

## **The complaint**

Mr F is complaining about BMW Financial Services (GB) Limited trading as Alphera Financial Services (Alphera). He says they were irresponsible in lending to him as the repayments were unaffordable.

## **What happened**

In December 2022, Mr F took out a hire purchase agreement with Alphera to finance the purchase of a vehicle. He borrowed £40,000 and paid a deposit of £4,476 – the cash price of the vehicle was £44,476. The agreement required Mr F to make 47 monthly repayments of £649.16, with an optional final instalment of £24,203.03 which would enable Mr F to keep the car. Mr F has made his repayments on time to date but says he has had to take out a significant amount of additional credit in order to do so.

Mr F complained to Alphera in November 2023, 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 to use a credit card to pay half of the deposit on the car and was now totally reliant on credit for his day-to-day living expenses.

Alphera didn't respond to Mr F's complaint within a reasonable timeframe so he brought his complaint to our service.

Our investigator looked into Mr F's complaint and thought it should be upheld. He said he didn't think Alphera had done proportionate checks – and if they had, they'd have realised the agreement wasn't affordable for Mr F. So, he said, they should end the agreement and collect the car, and 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 F'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?*

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. So I can't say their checks were proportionate.

That doesn't necessarily mean I can uphold Mr F's complaint – I need to consider whether they'd have been able to fairly decide to lend to Mr F if they had done proportionate checks.

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

A proportionate check would have involved Alphera finding out more about Mr F's income, credit commitments and expenditure to determine whether he'd be able to make the repayments in a sustainable way.

Mr F's bank statements show his salary was around £2,500 per month. His credit file shows at the time of the lending he had a mortgage and personal loans with repayments totalling £1,030 per month, and credit cards with balances totalling around £20,000. CONC says a lender must consider what repayments a consumer would need to make to repay running account credit within a reasonable period. In my opinion, Alphera would have needed to allow at least £700 per month for Mr F's payments against these credit cards.

So in total, Mr F already needed to make payments to creditors of over £1,700 every month. Adding on the amount due under this agreement takes that figure to around £2,350, leaving just £150 per month to cover all essential living expenses such as utilities, communications, food and transport. I'm satisfied Alphera wouldn't have been able to decide that was a reasonable figure.

In summary, I'm satisfied that if Alphera had done proportionate checks they could not have reasonably decided to lend to Mr F. 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 F has had use of the vehicle for around 17 months and 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 F's case I've thought about the amount of interest charged on the agreement and Mr F's overall usage of the car. In doing so, I think a fair amount Mr F should pay is £422 per month, or a total of £7,200. This figure is somewhat higher than that stated in our investigator's view because of the time that's passed since the view was issued. To settle Mr F's complaint, Alphera should do the following:

- End the agreement and collect the car with nothing further to pay.
- Refund the deposit of £4,476, adding 8% simple interest per year from the date of payment to the date of settlement.
- Calculate the total amount Mr F has paid (excluding the deposit) and deduct £7,200 for fair usage. Refund any overpayments, adding 8% simple interest per year from the date of each overpayment to the date of settlement.
- Remove any adverse information recorded on Mr F's credit file regarding the agreement.

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

### **My final decision**

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 15 July 2024.

Clare King  
**Ombudsman**