

The complaint

Miss M has complained about a hire purchase agreement which BMW Financial Services (GB) Limited trading as ALPHERA Financial Service ("Alphera") gave her which was unaffordable. Miss M has also said the interest rate was too high.

What happened

In March 2022, Miss M entered into a hire purchase type agreement through a credit intermediary for a used car. The vehicle purchase price was £16,090 and a £1,344.39 deposit was paid (made up of a £500 cash payment and a part exchange) meaning £14,745.61 was financed. There were interest and charges of £6,055.92 with a total to repay of £22,145.92.

This agreement was to be repaid with 59 monthly repayments of £282.67 followed by a final optional payment to keep the car of £4,124. Based on the most recent statement of account an outstanding balance still remains.

Following Miss M's complaint, Alphera in a final response letter didn't uphold it. Alphera explained the automated process Miss M's application went through, no concerns were raised and so it was satisfied a fair decision had been. Unhappy, with this response Miss M referred the complaint to the Financial Ombudsman.

The complaint was then considered by one of our investigators. They conclude that Alphera's checks didn't go far enough as the finance appeared to be auto approved. Had further checks been made into Miss M's finances it would've likely concluded she couldn't afford to take on this agreement.

Miss M accepted that her complaint was an uphold but was concerned about terminating the agreement and returning the vehicle because she uses it to take a family member to hospital. Miss M says no basis has been given as to why she should pay £180 per month for a car that we've decided wasn't affordable for her. The investigator provided a further explanation to Miss M but still she disagreed, saying;

- A fairer outcome would be for her to keep the car and just pay Alphera the remaining balance capital price of the car.
- Miss M is now in a better financial position now then she was at the time.
- The fair usage figure provided by the investigator isn't reasonable.

Alphera also didn't agree with the investigator's outcome, saying.

- Its underwriting review showed Miss M had £7,500 of total debt and she lived at home with parents.
- Her credit commitments came to £330 per month and on top of this was an existing HP agreement costing £157 per month.
- There was no adverse credit file data and she had credit card headroom – should she have needed further funds.

As both parties didn't accept the outcome the complaint has been passed to me to decide.

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.

The regulations in place when Alphera lent to Miss M required it to carry out a reasonable assessment of whether Miss M could afford to make his repayments in a sustainable manner.

Alphera had to think about whether making the payments sustainably would cause difficulties or adverse consequences for Miss M. In other words, it wasn't enough for Alphera's lending decision to only consider the likelihood that it would get its money back, or that it had the ability to repossess the vehicle, without considering the impact making these payments would have on Miss M.

Checks also had to be "proportionate" to the specific circumstances of the loan application. In general, what constitutes a proportionate affordability check will be dependent upon a number of factors including – but not limited to – the particular circumstances of the borrower (e.g. their financial history, current situation and outlook, and any indications of vulnerability or financial difficulty) and the amount / type / cost of credit they are seeking. Even for the same customer, a proportionate check could look different for different loan applications.

In light of this, I think that a reasonable and proportionate check generally ought to have been *more* thorough:

- the *lower* a customer's income (reflecting that it could be more difficult to repay a given loan amount from a lower level of income);
- the *higher* the amount due to be repaid (reflecting that it could be more difficult to meet a higher repayment from a particular level of income);
- the *longer* the term of the agreement (reflecting the fact that the total cost of the credit is likely to be greater and the customer is required to make payments for a longer period).

There may also be other factors which could influence how detailed a proportionate check should be for a given loan application – including (but not limited to) any indications of borrower vulnerability, any foreseeable changes in future circumstances, or any substantial time gaps between loans. I've thought about all the relevant factors in this case.

Alphera has said when Miss M applied for the loan it carried out an assessment of affordability and creditworthiness using a "...*bespoke credit scoring criteria, internal policies and data from credit reference agencies.*" Alphera also carried out a credit search, because the final response letter says it did and Alphera says the credit search results didn't indicate anything that would've caused it concern.

Alphera hadn't initially provided the results it saw from the credit search to the investigator before their assessment but in response it explained Miss M had some external debt but her credit file was clear of adverse payment information. It also says it knew that Miss M's existing payments came to around £330 per month.

