

Complaint

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

Background

In September 2016, Alphera provided Mr P with finance for a used car. The cash price of the vehicle was £10,895.00. Mr P paid a deposit of £1,895.00 and entered into a 24-month hire-purchase agreement with Alphera for the remaining amount needed to complete the transaction.

The loan was for £9,000.00, had total interest, fees and charges of £1,009.00 and a 24-month term. This meant that the balance to be repaid of £10,009.00 (which does not include Mr P’s deposit) was due to be repaid in 23 monthly instalments of £417.00 followed by a final monthly payment of £418.00.

Mr P’s complaint was considered by one of our investigators. She didn’t think that proportionate checks would have shown Alphera that it shouldn’t have lent to Mr P. So she didn’t think that Alphera had done anything wrong or treated Mr P unfairly and didn’t recommend that Mr P’s complaint should be upheld.

Mr P 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 P’s complaint.

Having carefully thought about everything I’ve been provided with, I’m not upholding Mr P’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 P 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.

I understand that Alphera would have considered various factors - such as Mr P'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 P's application was accepted. This may well have been the case but it hasn't provided us with the specifics of what it learned about Mr P's particular circumstances.

As Alphera hasn't provided us with the output of what it was that it learnt about Mr P 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 P.

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 P could afford the monthly payments. So I've not been satisfied that Alphera did complete fair, reasonable and proportionate affordability checks before entering into this hire-purchase agreement with Mr P.

As I've not seen enough to be persuaded that proportionate checks were carried out before this agreement was entered into, I can't say for sure what such checks 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 P on the basis that he wouldn't be able to afford the monthly payments.

Given the amount borrowed and the amount of the monthly payments, in order for Alphera's checks to have been proportionate, I think that it would have needed to have an understanding of Mr P's income, his payments to existing creditors and his regular living costs. 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 P would have made a difference on its decision to lend in this instance. I say this because the information Mr P 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, there appears to be no dispute that Mr P declared that he was a freelance bookmaker. Mr P now says that he wasn't employed and what he did was place bets on behalf of others. He's also said that his circumstances took a turn for the worse when one of the main people he was placing bets for lost everything.

In truth, I don't know what Mr P actually did. But I do know that Mr P was in receipt of funds each month, he declared that he was employed with an income and approached Alphera for finance on this basis. Equally, if Alphera had done what it typically does, which is cross-check Mr P's declaration against information from credit reference agencies on the funds he was receiving in his bank main account, it will have seen that Mr P was receiving funds commensurate with being employed and which were sufficient to make the required payments.

Bearing in mind, the hire-purchase agreement had a much shorter term than that typically taken by a customer, it's clear that there must have been discussion over what Mr P could afford to pay. I don't think that this is a case where a customer was simply handed an agreement to sign without little discussion. Furthermore, Alphaera will also have seen that Mr P was paying a deposit of £1,000.00, which would also support him having funds available to him.

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

Indeed, it should be said that Mr P's submissions don't clearly indicate that he believes the payments to this agreement were unaffordable. I say this because, as the investigator has pointed out, Mr P seems to attribute his inability to pay this agreement to his change in circumstances and the pandemic.

However, Mr P made all of his payments to this agreement on time, which in itself adds weight to the payments being affordable and then settled the finance in 2018. It is the agreement Mr P took after this one, for the car that he directly refers to, which was in force at the time of the pandemic. So Mr P's submissions here don't persuade me that Alphaera doing more than it did would have seen it make a different decision on lending.

Overall and having carefully considered everything, I've not been provided with sufficient evidence to satisfy me that Alphaera's checks before entering into this hire purchase agreement with Mr P did go far enough. Nonetheless, I'm satisfied that had Alphaera 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 P. I appreciate that this will be disappointing for Mr P. 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 P's complaint.

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

Jeshen Narayanan
Ombudsman