

## The complaint

Mrs P complains that BMW Financial Services(GB) Limited trading as ALPHERA Financial Services (Alphera) was irresponsible in its lending to her. She said it didn't carry out adequate checks before providing her with a hire purchase agreement and that the agreement is unaffordable. She wants the agreement to be cancelled and any interest and charges paid to be refunded. She wants to return the car and have the agreement removed from her credit file.

## What happened

Mrs P entered into a hire purchase agreement with Alphera in December 2022 to acquire a used car. The cash price of the car was £23,300 and Mrs P made an advance payment of £1,500. The agreement term was 49 months and Mrs P was required to make 48 monthly repayments of £383.76 followed by a final optional repayment of £10,345 if she wished to keep the car.

Mrs P said that Alphera didn't carry out sufficient checks to ensure the hire purchase agreement was affordable for her. She said that at the time of the lending she had income from employment and benefits which totalled around £1,245 a month and her bills exceeded this. She said she was solely responsible for two young children and needed the car for transport and that she relied on handouts and was consistently in her overdraft. Mrs P said that no detailed income and expenditure assessment was carried out and she has struggled to make her repayments, needing to borrow and use other short-term credit to pay her other essential bills.

Alphera issued a final response dated 12 September 2024 not upholding Mrs P's complaint. It said that creditworthiness and affordability checks were carried out before the lending was provided, using data from the application and Mrs P's credit file. It said a manual review was required due to a family member of Mrs P's being a victim of impersonation and so further identity checks took place. Alphera said that its checks didn't raise any creditworthiness or affordability concerns and noted Mrs P had maintained her repayments.

Mrs P wasn't satisfied with Alphera's response and referred her complaint to this service.

Our investigator noted the checks that Alphera had said it undertook but that it hadn't been able to provide a copy of its credit check results. Given this and noting the size and term of the loan and the monthly repayments, she didn't think that Alphera completed reasonable and proportionate checks before providing Mrs P with the agreement. She thought it should've taken steps to better understand Mrs P's circumstances by verifying her living costs and committed expenditure before lending.

Our investigator then considered what Alphera would likely have identified had further checks taken place. She looked at the information in Mrs P's credit report and bank statements for the months leading up to the lending. She found Mrs P was managing her existing credit commitments but noting the number of accounts thought this could raise concerns about her reliance on borrowing. Our investigator said that Mrs P's bank statements showed her average monthly income to be around £1,282 and her regular

monthly commitments to be around £991. She said this didn't leave enough to cover the Alphera repayments and so she didn't think that this lending should have been considered sustainably affordable for Mrs P and she upheld this complaint.

Alphera didn't agree with our investigator's outcome and provided further details of its checks. It said Mrs P had a stable employment with a monthly income and owned her own property with no mortgage. It said the credit check showed she had one loan outstanding with a £9 balance and another with a £2,490 balance. While she had overdraft facilities and credit cards, she wasn't using these and she had a mail order account with a £172 balance. It said that had Mrs P had no disposable income at the time of lending it would expect, on balance, her to have used some of her credit facilities.

Our investigator provided the copies of Mrs P's statements to Alphera and it questioned whether Mrs P had another account. It said it wasn't clear why the mortgage hadn't been identified through its checks but said it couldn't be held accountable for information it wasn't aware of at the time. It further didn't accept that the redress suggested by our investigator being the return of the car with nothing further to pay, refund of the deposit and anything above a fair usage charge of £8,750 along with interest and removal of any adverse information from Mrs P's credit agreement was the appropriate remedy for an affordability complaint.

Our investigator responded to Alphera's comments but as these didn't change her view, and a resolution hasn't been agreed, this complaint has been passed to me, an ombudsman, to issue 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.

Our general approach to complaints about unaffordable or irresponsible lending – including the key rules, guidance and good industry practice – is set out on our website.

The rules don't set out any specific checks which must be completed to assess creditworthiness. But while it is down to the firm to decide what specific checks it wishes to carry out, these should be reasonable and proportionate to the type and amount of credit being provided, the length of the term, the frequency and amount of the repayments, and the total cost of the credit.