I can't be sure exactly what data and factors it considered that led it to conclude Miss M could afford to make the monthly payments approaching £283 a month, or anything else

about Miss M's monthly expenditure. Indeed, it seems to me that Alphaera simply expects us to accept Miss M's payments were affordable because its systems approved it.

Considering the amount advanced, the monthly payment and the fact the loan was provided relatively recently, Alphaera hasn't been able to tell us the monthly income it had recorded for Miss M which given the size of her monthly repayment is something that at the very least needed to be considered. I'm not currently satisfied that the checks Alphaera carried out before reaching the conclusion the agreement was affordable for Miss M were reasonable or proportionate.

As proportionate checks weren't carried out before this agreement was provided, I can't say for sure what Alphaera may have seen. So, I need to decide whether it is more likely than not that a proportionate check would have shown Alphaera that it was unfair to enter into this agreement with Miss M.

When thinking about a proportionate check, it's also worth saying that while I've used bank statements, Alphaera could've built a picture of Miss M's finances a number of other ways. It could've for example asked for a copy of her payslips, work contract, copies of bills or any other documentation it felt it needed to obtain in order to satisfy itself that the agreement was affordable for her.

To be clear, I've only used the bank statements to get an idea of what Miss M's income and actual living costs are likely to have been like at the time. I've not done this because I think that Alphaera ought to have requested this information as part of underwriting this agreement.

I accept that had Alphaera conducted proportionate checks it may not have seen all the information that I have seen. But, in the absence of Alphaera conducting a proportionate check I do think it's fair and reasonable to consider the bank statements that I now have access to.

Firstly, turning to her income, I can see in the three months that her salary was £1,156 per month. There are other credits to the account but these aren't regular and there are occasions where Miss M received a payment and then immediately transferred it out to different individuals.

I can also see payments to a third party – and we asked Miss M about this. She explained she was at the time living between her parents and a rented property. And Miss M says she was contributing towards the bills. I can see she also received money from the third party but overall – over the course of the three months, taking account of what Miss M has told us I think she was paying around £300 per month for her share of the bills.

Miss M also says she was spending around £200 per month on food – and that does seem a reasonable assessment given the food costs I can see in the bank statements.

On top of this, Miss M had other regular payments including for finance, mobile phones, TV and internet, TV subscription service and buy-now-pay-later items. These commitments came in on average between £400 and £500 per month depending on how much Miss M paid to her credit card and catalogue shopping accounts.

Miss M was paying an existing hire purchase agreement with another lender, but I've not counted this because the agreement was settled and replaced with the Alphaera one.

Had Alphaera carried out a proportionate check – which is what it needed to have done before it lent to Miss M then it would've likely discovered that she didn't have enough

disposable income to afford the finance payment and cover all of her living costs. So a proportionate check ought to have led Alphera to not lend to Miss M.

I'm satisfied, based on what I've seen that the complaint should be upheld.

Other considerations

I've not considered Miss M's complaint about the APR of the agreement too closely, because I've already decided Alphera shouldn't have lent to Miss M. So where there was or wasn't a mis-representation to do with the APR wouldn't change the outcome that I've reached nor the redress that I've proposed below.

I've also considered whether the relationship might have been unfair under s.140A of the Consumer Credit Act 1974. However, I'm satisfied the redress I have directed below results in fair compensation for Miss M in the circumstances of her complaint. I'm satisfied, based on what I've seen, that no additional award would be appropriate in this case.

Putting things right

I've carefully considered what, in the circumstances of this case Alphera needs to do in order to put things right for Miss M.

I've seen from Miss M's response to the assessment that she doesn't agree that she should have to hand the car back and that the payment calculated for fair usage is unfair. Instead, she's asked to keep the car and continue to make payments to Alphera until she's paid enough to have repaid what she was lent.

I've thought about this, but ultimately, I do have to make a direction to Alphera as to what it does to put things right, and for the reasons I've set out below, I consider this to be the fairest way of settling the complaint.

I've thought about what amounts to fair compensation in this case. In broad terms, where I find that a business has done something wrong, I'd normally expect that business – in so far as is reasonably practicable – to put the consumer in the position they *would be in now* if that wrong hadn't taken place. In essence, in this case, this would mean Alphera putting Miss M in the position she'd now be in if the agreement hadn't been entered into in the first place.

