

Complaint

Mr G complains that BMW Financial Services (GB) Limited (trading as “Alphera” Financial Services) unfairly entered into an unaffordable hire-purchase agreement with him.

Background

In February 2020, Alphera provided Mr G with finance for a used car. The cash price of the vehicle was £21,595.00. Mr G paid a deposit of £4,200.00 and entered into a 25-month hire-purchase agreement with Alphera for the remaining amount needed to complete the transaction.

The loan was for £17,395.00, had total interest, fees and charges of £2,419.01 and a 25-month term. This meant that the balance to be repaid of £23,814.01 (which does not include Mr G’s deposit) was due to be repaid in 24 monthly instalments of £425.65 followed by an optional final payment of £9,598.41 which Mr G had to make if he wished to keep the car at the end of the term.

Mr G’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 G. So he didn’t think that Alphera had done anything wrong or treated Mr G unfairly and didn’t recommend that Mr G’s complaint should be upheld. Mr G 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 G’s complaint. Having carefully thought about everything I’ve been provided with, I’m not upholding Mr G’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 G 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 G'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 G's application was accepted. This may well have been the case but it hasn't provided us with the specific of what it learned about Mr G particular circumstances.

As Alphera hasn't provided us with the output of what it was that it learnt about Mr G or the actual data which it relied upon to determine that the payments to this agreement were affordable for him. So I don't actually know the data that Alphera relied upon to reach the conclusion that this agreement was affordable for Mr G.

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 G 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 G.

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 G on the basis that he wouldn't be able to afford the monthly payments.

Given the amount borrowed and the monthly payments, in order for Alphera's checks to have been proportionate, I think that an understanding of Mr G's income, his payments to existing creditors and his regular living costs were all required. 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 G would have made a difference on its decision to lend in this instance. I say this because the information Mr G has provided about his finances around the time of this application, on the face of things at least appears to show that when his actual committed expenditure was deducted from what he expected to receive each month, he did have the funds to sustainably make the repayments due under this agreement.

To explain, Mr G was looking to acquire this car so that he could increase his earnings. There appears to be no dispute that this was the case, or at least Mr G hasn't said that this wasn't the case. The regulatory rules do permit a lender to take into account an expected future increase in income as long as it is reasonable for it to believe that this will happen.

Mr G's statements appear to show payments from an additional source of employment almost immediately after he took custody of the car. I therefore think that this increase in income is likely to have formed part of any discussion about this loan. Indeed, the hire-purchase agreement having a much shorter term than the norm and an annual mileage allowance of 40,000 miles, which is highly unusual for a hire-purchase agreement, both of which indicate that the car wasn't just being acquired for social use, persuades me that it is more likely than not that this was the case.

I also have to consider that Mr G's most recent submissions are being made in support of a claim for compensation and what I need to decide here is what Mr G is likely to have disclosed to Alphera should it have posed further questions about his financial circumstances.

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 G would have sought to show Alphera that these repayments were unaffordable in circumstances where he was taking this agreement to increase his earnings and he reasonably believed that this would happen.

I appreciate that the increase in Mr G's income proved to be short lived as the following month saw the beginning of the pandemic. And I accept that Mr G had difficulty making his payments once the pandemic started. Bearing in mind the nature of Mr G's employment, I can understand just how significantly he was affected. Indeed, bearing in mind the sequence of events, it's fair to say that the pandemic couldn't have happened at a worse time as Mr G's commitments had only just increased as a result of this agreement.

But I don't think that Alphera could have anticipated the onset of the pandemic, or that this would mean that Mr G's income didn't increase in the way that all parties reasonably accepted it would at the time of the agreement. So while I sympathise with the difficulty Mr G had making his payments going forward, I don't think that this means it was unfair for Alphera to have approved the finance in the circumstances that it did.

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

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 G 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 G. I appreciate that this will be disappointing for Mr G. 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 G's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 3 June 2025.

Jeshen Narayanan
Ombudsman