

Complaint

Mr W 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 monthly payments to this agreement were unaffordable and he therefore shouldn’t have been lent to.

Background

In July 2020, Alphera provided Mr W with finance for a used car. The purchase price of the vehicle was £55,230.00. Mr W didn’t pay a deposit and entered into a 48-month hire purchase agreement with Alphera for the entire amount.

The loan had interest and charges of £13,089.36 and a 48-month term. This meant that the total amount to be repaid of £68,319.36 was due to be repaid in 47 monthly instalments of £825.93 and an optional final repayment of £29,500.65. Mr W settled this agreement in full in July 2021.

In May 2023, Mr W complained to Alphera saying that he shouldn’t have been lent the funds for this agreement. Alphera didn’t agree to Mr W’s complaint. In its view, it carried out reasonable checks which showed that the payments for this agreement were affordable for Mr W and it lent on this basis. Mr W remained dissatisfied at Alphera’s response and referred the complaint to our service.

Mr W’s complaint was then considered by one of our investigators. He thought that proportionate checks would have shown Alphera that Mr W wouldn’t be able to afford the payments to this agreement. And as Alphera entered into this agreement with Mr W, in these circumstances, it lent to him irresponsibly and failed to treat him fairly and reasonably. So he recommended that Mr W’s complaint should be upheld and that Alphera repay all of the interest and charges Mr W paid as a result of this agreement.

Alphera disagreed with our investigator and the complaint was passed to an ombudsman.

My provisional decision of 12 February 2024

I issued a provisional decision – on 12 February 2024 - setting out why I was not intending to uphold Mr W’s complaint.

In summary, I wasn’t intending to uphold Mrs W’s complaint because I was satisfied that he hadn’t suffered a financial loss.

Responses to my provisional decision

Neither Alphera nor Mr W responded to my provisional decision or provided anything further for me to consider

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 W's complaint.

Having carefully thought about everything and in the absence of anything further to consider in response to my provisional decision, I'm not upholding Mr W's complaint. I'll explain why in a little more detail.

There has been some debate as to whether Alphera did enough to establish that Mr W could make the payments on this hire-purchase agreement and, in any event, what such checks would have shown. However, the reality is that I'm satisfied that I don't need to get too concerned with the checks carried out at the time Alphera agreed to lend to Mr W.

I say this because even if I were to agree that Alphera did do something wrong and lent to Mr W irresponsibly here, I would still look to compensate Mr W for any financial loss he suffered. And having considered everything, I'm satisfied that Mr W did not suffer a financial loss as a result of entering into his hire-purchase agreement.

To explain, our investigator's assessment suggested that Mr W should be refunded any extra paid over and above the amount he was lent to begin with and this meant that he should be refunded anything paid over £55,230.00. In my view, there is a question whether this in itself is a fair method of putting things right in this instance. And this is something I'll return to later in this provisional decision.

But for now, Mr W's statement of account shows that he made 11 monthly payments of £825.93 before a settlement of £50,524.30 was applied to his account to clear the balance. This means that a total of £59,609.53 was paid as a result of this agreement, which is £4,379.53 more than the amount that Mr W was lent. So in effect if Alphera agreed to do what our investigator's assessment suggested this would see it paying Mr W £4,379.53 (plus interest at 8% simple).

However, this is only half the story. Having looked at matters, it was unclear to me how Mr W was able to make all of his payments bearing in mind the reasons why the investigator upheld the complaint. While it's fair to say that a borrower making their repayments doesn't in itself mean that they did so without experiencing adverse consequences, Mr W nonetheless paid over £50,000.00 to settle the finance well in advance of any such payment being due. I don't think that this is a matter that I can fairly and reasonably ignore.

It has been brought to my attention that Mr W was only able to settle the finance in July 2021 as a result of selling the vehicle. It's also my understanding that as a result of this sale not only was £50,524.30 paid to settle the outstanding finance balance to Alphera, but Mr W was also paid £6,975.70. So Mr W ended the agreement with £6,975.70 that he didn't have before entering into it. I also note that Mr W's hire-purchase agreement indicates that he didn't pay a deposit when entering into this hire-purchase agreement to purchase this vehicle either.

