

## **Complaint**

Mr P 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 shouldn’t have been lent to.

Mr P is being represented in his complaint by a claims management company (“CMC”).

## **Background**

In May 2019, Alphera provided Mr P with finance for a used car. The purchase price of the vehicle was £11,778.00. Mr P paid a deposit of £912.24 and entered into a 48-month personal contract purchase (“PCP”) hire purchase agreement with Alphera for the remaining £10,865.76. Mr P settled the agreement and took ownership of the vehicle in January 2023.

The loan had interest and charges of £2,349.28 and a 48-month term. This meant that the total amount to be repaid of £13,215.04 (not including Mr P’s deposit) was due to be repaid in 47 monthly instalments of £190.98 followed by an optional final payment of £4,238.98 which Mr P only needed to pay if he wished to keep the car.

Mr P’s complaint was considered by one of our investigators. She didn’t think that proportionate checks would have shown Alphera that it shouldn’t have lent to Mr P. So she didn’t think that Alphera had done anything wrong or treated Mr P unfairly and didn’t recommend that Mr P’s complaint should be upheld.

The CMC, on Mr P’s behalf, 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.

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 P’s complaint.

Having carefully thought about everything I’ve been provided with, I’m not upholding Mr P’s complaint. I’d like to explain why in a little 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 any lending was sustainable for Mr P before providing it.

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.

Alphera suggests that various factors - such as Mr P'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 P's application was accepted. This may well have been the case.

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

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

As Alphera has not provided sufficient information to satisfy me that it did take reasonable steps to understand whether Mr P 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 Mr P.

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 P on the basis that he 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 Mr P's income, his payments to existing creditors and his 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.

Having considered everything provided, I'm not persuaded that Alphera obtaining further information from Mr P would have made a difference on its decision to lend in this instance. I say this because the information Mr P has provided about his finances at the time, on the face of things at least appears to show that when his actual committed expenditure was deducted from what he earned each month, he did have the funds to sustainably make the repayments due under this agreement.

I accept that Mr P's actual circumstances at the time were worse than what the information about his committed living costs and existing commitments to credit shows. For example, having looked at the copies of the bank statements Mr P has provided us with now, I can see gambling. It's also possible – but by no means certain – that Alphera might have decided against lending to Mr P had it seen this.

However, what I need to think about here is what were Mr P's actual committed living costs and what were his existing regular credit commitments? – given this was a first agreement and Mr P was being provided with a car rather than cash.

Bearing in mind checking bank statements wasn't the only way for Alphera to have found out more about this – it could have obtained copies of bills or other evidence of payment etc – I don't think that proportionate checks would have extended into obtaining the bank statements for multiple accounts which Mr P has now provided us with.

In my view, proportionate checks certainly wouldn't have gone into the level of granularity whereby Alphera ought reasonably to have picked up on Mr P's gambling. I also think that it is unlikely – and certainly less likely than not – that Mr P made any attempt to disclose his gambling at the time, or that Alphera knew or ought to have known about this.

It's worth noting that the witness statement Mr P completed for his representative in December 2023 and almost a year after he'd settled this finance early and in full (with a lump sum payment) makes no mention of gambling. The witness statement merely states that Mr P had to work extra to make his payments to his agreement and this meant that he couldn't have any holidays. It is Mr P's representative that it is now making this gambling argument. And this wasn't an argument that it made in its initial letter of complaint either.

I also note that the application pack, which the broker appears to have supplied a copy of to Alphera, has a copy of a single bank statement which has little in the way of gambling transactions. I suspect that this statement was supplied for proof of address reasons rather than affordability, as it is incomplete but has Mr P's address details and has been certified by a branch. But the CMC is aware of this statement as it obtained a copy of this as part of the data subject access request it completed on Mr P's behalf.

In any event, Mr P providing a statement from his account which had little in the way of gambling, leaves me satisfied that he is unlikely to have provided information on this. I say this particularly as Mr P's most recent submissions are being made in support of a claim for compensation and aren't necessarily reflective of any explanations he would have provided at the time, which were more likely to have been with a view to persuading Alphera to lend to him, rather than highlighting any unaffordability.

So I don't think that Alphera was aware, or that it could reasonably have been aware, of Mr P's gambling. Furthermore, as Mr P was being provided with an asset rather than cash, which he, in any event, would not have been able to gamble, I think that this limits the relevance of his gambling in this instance.

I've also thought about what the CMC has said about payday loans. It's fair to say that Mr P's gambling account did have some payday loan transactions. However, a customer having taken out payday loans doesn't in itself mean that a mainstream lender shouldn't lend to such an individual.

Indeed, if I were to take this argument to its logical conclusion it would, in effect, mean that an individual who has taken a payday loan should not have access to mainstream credit after this. And, in these circumstances, a customer would be in a situation where they were only able to take out payday type loans because that's all they could access.

Irrespective of this, despite having been given sufficient time to do so, Mr P has chosen not to supply a copy of his credit file. So I don't know if Alphera actually saw Mr P's payday lending – although it lending to Mr P at an APR of 7.9% suggests that it did not price in a lengthy history of such lending.

As I've not seen sufficient evidence to highlight Alphera was aware of the likelihood that Mr P would take payday loans over the course of the four-year term of the agreement, I can't reasonably say that this ought to have been factored into its assessment of affordability either.

Overall and having carefully considered everything, I've not been provided with sufficient evidence which satisfies me that Alphera's checks before entering into this hire purchase agreement with Mr P did go far enough. Nonetheless, I'm satisfied that had Alphera carried

out reasonable and proportionate checks this won't have stopped it from providing these funds, or entering into this hire purchase agreement with Mr P.

In reaching this conclusion I've also considered whether the lending relationship between Alphera and Mr P might have been unfair to Mr P under section 140A of the Consumer Credit Act 1974 ("CCA").

However, for the reasons I've explained, I don't think Alphera irresponsibly lent to Mr P or otherwise treated him unfairly in relation to this matter. I haven't seen anything to suggest that section 140A CCA or anything else would, given the facts of this complaint, lead to a different outcome here. And I'm not upholding this complaint.

I appreciate that this will be disappointing for Mr P and his CMC. But I hope he'll understand the reasons for my decision and at least consider that his concerns have been listened to.

### **My final decision**

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 30 September 2024.

Jeshen Narayanan  
**Ombudsman**