

## **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 interest made the monthly payments on this agreement unaffordable.

## **Background**

In February 2020, Alphera provided Mr S with finance for a used car. The cash price of the vehicle was £16,602.00. Mr S paid a deposit of £1,897.52 and entered into a 48-month hire purchase agreement with Alphera for the remaining amount he needed to complete his purchase.

The loan was for £14,704.48, had interest and charges of £3,459.06 (which included an option to purchase fee of £1) and a 48-month term. This meant that the balance to be repaid of £18,163.54 (which did not include Mr S’ deposit) was due to be repaid in 47 monthly instalments of £212.82 followed by an optional final repayment of £8,161.00 which Mr S had to make if he wished to keep the car.

Mr S settled the finance in full in January 2022. In May 2024 Mr S complained to Alphera saying that the finance was unaffordable and so shouldn’t have been provided to him. Alphera didn’t uphold Mr S’ complaint saying that it carried out proportionate checks which showed the agreement to be affordable and therefore it wasn’t unreasonable to lend. Mr S was dissatisfied and referred his complaint to our service.

Mr 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 S. So he 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 that Mr S' application was manually reviewed. It also suggests that various factors - such as Mr 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 S' application was accepted. On the other hand, Mr S has said that the payments to this agreement were unaffordable and so he shouldn't have been lent to.

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

Alphera has provided us with the output of its credit check. From what I can see Mr S did have a defaulted account in his name. However, it is fair to say that this was historic as the default took place approaching six years prior to this application. Furthermore, Mr S had since taken out other credit which he successfully repaid. Mr S also had an active hire-purchase agreement which had higher monthly payments, which he'd maintained well, which was going to be settled as part of the purchase of this vehicle.

That said, while I can see that Alphera had the details of Mr S' employer and said that Mr S confirmed that he lived at home with parents, I can't see that it had the amount of his income, or what his living expenses were. Bearing in mind Mr S' previous defaulted account as well as the failure to capture the amount of Mr S' income or his living expenses, I'm not satisfied that Alphera did complete fair, reasonable and proportionate affordability checks before entering into this hire-purchase agreement with Mr S.

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 S 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 S' income and his regular living costs, as well as his payments to existing creditors, which it already had. 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 say tis because having considered everything provided, I'm not persuaded that Alphera obtaining further information from Mr S would have made a difference on its decision to lend in this instance. I say this because the information Mr S 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 S' actual circumstances were worse than this. And having looked at the statements Mr S has provided, I have some idea why Mr S may have had difficulty making

his payments. I also accept that if Alphera had seen what I've seen it's possible, but by no means certain, that it may have reached a different decision on lending to him.

However, bearing in mind checking bank statements wasn't the only way for Alphera to have found out more about Mr S' income and living expenses – it could have obtained copies of payslips, bills or other evidence of payment etc – I don't think that proportionate checks would have extended into obtaining the bank statements which Mr S has now provided us with. So I don't think that proportionate checks would have shown the extent of Mr S' additional spending or why this may have affected his ability to make his payments.

I know that Mr S has queried how it is possible for us not to uphold this complaint when a separate complaint of his about another agreement, taken out after this one, ended up being upheld. I can understand why Mr S might find it strange that he's received different outcomes on complaints which he perceives to be materially the same.

But it's important for me to explain that we consider complaints on an individual basis and looking at the individual circumstances. As I've already explained, what will constitute a proportionate check will very much depend on the particular circumstances of the individual application. A proportionate check, even for the same customer, could look different for different applications.

Furthermore, I'm not bound by the outcomes reached by other ombudsmen on different cases. Ultimately, I'm required to consider the facts of a case and reach my own conclusions. So the outcome on Mr S' other case cannot and does not bind me into reaching the same conclusion on this case. That said, consistency is important and with a view to providing some clarity and reassurance to Mr S, it might help for me to explain that there are some key differences between this complaint and Mr S's other one.

Having looked at Mr S' other case, it's clear that his circumstances had changed for the worse in the period between him entering into this agreement and then entering into the agreement for his upheld complaint. This change of circumstances affected his disposable income and what the lender in Mr S' other case is likely to have seen, had it carried out proportionate checks. This is why proportionate checks are likely to have shown the payments in Mr S other case were unaffordable, whereas I'm not persuaded that that is the case in this instance.

As this is the case, while I'm not required to replicate the outcomes reached on other cases, nonetheless I don't consider that my answer here is incompatible or inconsistent with the one Mr S received on his other case, notwithstanding the differing outcomes.

In reaching my conclusions, I've also considered whether the lending relationship between Alphera and Mr S might have been unfair to Mr S 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 S 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.

Overall and having carefully considered everything, I've not been persuaded that Alphera's checks before entering into this hire purchase agreement with Mr S did go far enough. Nonetheless, I'm satisfied that had Alphera carried out reasonable and proportionate checks this won't have stopped it from providing these funds, or entering into this hire purchase agreement with Mr S.

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.

### **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 10 March 2025.

Jeshen Narayanan  
**Ombudsman**