

Complaint

Mr K 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.

Background

In March 2019, Alphera provided Mr K with finance for a used car. The cash price of the vehicle was £8,500.00 and Mr K also purchased a warranty for £359 which meant that the total amount of the purchase was £8,859.00. Mr K didn’t pay a deposit and entered into a 60-month hire purchase agreement with Alphera for the total amount of the transaction.

The loan was for £8,859.00, had interest and charges of £2,298.60 and a 60-month term. This meant that the total amount to be repaid of £11,157.60 was due to be repaid in 60 monthly instalments of £185.96.

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

Mr K 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.

Having carefully thought about everything I’ve been provided with, I’m not upholding Mr K’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 K 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 says that Mr K was proposed as employed as a warehouse operative and was living at home with parents. It also suggests that various factors - such as Mr K'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 K's application was accepted. This may well have been the case.

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

The first thing for me to say is that while Mr K has said that Alphera failed to obtain a guarantor on this agreement, Mr K wasn't provided with a guarantor loan. So having a guarantor wasn't a condition of the agreement he entered into and I don't think that Alphera not requiring Mr K to have one meant that it lent irresponsibly either.

Alphera has provided us with the output of its credit check. From what I can see Mr K only had a bank account and finance for car insurance in his name. I understand that it is this thinness of Mr K's credit file and him only having three years of credit history which led to his application not being automatically accepted and requiring a manual review. Nonetheless, I've not been provided with the detail of what this manual review would have contained.

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

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 K 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 K's income, his payments to existing creditors and his regular living costs.

Having considered everything provided, I'm not persuaded that Alphera obtaining further information from Mr K would have made a difference on its decision to lend in this instance. I say this because the information Mr K 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 received each month, he did have the funds to sustainably make the repayments due under this agreement.

I accept that Mr K's actual circumstances at the time were not the same as how he presented in his application. For example, I know that Mr K says he wasn't working at the time. But the bank statements provided show that he had just started, or was just about to start employment. And even before this Mr K was receiving regular payments into his bank account. So I don't think it would have been immediately obvious to Alphera that Mr K may not have been working in the way that he appears to have said that he was at the time of his application.

Bearing in mind checking bank statements wasn't the only way for Alphera to have found out more about Mr K's circumstances – 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 Mr K's bank statements and drilling down into his source of funds. In my view, proportionate

checks wouldn't necessarily have picked up that Mr K had only just started or was about to start employment.

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 K 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 K.

In reaching this conclusion I've also considered whether the lending relationship between Alphera and Mr K might have been unfair to Mr K 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 K 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 K. But I hope he'll understand the reasons for my decision and at least consider that his concerns have been listened to.

Although I'm not upholding Mr K's complaint, I would remind Alphera of its continuing obligation to exercise forbearance and due consideration, given what Mr K now says about his financial position and its impact on his ability to repay what he owes.

I would also encourage Mr K to get in contact with and co-operate with any steps that may be needed to review what he might be able to repay. For example, I note that Mr K hasn't completed the income and expenditure forms he has been sent thus far and I don't think that it is unreasonable to expect him to complete and return such documentation to Alphera or any party it authorises to collect payments on its behalf.

That said, Mr K may be able to complain to us – subject to any jurisdiction concerns – should he be unhappy with Alphera's actions in relation to exercising forbearance going forward.

My final decision

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

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

Jeshen Narayanan
Ombudsman