

Complaint

Mr H 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 finance was unaffordable which resulted in him having to borrow elsewhere to make his repayments and that this put him in a cycle of debt.

Background

In December 2015, Alphera provided Mr H with finance for a used car. The purchase price of the vehicle was £14,500.00. Mr H paid a deposit of £100 and entered into a 49-month hire-purchase agreement with Alphera for the remaining £14,400.00 he required.

The loan had interest, fees and total charges of £3,215.51 (made up of interest of £3,214.51 and a £1 option to purchase fee). The balance to be repaid of £17,615.51 was due to be repaid in 48 monthly repayments of £235.25 followed by an optional final payment of £6,323.51 which Mr H had to pay if he wished to keep the car. The available information shows that Mr H settled the finance in April 2021.

In December 2024, Mr H complained to Alphera saying that it shouldn’t have entered into this hire-purchase agreement with him, as it ought to have realised that it was unaffordable for him which resulted in him having to borrow elsewhere to make his repayments and that this put him in a cycle of debt. As Mr H didn’t receive a final response to his complaint within eight weeks of Alphera receiving it, he referred the matter to our service.

When it provided its file of papers on Mr H’s complaint, Alphera told us that it considered that the complaint was made too late. Mr H’s complaint was considered by one of our investigators. She reached the conclusion that proportionate checks would not have shown Alphera that it shouldn’t have entered into the hire-purchase agreement with Mr H. So she didn’t think that Mr H’s complaint should be upheld.

Mr H 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.

Basis for my consideration of this complaint

There are time limits for referring a complaint to the Financial Ombudsman Service. Alphera has argued that Mr H’s complaint was made too late because he complained more than six years after the decision to provide the finance as well as more than three years after he ought reasonably to have been aware of his cause to make this complaint.

Our investigator explained why it was reasonable to interpret Mr H's complaint as being one alleging that the relationship between him and Alphera was unfair to him as described in s140A of the Consumer Credit Act 1974 ("CCA"). She also explained why this complaint about an allegedly unfair lending relationship had been made in time.

Having carefully considered everything, I've decided not to uphold Mr H's complaint. Given the reasons for this, I'm satisfied that whether Mr H's complaint was made in time or not has no impact on that outcome.

I'm also in agreement with the investigator that Mr H's complaint should be considered more broadly than just the lending decision. I consider this to be the case as Mr H has not only complained not about Alphera's decision to lend to him, he has also alleged that this resulted in him having to borrow elsewhere to make his repayments and that this put him in a cycle of debt.

I'm therefore satisfied that Mr H's complaint can therefore reasonably be interpreted as a complaint about the overall fairness of the lending relationship between him and Alphera. I acknowledge Alphera still may not agree we can look Mr H's complaint, but given the outcome I have reached, I do not consider it necessary for me to make any further comment, or reach any findings on these matters.

In deciding what is fair and reasonable in all the circumstances of Mr H's case, I am required to take relevant law into account. As, for the reasons I've explained above, I'm satisfied that Mr H's complaint can be reasonably interpreted as being about the fairness of the lending relationship between him and Alphera, relevant law in this case includes s140A, s140B and s140C of the CCA.

S140A says that a court may make an order under s140B if it determines that the relationship between the creditor (Alphera) and the debtor (Mr H), arising out of a credit agreement is unfair to the debtor because of one or more of the following, having regard to all matters it thinks relevant:

- any of the terms of the agreement;
- the way in which the creditor has exercised or enforced any of his rights under the agreement;
- any other thing done or not done by or on behalf of the creditor.

Case law shows that a court assesses whether a relationship is unfair at the date of the hearing, or if the credit relationship ended before then, at the date it ended. That assessment has to be performed having regard to the whole history of the relationship. S140B sets out the types of orders a court can make where a credit relationship is found to be unfair – these are wide powers, including reducing the amount owed or requiring a refund, or to do or not do any particular thing.

Given Mr H's complaint, I therefore need to think about whether Alphera's decision to lend to Mr H, or its later actions resulted in the lending relationship between Mr H and Alphera being unfair to Mr H, such that it ought to have acted to put right the unfairness – and if so whether it did enough to remove that unfairness.

Mr H's relationship with Alphera is therefore likely to be unfair if it didn't carry out reasonable and proportionate checks into Mr H's ability to repay in circumstances where doing so would have revealed the monthly payments to the agreement to have been unaffordable, or that it was irresponsible to lend. And if this was the case, Alphera didn't then somehow remove the unfairness this created.

I'll now turn to whether Alphera acted fairly and reasonably when entering into the hire-purchase agreement with Mr H.

What we consider when looking at complaints about irresponsible or unaffordable lending

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 H's complaint.

I think that it would be helpful for me to set out that we consider what a firm did to check whether repayments to credit were affordable (asking it to evidence what it did) and determine whether this was enough for the lender to have made a reasonable decision on whether to lend.