Mrs P was provided with a hire purchase agreement by Alphera to finance the acquisition of a car. Before the lending was provided, Alphera said that it gathered information about Mrs P's employment and carried out creditworthiness and affordability checks. It has provided a summary of the outcome from its credit checks and said that these didn't identify Mrs P having a mortgage. It said that it hadn't confirmed Mrs P's declared income and as the dealer was no longer operating further documentation about this wasn't available.

I note the checks Alphera undertook and accept that Mrs P was in employment and its credit check results didn't raise concerns. But, given the size and term of the lending and the monthly repayments, I think it would have been proportionate for Alphera to have verified Mrs P's income before providing the agreement.

Alphera wasn't required to request copies of Mrs P's bank statements to verify her income, but I have used the information they contain to understand what a verification process would likely have identified. Having looked through Mrs P's bank statements for the three months

leading up to the agreement being provided, her average monthly income (consisting of income from employment and benefits) was around £1,250. Given the repayments due under the Alphera agreement were around £384, these alone would account for around 30% of Mrs P's monthly income. Therefore, I think that further checks should have been undertaken to fully understand Mrs P's financial circumstances by checking her monthly outgoings.

Alphera has said that its credit checks didn't identify Mrs P having a mortgage. I cannot say why this was the case but as I think further questions should have been asked about Mrs P's monthly expenses, I think it would have been reasonable to ask her about her housing costs. Mrs P's credit report shows a mortgage being in place since 2015 with monthly payments of £427 and her bank statements show payments to the mortgage provider averaging around £480. Therefore, I think it likely that further checks would have identified this cost.

Alphera's credit checks identified two loan accounts, one with a minimal outstanding balance which I can see was settled around the time of this agreement being provided. Mrs P's banks statements (and credit report) show monthly payments of around £138 to the other loan. Additional to this, Mrs P was making payments for insurances, telecommunications /media contracts and other credit commitments. These were around £330 a month at the time of the Alphera agreement being provided. This gave total regular commitments (before general living costs such as food and fuel) of around £950. Deducting this from Mrs P's income wouldn't leave sufficient funds to make the Alphera repayments. Therefore, in this case I think proportionate checks would have shown the lending to not be sustainably affordable for Mrs P. Therefore, I am upholding this complaint.

Our investigator set out her proposed redress for this complaint. Alphera didn't agree this was a reasonable approach for this case. While I have considered Alphera's comments, I think the proposed redress is fair. That is because Mrs P has had use of the car and so she should be required to pay for this. However, as the agreement wasn't affordable for her, and there is still a substantial amount outstanding on the agreement, I think it fair the car is returned and the agreement cancelled.

### **Putting things right**

As I don't think Alphera ought to have approved the lending, I don't think it's fair for it to be able to charge any interest or charges under the agreement. But Mrs P has had use of the vehicle for around 24 months (until the MOT expired), so I think it's fair she pays for that use. But I'm not persuaded that monthly repayments of over £383 a month are a fair reflection of what fair usage would be. This is because a significant proportion of those repayments went towards repaying interest.

There isn't an exact formula for working out what a fair monthly repayment would be to reflect Mrs P's usage. But in deciding what's fair and reasonable I've thought about the amount of interest charged on the agreement, Mrs P's likely overall usage of the car and what her costs to stay mobile would likely have been if she didn't have this car. In doing so I think a fair amount Mrs P should pay is £350 for each month she had use of the car. This means Alphera can only ask her to repay a total of £8,400.

To settle Mrs P's complaint Alphera should do the following:

- End the agreement and collect the car with nothing further to pay.
- Refund the deposit, adding 8% simple interest per year\* from the date of payment to the date of settlement.
- Calculate how much Mrs P has paid in total and deduct £8,400 for fair usage. If Mrs P has paid more than the fair usage figure, Alphera should refund any

overpayments, adding 8% simple interest per year\* from the date of payment to the date of settlement.

- Remove any adverse information recorded on Mrs P's credit file regarding the agreement.
- If there any arrears after the settlement has been calculated, Alphera should arrange an affordable repayment plan and treat Mrs P with forbearance and due consideration.

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

### **My final decision**

My final decision is that BMW Financial Services(GB) Limited trading as ALPHERA Financial Services should take the actions set out above in resolution of this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 5 June 2025.

Jane Archer  
**Ombudsman**