But when it comes to complaints about irresponsible lending this isn't always straightforward or even possible. Miss M did enter into the agreement and *was*, at least, given the car in question. She has also had use of the vehicle for around 36 months. So, in these circumstances, I can't undo what's already been done. And it's simply not possible to put Miss M back in the position she would be in if she hadn't been given the agreement in the first place.

I've had to think about some other way of putting things right in a fair and reasonable way bearing in mind all the circumstances of the case. Our website sets out the main things we consider when looking at putting things right in cases where we conclude that a lender did something wrong in irresponsible/unaffordable lending complaints.

When an unaffordable lending complaint is upheld, we typically say the borrower should repay the amount lent and the lender refunds any interest, fees and charges the borrower paid. This is because the borrower will have had the benefit of the credit they were provided with and it's usually the extra paid over and above this – any interest fees and charges – that will have caused the consumer to lose out.

In this case, this would limit Miss M to paying back the cash value of the car - £16,090. But having looked at the deposit and the amount Miss M has likely already paid to Alphera since the inception of the agreement, she hasn't yet paid enough to cover the cash value of the car. So, she's currently not in a position where she's already paid the cash value of the car and therefore she would be in effect now paying interest or charges to Alphera.

In circumstances where a borrower was provided with finance to purchase a car they were unable to afford to make the payments for – which would've been discovered by carrying out a proportionate check, it's usually appropriate for the car to be returned and the agreement ended. Given the circumstances of this complaint, I've not seen anything here to make me think I should depart from this approach.

Furthermore, while Miss M may require a car, I don't think that it would be fair nor reasonable for me to say that Alphera should allow Miss M to keep the car and continue to pay for the car despite Miss M possibly, now being in a position to afford the payments. When her complaint has been upheld on the bases the agreement ought to not have been entered into. So, as part of what I'm proposing to ask Alphera to do, Miss M will need to return the car to Alphera.

I now turn to what it would be fair for Miss M to pay for using the vehicle – in other words, what fair usage would be here. Although the agreement shouldn't have been granted, Miss M was still nonetheless provided with a car and has had use of it since. So, I don't think that it would be fair for her to in effect keep the car without making any further payments or have been able to use the car for free during the last three years.

I do think it's fair to say that there isn't an exact formula for working out fair usage. But in deciding what's fair and reasonable I've thought about the amount of interest charged on the agreement, Miss M's usage of the car and what sort of costs she might have incurred to stay mobile in an equivalent vehicle.

Having thought about these factors, the Investigator concluded that Miss M should have to pay £180 she's had use of the car and I don't think that is an unreasonable amount and a reasonable figure to reflect the fact that she's been kept mobile during a time when she shouldn't have had the car.

Therefore to put things right for Miss M Alphera should:

- end the agreement and collect the car with nothing further for Miss M to pay;
- refund the deposit Miss M paid along with 8% simple interest per year from the date of payment to the date of settlement[†]
- Refund all of the monthly payments Miss M made, less £180 per month for the time she has had use of the vehicle.

If Miss M has paid more than the fair usage figure:

- Alphera should refund any overpayments adding 8% simple yearly interest on the refunds, calculated from the date Miss M made the overpayments to the date of the refund[†]; and
- remove all adverse entries relating to this agreement from Miss M's credit file.

Although, the below is unlikely given the number of repayments Miss M has already paid, if Miss M has paid less than the fair usage figure, then Alphera should:

- arrange an affordable repayment plan with Miss M, while taking into consideration the FCA requirements to treat Miss M's financial difficulties with forbearance and due consideration – if necessary; and
- when the debt has been fully repaid, remove all adverse entries relating to this agreement from Miss M's credit file.

†HM Revenue & Customs requires Alphera to take off tax from this interest. Alphera must give Miss M a certificate showing how much tax it's taken off if she asks for one.

My final decision

For the reasons I've outlined above, I am upholding Miss M's complaint.

BMW Financial Services(GB) Limited trading as ALPHERA Financial Service should put things right for Miss M as directed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 24 April 2025.

Robert Walker
Ombudsman