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.

That said, I think that it is important for me to explain that our website does not provide a set list of mandated checks that a lender is expected to carry out on every occasion – indeed the regulator's rules and guidance did not and still do not mandate a list of checks to be used. It simply sets out the types of things that a lender could do.

It is for a lender to decide which checks it wishes to carry out, although we can form a view on whether what was done was proportionate to the extent it allowed the lender to reasonably understand whether the borrower could make their payments.

Bearing in mind Mr H's response to our investigator, I also think that it is important for me to explain that even if we don't think that the lender did enough to establish whether the repayments to an agreement were affordable, this on its own doesn't mean that a complaint should be upheld.

We would usually only go on to uphold a complaint in circumstances where we were able to recreate what reasonable and proportionate checks are likely to have shown – typically using information from the consumer – and this clearly shows that the repayments in question were unaffordable.

I've kept this in mind when deciding Mr H's complaint.

Application to Mr H's complaint - Was Alphera's decision to enter into a hire-purchase agreement with Mr H, in December 2015, fair and reasonable?

Alphera suggests that various factors - such as Mr H'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 H's application was accepted.

This may well have been the case. However, while I accept that there may be valid reasons for this, nonetheless Alphera hasn't provided us with the specifics of what it learned about Mr H particular circumstances as result of enquiring into the various factors that it says it did.

On the other hand, Mr H has said that the finance was unaffordable which resulted in him having to borrow elsewhere to make his repayments and that this put him in a cycle of debt.

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

The first thing for me to say is that while I'm sympathetic to the fact that Alphera is no longer required to have this information, nonetheless I'm not in a position to agree that Alphera did take reasonable steps to understand whether Mr H could afford the monthly payments. And in these circumstances, I'm not in a position where I can reasonably say that it did complete fair, reasonable and proportionate affordability checks before entering into this hire-purchase agreement with Mr H.

As this is the case, I find that there is insufficient evidence for me to reasonably conclude that Alphera carried out proportionate checks before agreeing to lend to Mr H.

However, as I explained earlier, even though I don't think that Alphera did enough to establish whether the repayments to this agreement were affordable, this doesn't on its own mean that Mr H's complaint should be upheld. This is because where a firm failed to carry out reasonable and proportionate checks before providing credit or increasing the amount available to a customer, I still need to be satisfied that carrying out such checks is likely to have shown the monthly payments were unaffordable. I've therefore considered the information Mr H has provided with a view to determining this.

The information Mr H has provided does appear to show that when his committed regular living expenses are combined with his existing credit commitments, and then deducted from the income he was receiving, he did have the funds, at the time at least, to sustainably make the repayments due under this agreement.

I appreciate that Mr H has said that it was irresponsible for Alphera to lend to him as he'd only recently moved to the United Kingdom. In the first instance, I don't know whether Alphera knew that Mr H had only recently moved to the United Kingdom. In any event, it would have been aware that Mr H didn't have an extensive credit history.

Nonetheless, it is for a lender to decide whether it wishes to accept the credit risk of lending to a customer that has only recently moved to the country, or that has a thin credit history. Moreover, there isn't a prohibition on a lender lending to a borrower in such circumstances. Indeed, a lender applying an approach of automatically rejecting an application for finance, in such circumstances, without any regard to whether it was affordable is likely to be discriminatory. And this in itself is likely to mean a lender failing to act fairly and reasonably.

For the reasons I've explained, I'm satisfied that Alphera carrying out proportionate checks is likely to have shown it that Mr H was in a position where he was able to afford the monthly payments he was committing to. As this is the case, I'm not persuaded that Mr H having recently moved to the United Kingdom means that Alphera shouldn't have lent to him.

Overall and having carefully considered everything, I've not been provided with sufficient evidence to be persuaded that Alphera's checks before entering into this hire-purchase agreement with Mr H went far enough. Nonetheless I'm satisfied that it is more likely than not that Alphera carrying out such checks would not have prevented it from providing these funds, or entering into this agreement with Mr H.

As this is the case, I don't find that the lending relationship between Mr H and Alphera was unfair to Mr H. I've not been persuaded that Alphera created unfairness in its relationship with Mr H by irresponsibly lending to him when it entered into this hire-purchase agreement

with him. And I don't find Alphera treated Mr H unfairly in any other way either based on what I've seen.

So overall and having considered everything, while I can understand Mr H's sentiments and appreciate why he is unhappy, I'm nonetheless not upholding this complaint. I appreciate that this will be very disappointing for Mr H – particularly as it is clear that he feels strongly about this matter. But I hope he'll understand the reasons for my decision and that he'll at least feel his concerns have been listened to.

My final decision

My final decision is that I'm not upholding Mr H's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 18 August 2025.

Jeshen Narayanan
Ombudsman