

Complaint

Mr M 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 he couldn’t afford the payments as he wasn’t working at the time.

Background

In June 2018, Alphera provided Mr M with finance for a used car. The cash price of the vehicle was £9,458.00. Mr M paid a deposit of £1,975.00 and sought finance for the remaining amount. Alphera accepted Mr M’s application and agreed to lend him the £7,483.00 which he needed to complete his purchase.

The ‘Personal Contract Purchase’ (“PCP”) hire-purchase agreement Mr M was provided with had interest, fees and total charges of £1,679.46 (comprising of interest of £1,678.46 and a £1 option to purchase fee) and a term of 48 months. This meant the total amount to be repaid of £9,162.46 (not including Mr M’s deposit) was due to be repaid in 47 monthly instalments of £128.18 followed by an optional final payment of £3,138.00.

Mr M’s complaint was then considered by one of our investigators. She thought that Alphera ought to have realised that the agreement was unaffordable for Mr M and so it shouldn’t have entered into it with him. So she thought that Mr M’s complaint should be upheld.

Alphera didn’t respond to the investigator’s assessment, or any of the three subsequent chases for a response either. So the case was passed to an ombudsman as per the next stage of our dispute resolution process.

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 M’s complaint.

Having carefully considered everything, I’m upholding Mr M’s complaint. I’ll explain why in a bit 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 Mr M could make the payments to this agreement in a sustainable manner before agreeing to lend to him. And if the checks Alphera carried out weren’t sufficient, I then need to consider what reasonable and proportionate checks are likely to have shown.

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've kept this in mind when determining whether Alphera acted fairly and reasonably when deciding to lend to Mr M.

Were the checks that Alphera carried out before lending to Mr M reasonable and proportionate?

Alphera appears to suggest that various factors - such as Mr M'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 M's application was accepted. This may well have been the case.

But, in truth, despite having been asked for this information on a number of occasions, Alphera hasn't been able to provide the specifics of what it learnt about Mr M or the actual data it relied upon to determine that the payments to this agreement were affordable for him. So I don't actually know what specifics that Alphera relied upon to reach the conclusion that this agreement was affordable for Mr M.

As I've not been provided with anything at all which satisfies me that Alphera did take steps to understand Mr M's income, payments to existing creditors and his regular living costs, which bearing in mind the circumstances of the lending here I'd expect it to have known, I'm not satisfied that it completed fair, reasonable and proportionate affordability checks before entering into this hire-purchase agreement with Mr M.

Would reasonable and proportionate checks have indicated to Alphera that Mr M was unable to sustainably make the monthly repayments to his hire-purchase agreement?

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 Mr M.

Mr M has provided us with evidence of his financial circumstances at the time he applied for the hire-purchase agreement. Of course, I accept different checks might show different things. And just because something shows up in the information Mr M has provided, it doesn't mean it would've shown up in any checks Alphera might've carried out.

But in the absence of anything else from Alphera showing what this information would have shown and it having been given significant opportunity to dispute the investigator's use of and interpretation of this evidence, I think it's perfectly fair and reasonable to place considerable weight on it as an indication of what Mr M's financial circumstances were more likely than not to have been at the time.

To be clear, I've not looked at Mr M's bank statements and the other information he's provided because I think that Alphera ought to have obtained this before lending to him. I've consulted this information because it is readily available at this stage and it contains what I now need to reconstruct the proportionate check Alphera should have, but failed to carry out in June 2018.

Mr M's bank statements do not show him receiving an income. Mr M has said that he has not been in employment since 2015. I've not seen anything to contradict this and while Mr M does receive some funds, this is mostly made up from unsustainable sources. So I can't see how Mr M would have been able to meet the payments to his existing commitments let alone take on this additional one.

Alphera may question why Mr M sought to purchase the vehicle he did, at the time he did, given what the information he's provided showed. While I'm not unsympathetic to an to any argument made in relation to the wisdom of Mr M's actions, Alphera has chosen not to respond to us at all let alone make a reasoned and plausible counter argument in relation to why it believes that Mr M could make his payments. And most importantly of all, I have to keep in mind that the regulations in place required Alphera to take reasonable steps to ascertain Mr M's ability to make the monthly payments, not the reasonableness of Mr M to make a car purchase at the time he did.

Given what I've been provided with indicates Mr M never had the funds to do so, I'm satisfied that Mr M simply wasn't in a position to make the monthly payments to this agreement, let alone other reasonable associated running costs for the vehicle such as petrol, tax and insurance. In these circumstances, I'm satisfied that Mr M wasn't in a position to make the monthly payments to this agreement, without borrowing further, or doing so having a significant adverse impact on his financial position.

So having carefully considered everything, I'm satisfied that reasonable and proportionate checks would have alerted Alphera to the fact that Mr M wasn't in a position to sustainably make the payments to this agreement. In reaching these conclusions, I've thought about whether the effect of Alphera's lending decision and whether this rendered the relationship between Mr M and Alphera unfair to Mr M under section 140A of the Consumer Credit Act 1974.

However, irrespective of whether or not it does, I'm satisfied the redress I am directing in the following section of this decision results in fair compensation for Mr M in all the circumstances of his particular complaint. And I'm satisfied, based on what I've seen, that no additional award would be appropriate in this case.

Fair compensation – what Alphera needs to do to put things right for Mr M

Having considered the statement of account provided, I understand that the finance has been repaid and so ownership of the vehicle will have been transferred to Mr M. In these circumstances, I'm satisfied that it would be fair and reasonable for Alphera to put things right for Mr M by:

- refunding all interest, fees and charges Mr M paid as a result of this hire-purchase agreement;
- adding interest at 8% per year simple to any refunded payments from the date they were made by Mr M to the date of settlement†
- removing any adverse information recorded on Mr M's credit file (should any be recorded) as a result of this agreement.

My final decision

For the reasons given above, I'm upholding Mr M's complaint. BMW Financial Services (GB) Limited (trading as Alphera Financial Services) should put things right for Mr M in the way I've directed it to do so above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 29 July 2024.

Jeshen Narayanan
Ombudsman