

## **The complaint**

Mr C complains that BMW Financial Services (GB) Limited trading as Alphera Financial Services (Alphera) acted unfairly by lending to him.

In bringing his complaint Mr C is represented by a third party for ease of reading I will only refer to Mr C in my decision.

## **What happened**

Around July 2020 Mr C acquired a car when he entered into a hire purchase agreement with Alphera. The cash price of the car was £11,249.50. After interest and charges were applied the total amount repayable was £13,775.92. This was repayable over 48 months with a deposit of £143.48, 46 monthly instalments of £205.52 and an optional final payment of £3,973.. Mr R said he struggled with the repayments. He said Alphera hadn't properly checked whether he could afford to sustain the repayments as they didn't verify his income or ask about his outgoings. He complained to Alphera.

Alphera said they'd carried out proportionate checks to make sure the lending was affordable for Mr C. They said their checks showed Mr C was employed and that he'd a low level of indebtedness with all his active accounts being managed well. Based on these checks they said their lending decision was fair.

Mr C wasn't happy with Alphera's response and referred his complaint to us

Our investigator said Alphera hadn't shown their checks to be reasonable and proportionate and that they should have checked Mr C's income. After consideration of Mr C's bank statements, they said the lending wasn't affordable as Mr C didn't have sufficient disposable income to sustain the repayments. They asked Alphera to put things right.

As Alphera haven't accepted or rejected our investigator's outcome Mr C's complaint has been referred to an ombudsman for a final decision.

## **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.

Having done so, I've reached the same overall conclusions as the investigator, and for broadly the same reasons. Whilst I've read and considered everything, if I don't mention any specific point, it's not because I failed to take it on board and think about it, but because I don't think I need to comment on it to reach what I think is a fair and reasonable outcome. This is not meant as a discourtesy but rather reflects my role of resolving disputes with minimum formality.

I've considered the relevant rules and guidance on responsible lending set by the regulator, laid out in the consumer credit handbook (CONC). In summary, these say that before Alphera offered the credit facility they needed to complete reasonable and proportionate

checks to be satisfied Mr C would be able to repay the debt in a sustainable way.

There's no set list for what reasonable and proportionate checks are. But I'd expect lenders to consider the specific circumstances of the loan application. What constitutes a proportionate affordability check will generally depend on several factors such as the specific circumstances of the borrower, their financial history, current situation and whether there are any indications of vulnerability or financial difficulty.

CONC says a lender must base their creditworthiness assessment on sufficient information of which they're aware at the time the assessment is carried out, obtained, where appropriate, from the consumer and where necessary from a credit reference agency (CRA) and the information must enable the lender to carry out a reasonable creditworthiness assessment

A lender should take reasonable steps to estimate a consumer's income and non-discretionary spending. And that it's not generally sufficient to rely solely on a statement of current income made by the consumer without independent evidence such as from a CRA or third party. CONC does allow the use of statistical data for the purpose of estimating a consumer's non-discretionary expenditure.

The affordability checks should be "borrower-focused", meaning Alphera need to think about whether repaying the loan sustainably would cause difficulties or adverse consequences for Mr C. In other words, it wasn't enough for Alphera to think only about the likelihood that they would get their money back without considering the impact of repayment on Mr C himself.

Alphera has shown they checked Mr C's employment status, his level of indebtedness and how he was managing his active accounts. As Mr C would be indebted for around four years, had a mortgage and several credit cards and a loan, I don't think Alphera could have carried out proportionate checks without taking reasonable steps to estimate Mr C's income and any other non-discretionary spending. So I can't say their checks were proportionate.

This doesn't automatically mean Alphera shouldn't have lent to Mr C as I need to consider whether further checks would have shown that the repayments were unaffordable to him – or in other words that he lost out because of Alphera's failure to complete proportionate checks. While I generally wouldn't expect a lender to ask for bank statements, for our purposes they provide a good indicator of Mr C's income and expenditure.

Having reviewed Mr C's bank statements for the three months prior to the lending I can see his average income was around £1,924, and his average outgoings including his existing credit commitments, mortgage and day to day living costs was around £1,707. This meant after factoring in the new lending of around £205 Mr C had insufficient disposable income to cover any non-discretionary or unexpected costs. Considering Mr C had a partner and three dependents I think had Alphera checked further they would have seen this wasn't sufficient to sustain the repayments.

I take on board Alphera's comments that Mr C had maintained his repayments, hadn't previously raised concerns about financial difficulties and had gone on to settle the agreement on acquiring another vehicle. But I can only reach my decision based on the evidence which shows it was most likely at the time of lending that Mr C had insufficient disposable income to sustain the repayments.

I've also considered whether Alphera acted unfairly or unreasonably in some other way given what Mr C has complained about, including whether their relationship with him might have been viewed as unfair by a court under Section 140A Consumer Credit Act 1974. But I'm satisfied the redress I've directed below results in fair compensation for Mr C in the

circumstances of his complaint. I'm satisfied based on what I've seen that no additional award would be appropriate in this case.

### **Putting things right**

When a business has done something wrong, I'd look for the business to put the complainant in the position they would be in now if the mistake they'd made hadn't happened, as far as is reasonably practical. But Mr C has had the credit to acquire a car, so it's right that he should repay what he borrowed as he has had the benefit of those funds. But I don't think it's fair and reasonable that Alphera should apply any interest fees and/or charges incurred by Mr C because of the credit unfairly extended to him. I can see that Mr C settled the agreement around August 2023.

### **My final decision**

I uphold this complaint. And ask BMW Financial Services (GB) Ltd trading as Alphera Financial Services to:

- Refund any payments made towards the agreement in excess of £11,249.50, representing the original cash price of the car. They should add 8% simple interest per year\* from the date of each overpayment to the date of settlement.
- Remove any adverse information recorded on Mr C's credit file regarding the unfair lending.

\*HM Revenue & Customs requires Alphera to take off tax from this interest. Alphera must give Mr C a certificate showing how much tax it's taken off if Mr C asks for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 19 May 2026.

Anne Scarr  
**Ombudsman**