

The complaint

Mr J complains that BMW Financial Services (GB) Limited trading as ALPHERA Financial Services (“Alphera”) failed to conduct adequate affordability checks before it lent to him.

What happened

In August 2021, Alphera provided Mr J with a hire purchase agreement for a used car through a credit intermediary. The car had a retail price of £15,085 and Mr J paid a £1,000 deposit and received £3,000 for a part exchange. This led to £11,085 being financed. The agreement had interest, fees and charges totalling £4,077.60 – with a total to repay, including the deposit of £19,162.60. This agreement was to be repaid in 60 monthly repayments of £252.71.

Alphera says the last payment was made in August 2024 – and it has shown that the agreement has been terminated. But Mr J still has possession of the vehicle.

Alphera considered Mr J’s complaint and didn’t uphold it explaining the checks it carried out showed the agreement was affordable. Unhappy with this response, Mr J then referred the complaint to the Financial Ombudsman.

Mr J’s complaint was considered by an investigator, who in their latest assessment didn’t uphold the complaint. The investigator concluded Alphera needed to do further checks before lending. However, the investigator said had further checks been made, Alphera would’ve still lent to Mr J.

Mr J disagreed, and across a number of emails said.

- The investigator ought to have conducted a full financial review into his circumstances.
- The bank account statements show Mr J was using his overdraft and incurring fees.
- As a result of being given the agreement Mr J had to borrow funds to make ends meet.
- The payments from a family member were not regular income, but instead Mr J was helping a family member during a busy period of work.
- The difference between the money going into and out of the account over a statement cycle shows the agreement wasn’t unaffordable.
- Mr J says he was giving his partner £120 per week towards household bills – and the bank statements show the payments for household and food shops.

These comments didn’t change the investigator’s assessment and so 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.

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 J's complaint. Having carefully thought about everything I've been provided with; I'm not upholding Mr J'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 Alphera needed to carry out proportionate checks to be able to understand whether any lending was sustainable for Mr J 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 has said when Mr J 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.*”

As part of this process, Alphera conducted a credit search and the results have been provided. The result showed in 2018 Mr J had defaulted on an account but the balance had been reduced – significantly – indicating he had been making regular payments.

Apart from the default, the rest of his credit file didn't have any adverse payment markers. There was a mortgage with monthly payments of £305 and along with his other credit commitments Alphera worked out Mr J's total monthly costs came to £352.

The credit check results, didn't and wouldn't have raised any concerns with Alphera, as there wasn't anything to suggest Mr J was either overindebted or was struggling to meet his existing payments.

However, Mr J's application failed the auto approval process and so his application was manually underwritten. Alphera has said Mr J's credit profile was “*mature, stable and the vehicle fitted your profile*”. Having completed this manual review Alphera concluded the loan was affordable.

It doesn't appear any further documents were collected as part of the manual review – indeed the system notes provided show a manual review was needed due to incorrect details being entered about Mr J's address.

Whereas, Mr J says after the initial failed application no further checks were conducted and had better checks been made Alphera would've discovered the loan payments weren't affordable.

I can't be sure exactly what other data and factors Alphera considered – beyond the credit check to lead it to conclude Mr J could afford to make the monthly payments approaching £253 a month. Indeed, it seems to me that Alphera simply expects us to accept Mr J's payments were affordable because its affordability process was followed.

I've thought about all of this – but I don't think I can fairly or reasonably conclude the checks Alphera carried out were proportionate. I say this bearing in mind Mr J had declared he was

retired and as far as I can see Alphera didn't have any idea of what if any income or benefits he received and what his non-discretionary monthly outgoings were. So, Alphera's checks needed to go further.

Alphera could've gone about making more detailed checks a number of ways, it could've simply asked Mr J about her other non-discretionary living costs, asked for evidence from Mr J about his bills, or any other documentation it felt it may have needed. Or, as I've done here reviewed the bank statements Mr J has provided.

