

Complaint

Mrs K complains that BMW Financial Services (GB) Limited (“Alphera” Financial Services) unfairly entered into a hire-purchase agreement with her. She’s said the agreement was unaffordable and so she shouldn’t have been accepted for it.

Background

In June 2019, Alphera provided Mrs K with finance for a used car. The cash price of the vehicle was £18,010.00. Mrs K paid a deposit of £2,000.00 and required finance for the remaining £16,010.00 she needed to complete her purchase.

Alphera accepted her application and as a result she entered into a 60-month hire-purchase agreement with it. The amount lent was £16,010.00 and the loan had interest of £3,724.00. So the total amount to be repaid of £19,734.00 (not including Mrs K’s deposit) was due to be repaid in 60 monthly instalments of £328.90.

Mrs K settled the finance in full and early in September 2023. In April 2024, she subsequently complained that the agreement was unaffordable and Alphera shouldn’t have provided it to her.

Mrs K’s complaint was considered by one of our investigators. She didn’t think that Alphera had done anything wrong or treated Mrs K unfairly. So she didn’t recommend that Mrs K’s complaint should be upheld.

Mrs K 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 Mrs K’s complaint.

Having carefully thought about everything I’ve been provided with, I’m not upholding Mrs K’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 Mrs K could make her payments in a sustainable manner before agreeing to lend to her. And if the checks Alphera carried out weren’t sufficient, I then need to consider what reasonable and proportionate checks are likely to have shown.

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 suggests that various factors - such as Mrs K's credit score, what she owed to other lenders, her existing indebtedness; whether she had any credit cards and/or payday loans; her employment status and the amount of the monthly payment to this agreement – were all considered before Mrs K's application was accepted.

On the other hand, Mrs K has said that the payments were unaffordable for her and she therefore shouldn't have been accepted for the agreement.

I've thought about what Mrs K and Alphera have said.

Alphera hasn't provided us with the output of what it was that it learnt about Mrs K or the actual data which it relied upon to determine that the payments to this agreement were affordable for her. So I don't actually know what it was that Alphera relied upon to reach the conclusion that this agreement was affordable for Mrs K.

As Alphera has not provided sufficient information to satisfy me that it did take reasonable steps to understand whether Mrs K could afford the monthly payments, I'm not satisfied that it did complete fair, reasonable and proportionate affordability checks before entering into this hire-purchase agreement with Mrs K.

As proportionate checks weren't carried out before this agreement was entered into, I can't say for sure what they would've shown. So I need to decide whether it is more likely than not that a proportionate check would have told Alphera that it was unfair to enter into this agreement with Mrs K on the basis that she wouldn't be able to afford the monthly payments.

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 understanding of Mrs K's income, her payments to existing creditors and her regular living costs. I want to be clear in saying that this isn't the same as saying that Alphera had to obtain bank statements in order to verify all of this as how it found out about this was down to it.

I've considered the information Mrs K has provided on her circumstances at the time. But I don't think that Alphera attempting to find out further information about Mrs K's committed expenditure would have made a difference here. I say this because I've not seen anything that shows me that when Mrs K committed regular living expenses, other non-discretionary expenditure and her existing credit commitments were deducted from what she received each month, she did not have the funds to make the payments to this agreement.

I say this in the knowledge that Mrs K is unhappy that our investigator didn't take all of her expenditure into account. However, some of the expenditure Mrs K believes should be included are things that wouldn't have shown up in credit checks – for example what she says are loan repayments to relatives. I'd also point out that Alphera would not necessarily have seen these bank statements either, as it didn't have to request bank statements in order to find out more about Mrs K's committed expenditure.

Finally, I also need to keep in mind that this transaction took place at a time where Mrs K decided that it was a reasonable time to purchase a car. So, at the time at least, she wanted the finance she needed to enable her to acquire this vehicle - albeit her complaint makes it clear that she no longer feels that way. However, Mrs K's submissions now are being made with a view to obtaining a successful outcome on her complaint.

I have to consider what Mrs K is now saying in this light and in these circumstances. It is therefore difficult for me to accept that Mrs K would proactively have looked to have shown the monthly payments for the agreement to be unaffordable, in circumstances where the information I've seen suggests proportionate checks would have shown that they were.

Overall and having carefully considered everything, while I don't think that Alpher's checks before entering into this hire-purchase agreement with Mrs K did go far enough, I've not been persuaded that reasonable and proportionate checks would have prevented Alpher from providing these funds, or entering into this agreement with her.

I've also thought about what Mrs K has said about asking Alpher for help because she was experiencing financial difficulty. It's fair to say that Mrs K did email Alpher, in October 2022, to enquire whether it was possible to defer payments for two months. She pointed to the fact that she had 20 payments remaining on her agreement and that she would increase her payments over this time to cover the two payments deferred.

It's important to note that Mrs K doesn't say why she wants a payment deferral and there certainly isn't anything in the content of the email where Mrs K directly says that she is suffering from financial difficulty. Furthermore, as I understand it Mrs K was not in an arrears on her agreement at this time either.

Alpher's notes on Mrs K's agreement indicate that someone attempted to phone Mrs K but their call wasn't answered. Mrs K says she was told that there wasn't a possibility of deferring payments. I suspect that the voicemail Alpher's representative left did say this. But the notes recorded also indicate that the possibility of a reduced payment plan was mentioned but that this would subject to affordability.

Therefore, I think that it's likely the voicemail told Mrs K she could have a payment plan if she was having issues with making her payments and she should get back in touch if that was the case. Bearing in mind, what I've said about the content of Mrs K's email and her account not bearing in arrears, I don't think that Alpher's actions were unreasonable. And as it didn't hear back from Mrs K, I don't think that it was unreasonable to continue collecting payments from her, or that it treated Mrs K unfairly after receiving her email.

In reaching my conclusions, I've also considered whether the lending relationship between Alpher and Mrs K might have been unfair to Mrs K under section 140A of the Consumer Credit Act 1974 ("CCA").

However, for the reasons I've explained, I don't think Alpher irresponsibly lent to Mrs K or otherwise treated her unfairly in relation to this matter. And I haven't seen anything to suggest that section 140A CCA or anything else would, given the facts of this complaint, lead to a different outcome here.

This means I've not been persuaded that Alpher acted unfairly towards Mrs K and I'm not upholding the complaint. I appreciate that this will be very disappointing for Mrs K. But I hope she'll understand the reasons for my decision and that she'll at least feel her concerns have been listened to.

My final decision

My final decision is that I'm not upholding Mrs K's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs K to accept or reject my decision before 4 November 2024.

Jeshen Narayanan
Ombudsman