

Complaint

Mrs T complains that BMW Financial Services (GB) Limited (trading as “Alphera” Financial Services) unfairly entered into a hire-purchase agreement with her. She’s said that the proper checks weren’t carried out which led to her being provided with finance that was unaffordable and this led to further debt and struggles going forward.

Background

In March 2017, Alphera provided Mrs T with finance for a brand-new car. The cash price of the vehicle was £45,317.40. Mrs T paid a deposit of £9,401.00 and entered into a 49-month hire-purchase agreement with Alphera for the remaining £35,916.40 she needed.

The loan had interest, fees and total charges of £8,641.64 (comprised of interest of £8,640.64 and a £1 option to purchase fee) and the balance repayable of £33,302.84 (which does not include Mrs T’s deposit) was due to be repaid in 48 monthly instalments of £357.98 followed by an optional final payment of £27,375.00 which Mrs T needed to pay if she wished to keep the car. Mrs T settled the agreement in full in April 2021 and took ownership of the car.

In October 2024, Mrs T complained that the agreement was unaffordable for her and Alphera should never have entered into it with her. After Alphera didn’t issue a final response to the complaint within eight weeks of receiving it, Mrs T referred the complaint to our service.

When it provided its file of papers on the complaint, Alphera told us that it believed that Mrs T had complained too late. Mrs T’s complaint was subsequently considered by one of our investigators. She reached the conclusion that we could look at it. Nonetheless, she wasn’t persuaded that proportionate checks would have shown Alphera that it shouldn’t have provided Mrs T with the finance. So she didn’t think that Mrs T’s complaint should be upheld.

Mrs T 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 Mrs T’s complaint was made too late because she complained more than six years after its decision to provide the finance as well as more than three years after Mrs T ought reasonably to have been aware of her cause to make this complaint.

Our investigator explained why it was reasonable to interpret Mrs T’s complaint as being one alleging that the relationship between her and Alphera was unfair to her as described in

s140A of the Consumer Credit Act 1974 (“CCA”). He 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 Mrs T’s complaint. Given the reasons for this, I’m satisfied that whether Mrs T’s complaint about the hire-purchase agreement was made in time or not has no impact on that outcome.

I’m also in agreement with the investigator that Mrs T’s complaint should be considered more broadly than just the lending decision. I consider this to be the case as Mrs T has not only complained not about the decision to lend but has also alleged that this unfairly impacted her going forward.

I’m therefore satisfied that Mrs T’s complaint can therefore reasonably be interpreted as a complaint about the overall fairness of the lending relationship between her and Alphera. I acknowledge Alphera may still disagree that we can look Mrs T’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 Mrs T’s case, I am required to take relevant law into account. As, for the reasons I’ve explained above, I’m satisfied that Mrs T’s complaint can be reasonably interpreted as being about the fairness of the lending relationship between her 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 (Mrs T), 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 Mrs T’s complaint, I therefore need to think about whether Alphera’s decision to lend to Mrs T, or its later actions resulted in the lending relationship between Mrs T and Alphera being unfair to Mrs T, such that it ought to have acted to put right the unfairness – and if so whether it did enough to remove that unfairness.

Mrs T’s relationship with Alphera is therefore likely to be unfair if it didn’t carry out reasonable and proportionate checks into Mrs T’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 Mrs T.

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 Mrs T'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 it 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 we think what was done was proportionate to the extent it allowed the lender to reasonably understand whether the borrower could make their payments.

Furthermore, if we don't think that a lender did enough to establish whether the repayments to an agreement were affordable, this doesn't on its own 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 kept this in mind when deciding Mrs T's complaint.

Was Alpher's decision to enter into the hire-purchase agreement with Mrs T fair and reasonable?

Alpher suggests that various factors - such as Mrs T's credit score, what she owed to other lenders, her existing indebtedness; whether she had any credit cards and/or payday loans; her employment status and the amount of the monthly payment to this agreement – were all considered before Mrs T's application was accepted. On the other hand, Mrs T has said that the payments were unaffordable for her.