This didn't, and doesn't mean that, Alphera had to undertake a full financial review of Mr J's circumstances – such as reviewing every transaction that Mr J was making from his account, merely it just needed to obtain an idea of what his living costs were. And I want to be clear that a line by line review of Mr J's bank statements wouldn't have been proportionate.

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

I would add that Alphera was already aware of his mortgage and other credit commitment costs, so I think any check that it may have needed to have done needed to have extended to asking Mr J about his other non-discretionary monthly costs and his income.

In terms of income, in July 2021 Mr J received two pensions – supporting that he was retired – these total £824 per month. In June 2022, the pension amount received wasn't as much which may have been an indication perhaps that it had just started.

But the crux of the issue is the regular payments from a person Mr J has said was a family friend for work that he was doing – but was only helping out. I've thought about this but if Alphera would've probed further it would've seen these payments had been received since at least April 2021 – which is as far as back as I have statements for. So, I do think it's reasonable to have included these amounts as part of Mr J's income. Even if it was work for a friend it had been regular and had been received by Mr J for some time.

In June 2021, Mr J received just over £750 per month from the family friend and just under £700 per month in July 2021. In both April and May 2021 the amount received from the friend isn't as much – £325 and £520 respectively. But there are in those months' other creditors from another third party.

So, like the investigator, including the money received from Mr J's family friend – which I think would've been reasonable – leads to a monthly income of around £1,400 per month – which is broadly what the investigator concluded.

In terms of outgoings, I've seen the same sort of regular transactions that the investigator highlighted in their view. If you strip out what Alphera already knew (mortgage and credit commitments) than Mr J had account fees at £28 per month, mobile phone of around £16 per month, car tax at £15 per month, plus two insurances totalling £38 per month, a further payment of £44 per month and a TV subscription service at just over £100 per month.

Mr J says that he was paying £120 per week for other household bills – but I can't see those sorts of transactions on the statements- for example there aren't any obvious transfers out and while I can see cash withdrawals these are sporadic and don't quite match the amount that. So, it's difficult for me to conclude that Mr J was paying £500 each month for these other costs.

And while I can see that Mr J was using his overdraft – which Alphera may well have discovered, that on its own, isn't enough to say the finance ought to not have been granted.

I've also had to consider that a deposit was paid, while some of it, was a part exchange Mr J was in a position to pay £1,000 – which was the equivalent of around four months' worth payments – which would've given Alphera additional confidence that Mr J would be in a position to afford his repayments.

Overall, Alphera would've reasonably concluded that with the loan payment, the credit commitment costs and the costs that I've detailed above that Mr J's outgoings were £845 per month before petrol and food costs. This left just over £550 per month disposable income. Which in my view would've shown Alphera that the agreement was affordable.

I do not uphold the complaint.

Other considerations

Having reviewed the account notes there was very little contact between Alphera and Mr J from the inception of the agreement until February 2024, when the first direct debit payment is missed.

Shortly after the first payment was missed – Mr J raised his complaint and so Alphera then investigated it – and issued its response. This was the correct response.

Alphera's notes detail that the agreement was terminated, but it would hold off recovering the vehicle while there is an open complaint. Mr J did query why the account had been terminated, but it does seem sufficient arrears had built up – and so termination of the agreement is one of the options open to Alphera.

An outstanding balance remains due and it does seem, from the system notes that Alphera has terminated the agreement. Mr J may wish to speak to it to discuss a way forward and to see what help and support it can offer. I would remind Alphera that it has an obligation to treat Mr J fairly and with forbearance.

I've also considered whether the relationship might have been unfair under s.140A of the Consumer Credit Act 1974. However, for the reasons I've already given, I don't think Alphera lent irresponsibly to Mr J or otherwise treated him unfairly in relation to this matter. I haven't seen anything to suggest that Section 140A would, given the facts of this complaint, lead to a different outcome here.

My final decision

For the reasons outlined above, I am not upholding Mr J's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 15 May 2025.

Robert Walker
Ombudsman