It might seem odd for the vehicle in question to have been sold for more than £2,000.00 than the amount Mr W purchased it for a year earlier. However, this is a reflection of market conditions at the time. New prestige vehicles of the type that Mr W had were scarce as a result of the effects of the pandemic. This had the knock-on effect of increasing prices for

used vehicles as less were being sold, when potential sellers weren't able to obtain a new replacement for themselves.

In any event, the most important thing here is that Mr W was able to not only walk away from his agreement but he also received £6,975.70. Any remedy I would award were I to agree that Alphera failed to act fairly and reasonably towards Mr W, would effectively seek to place Mr W in the position he would now be in had Alphera not entered into this hire-purchase agreement with him. It's fair to say that Mr W would not have been able to purchase the vehicle he did and make the profit he did, without entering into this (or some other) finance agreement.

So whether or not the payments Mr W had to make on his agreement were affordable, it would be unconscionable and certainly not in keeping with what is fair and reasonable in all the circumstances of the case, for me to say that Alphera should now pay Mr W a further £4,379.53. There isn't a scenario where Mr W would have had £6,975.70 without paying £4,379.53.

So Mr W would never have had both of these amounts and making such an award in these circumstances would be placing Mr W in a far more advantageous position than he would be in, rather than the position he would actually be in, had Alphera not entered into this hire-purchase agreement with him in the first place.

In reaching this conclusion, I am also mindful that irrespective of the profit that Mr W made in this instance, there is an argument for saying that a refund of the interest paid doesn't even reflect Mr W's loss, should Alphera have lent to him irresponsibly. I say this because a refund of all the interest, fees and charges paid isn't usually the fair and reasonable method of putting things right where a car finance agreement – especially a Personal Contract Purchase (“PCP”) one such as Mr W's – was provided irresponsibly but was in any event settled early.

A refund of interest and charges in circumstances where Mr W didn't really repay £55,230.00 and effectively returned a prestige vehicle significantly early, wouldn't take into account amortisation, or the usage that Mr W had. In such circumstances, rather than requiring a repayment of interest as the investigator did here, I would typically direct a lender to return any payments that were made minus an amount reflecting the fact that the borrower will have had the use of the vehicle for the period they had it and it will have depreciated in this time.

The monthly payments on PCP arrangements like Mr W's are supposed to reflect the monthly cost of hiring the car financed, rather than repaying the amount financed, as there will be an outstanding amount left to repay even if all the monthly instalments have been made. So, in my view, Mr W's monthly repayments are a useful starting point for determining what it would have cost for him to have been mobile in a vehicle equivalent to the one he chose and there is a reasonable argument to be made for Alphera keeping all the payments Mr W made, irrespective of the £6,975.70 he received.

Indeed, in my view, calculating Mr W's loss this way would be a fairer method of putting things right, rather than making an award of interest, in circumstances where the amortisation schedule was skewed by any deferred settlement as a result of the optional final payment, which was then compounded by the early termination.

As this is the case, I'm satisfied that Mr W hasn't suffered a financial loss irrespective of Alphera's actions here. So I don't need to assess whether Alphera did lend to Mr W irresponsibly as even if I concluded that it did, I wouldn't award Mr W any compensation because I don't think that he suffered a loss.

Overall and having carefully considered everything, I'm satisfied that Mr W didn't suffer a financial loss and therefore, I'm not upholding this complaint. I appreciate that this is likely to be disappointing for Mr W as the investigator recommended that his complaint should be upheld. But I hope he'll at least understand the reasons my decision.

My final decision

For the reasons I've explained above and in my provisional decision of 12 February 2024, I'm not upholding Mr W's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 8 April 2024.

Jeshen Narayanan
Ombudsman