I've thought about what Mrs T and Alpher have said.

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

As Alpher has not provided sufficient information to satisfy me that it did take reasonable steps to understand whether Mrs T could afford the monthly payments, I'm not satisfied that

it did complete fair, reasonable and proportionate affordability checks before entering into this hire-purchase agreement with Mrs T.

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 Mrs T on the basis that she wouldn't be able to afford the monthly payments.

Given the amount borrowed, the monthly payments and the length of the agreement, in order for Alphera's checks to have been proportionate, I think that it would have had to have an understanding of Mrs T's income, her payments to existing creditors and her 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.

Indeed, there was and still remains no requirement for a lender to obtain bank statements from a customer, prior to lending. It is up to a lender to determine how it assesses income and expenditure. The reason I've considered the bank statements Mrs T has provided is because they provide the simplest access to the information I now need to be able to determine what proportionate checks are likely to have shown, at this stage.

As I've explained, the main thing that Alphera needed to find out about Mrs T was how much she received each month and whether she had enough to make the monthly repayments to the agreement once her committed expenditure is taken into account. Having looked through the statements, I can see that Mrs T has provided us with statements for the account that her income was being paid into and which she was receiving other regular credits.

These bank statements also appear to show that when Mrs T's committed regular living expenses are combined with her payments to her credit commitments and then deducted from the total amount she was receiving, she did have sufficient funds left over to make the payments to this agreement. This isn't even taking into account the fact that Mrs T is unlikely to have been responsible for all of the expenditure going out of what was a joint account.

I know that Mrs T has said that her business had failed. However, I have to consider Mrs T's current submissions in the context that they are being made in support of a claim for compensation. Whereas at the time of sale, at least, Mrs T considered that it was an appropriate time to purchase a vehicle and she clearly wanted the car she had chosen.

In these circumstances, it's fair to say that any explanations she would have provided would have been with a view to persuading Alphera to lend to her, rather than highlighting the monthly payments were unaffordable. So I think it's unlikely that Mrs T would have disclosed that her business had failed in the event that further checks had been carried out. Equally, I don't think that Alphera had any reason to have suspected that this was the case, given Mrs T doesn't appear to have had any significant adverse information recorded against her and she was paying an advance payment of over £9,000.00 which was around two years' worth of monthly payments.

I'd also point out and while I accept that this isn't in itself determinative, I do think that it is nonetheless worth noting that Mrs T not only made her payments when they fell due (apart from agreed temporary pandemic breaks), she also made the optional final payment and took ownership of the car. Therefore, Mrs T's repayment record and actions do tend to support the fact that this loan was affordable for her.

Finally, I've noted what Mrs T has said about being pressured into agreeing to this finance. However, I find it difficult to see how Mrs T was forced into purchasing a car that she didn't

want. In my view, she could have simply left the dealership if she didn't want the car. So I'm not persuaded that Mrs T was pressured into purchasing a car that she didn't want, or forced into taking an agreement she couldn't afford.

Having carefully considered everything, while Alphera's checks before entering into this hire-purchase agreement with Mrs T didn't go far enough, I've not been persuaded that reasonable and proportionate checks would have prevented Alphera from providing these funds, or entering into this agreement with her.

So overall, and based on the available evidence I don't find that the lending relationship between Mrs T and Alphera was unfair to Mrs T. I've not been persuaded that Alphera created unfairness in its relationship with Mrs T by irresponsibly lending to her when it entered into this hire-purchase agreement with her. And based on what I've seen, I don't find Alphera treated Mrs T unfairly in any other way either.

Bearing all of this in mind, while I can understand Mrs T's sentiments and appreciate why she is unhappy, I'm nonetheless not upholding this complaint. I appreciate that this will be very disappointing for Mrs T. But I hope she'll understand the reasons for my decision and that she'll at least feel her concerns have been listened to.

My final decision

My final decision is that I'm not upholding Mrs T's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs T to accept or reject my decision before 5 September 2025.

Jeshen Narayanan
Ombudsman