of his employment and it looked at the way he'd managed the payments on previous agreements. It says it also carried out credit searches on Mr S which had shown he had a reasonable credit file. On the other hand, Mr S says his existing commitments meant that these payments were unaffordable and there was no way he was going to be able to maintain them.

I've thought about what Mr S and Alphera have said.

The first thing for me to say is that all parties agree that the checks Alphera carried out did go far enough. So in reality the question for me to consider here is, had Alphera carried out further checks what are they likely to have shown? I have therefore carefully considered this question.

Given the amount borrowed, the monthly payments and the length of the agreement, in order for Alphera's checks to have been proportionate, I think that it would have had to have an actual understanding of Mr S' income, normal credit commitments and his actual living costs. That said, I don't think that obtaining further information on these matters would have made a difference to Alphera's decision to lend in this instance.

I say this because the information Mr S has provided about his finances at the time appears to show that Alphera is likely to conclude that he did have the funds, at the time at least, to sustainably make the repayments due under this agreement. I accept it's possible that Mr S' actual circumstances at the time might have been worse than what the information he's provided shows. I've seen what Mr S has said about his income and considered the information he's provided about the accounts he defaulted on sometime after the funds for this agreement were provided.

In relation to what Mr S has said about the income he received at the time, the key here is that it's only fair and reasonable for me to uphold a complaint in circumstances where a lender did something wrong. I don't think that the investigator's interpretation of what Alphera is likely to have concluded about Mr S' salary is unreasonable based on the information Mr S has now provided.

Equally, given Mr S was returning to Alphera for finance in circumstances where he'd previously been turned down for finance by it, I think it's unlikely – and certainly less likely than not – that Mr S would have attempted to correct any interpretation of his salary which concluded he could afford the monthly payments, in the way that he has offered to do now.

It's clear that Mr S refused to take no for an answer when previously refused credit. And I cannot reasonably conclude that he would have challenged Alphera on its interpretation of

what was being received into his bank account and attempted to correct this with company accounts had it, as I think it is likely to have done, decided to lend.

In these circumstances, while I agree that further checks were necessary, the information provided leads me to conclude that Alphera is unlikely to have concluded that the payments to this agreement were unaffordable, had the necessary further checks been carried out.

For the sake of completeness, I'd also add that the amount Mr S has paid on his agreement is substantially less than the amount he borrowed. So even if I were to agree that Mr S' complaint should be upheld, I would not look towards making a direction that would see him retain ownership of a vehicle which he hasn't got close to repaying the capital value of and which he argues was never affordable for him to begin with.

The fact that Mr S might have paid more than half the agreement – and therefore has paid the amount necessary to voluntarily terminate the vehicle, which would in any event require the vehicle to be returned – doesn't alter my conclusion on this matter.

So overall and having carefully considered everything, while I'm not persuaded that Alphera's checks before entering into this hire purchase agreement with Mr S did go far enough, I'm satisfied that carrying out reasonable and proportionate checks won't have stopped Alphera from providing these funds, or entering into this hire purchase agreement with him.

As this is the case, I don't think that Alphera acted unfairly or unreasonably towards Mr S. So I'm not upholding this complaint. I appreciate that this will be disappointing for Mr S. But I hope he'll understand the reasons for my decision and at least consider that his concerns have been listened to.

As I'm not upholding Mr S' complaint I leave it up to him to decide whether he wishes to contact Alphera about the offer it made in its final response letter, which he rejected, to see whether it remains available for him to accept.

My final decision

My final decision is that I'm not upholding Mr S' complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 20 March 2024.

Jeshen Narayanan
Ombudsman