

## **Complaint**

Mr H 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.

## **Background**

In November 2023, Alphera provided Mr H with finance for a used car. The cash price of the vehicle was £28,750.00. Mr H paid a deposit of £201 and entered into a 49-month hire purchase agreement with Alphera for the remaining amount needed for the purchase.

The loan was for £28,549.00, had total interest, fees and charges of £9,960.22 and a 49-month term. This meant that the total amount to be repaid of £38,710.22 was due to be repaid in 48 monthly instalments of £475.98 followed by an optional final payment of £15,662.18 which Mr H had to make if he wished to keep the car at the end of the term.

Mr H’s complaint was considered by one of our investigators. He didn’t think that proportionate checks would have shown Alphera that it shouldn’t have lent to Mr H. So he didn’t think that Alphera had done anything wrong or treated Mr H unfairly and didn’t recommend that Mr H’s complaint should be upheld.

Mr H 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 H’s complaint.

Having carefully thought about everything I’ve been provided with, I’m not upholding Mr H’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 H 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 suggests that various factors - such as Mr H's credit score, what he owed to other lenders, his existing indebtedness; whether he had any credit cards and/or payday loans; his employment status and the amount of the monthly payment to this agreement – were all considered before Mr H's application was accepted. This may well have been the case but it hasn't provided us with the specifics of what it learned about Mr H particular circumstances.

As Alphera hasn't provided us with the details of what it was that it learnt about Mr H or the actual data which it relied upon to determine that the payments to this agreement were affordable for him, I have no idea of what it was that Alphera relied upon to reach the conclusion that this agreement was affordable for Mr H.

In these circumstances, I'm simply not in a position to agree that Alphera has provided sufficient evidence to demonstrate that it did take reasonable steps to understand whether Mr H could afford the monthly payments. So I'm not satisfied that it did complete fair, reasonable and proportionate affordability checks before entering into this hire-purchase agreement with Mr H.

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 Mr H on the basis that he 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 Mr H's income, his payments to existing creditors and his 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.

Having considered everything provided, I'm not persuaded that Alphera obtaining further information from Mr H would have made a difference on its decision to lend in this instance. I say this because the information Mr H has provided about his finances at the time, on the face of things at least appears to show that when his actual committed expenditure was deducted from what he received each month, he did have the funds to sustainably make the repayments due under this agreement.

I accept that Mr H argues that he was in financial distress at the time that he applied for these funds and he's provided his credit card statements as evidence of this. I've considered what Mr H has said and while I accept that he was making significant overpayments to save on the amount he paid in interest, this was essentially his choice and a matter which he was aware of at the time he was choosing to purchase this vehicle.

I also have to consider that Mr H's most recent submissions are being made in support of a claim for compensation and what I need to decide here is what Mr H is likely to have disclosed to Alphera should it have posed further questions about his financial circumstances. I think that this is important as while there were some non-discretionary spend on the credit card, it is fair to say that a significant amount of the spending was discretionary and at the time, at least, Mr H wanted this car and that is why he applied for finance.

With this in mind I think that any explanations he would have provided at the time are more likely to have been with a view to persuading Alphera to lend, rather than highlighting any

unaffordability. And, in these circumstances, I think it is unlikely that Mr H would have sought to show Alphera that he'd continue his discretionary spending in this way and therefore would continue having to make these larger credit card payments when he wasn't obliged to do so. So I don't think that it would be fair and reasonable for me to consider the full amount of the credit card repayments Mr H was making as committed expenditure in the way he argues that I should.

Overall and having carefully considered everything, I've not been provided with sufficient evidence which satisfies me that Alphera's checks before entering into this hire purchase agreement with Mr H did go far enough. Nonetheless, I'm satisfied that had Alphera carried out reasonable and proportionate checks, as it ought to have done, this won't have stopped it from providing these funds, or entering into this hire purchase agreement with Mr H.

In reaching this conclusion I've also considered whether the lending relationship between Alphera and Mr H might have been unfair to Mr H under section 140A of the Consumer Credit Act 1974 ("CCA").

However, for the reasons I've explained, I don't think Alphera irresponsibly lent to Mr H or otherwise treated him unfairly in relation to this matter. 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. And I'm not upholding this complaint.

I appreciate that this will be disappointing for Mr H. But I hope he'll understand the reasons for my decision and at least consider that his concerns have been listened to.

Although I'm not upholding this complaint, I'd like to remind Alphera of its obligation to exercise forbearance and due consideration should it intend to collect the outstanding balance remaining on Mr H's account and it be the case that he is experiencing financial difficulty.

### **My final decision**

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 16 December 2024.

Jeshen Narayanan  
**Ombudsman**