DRN-3827996

Complaint

Mr S complains that BMW Financial Services(GB) Limited (trading as "Alphera" Financial Services) unfairly charged him too much interest when he repaid his finance agreement immediately after it was provided. He says that he was told if, for any reason, he didn't wish to go ahead with the purchase when he picked up the car he would be entitled to a full refund.

Background

In May 2021, Mr S purchased a car for £101,000.00. He paid a deposit of £25,000.00 and the remaining £76,000.00 was financed by a hire-purchase agreement with Alphera. Mr S' agreement had interest, fees and total charges of £18,891.58, and the total amount to be repaid of £94,891.58 (less Mr S' deposit of £25,000.00) was due to be repaid in 47 monthly repayments of £1,060.52 and an optional final repayment of £43,986.62.

Mr S says that when he reviewed his copy of the hire-purchase agreement he saw that he'd have to pay close to £19,000.00 in interest. As a result, he contacted the dealer to ask whether he could cancel the finance and instead purchase the car outright. The dealer told Mr S told that Alphera had already paid out the funds and that he'd have to contact it to repay the funds. When Mr S contacted Alphera he was told that he didn't have the right to withdraw from the agreement and he'd have to pay £76,936.82 to settle the finance early. Mr S was dissatisfied at this. Nonetheless he eventually settled the finance agreement and subsequently complained that he was charged too much.

Mr S' complaint was considered by one of our investigators. She didn't think that Alphera had done anything wrong but it nonetheless treated Mr S unfairly because he repaid the full amount outstanding the day after the funds were advanced so he shouldn't have to pay 56 days interest. So our investigator recommended that Mr S' complaint should be upheld and that Alphera should refund the additional £936.82 less one days' interest – approximate £16.45.

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

My provisional decision of 15 November 2022

I issued a provisional decision – on 15 November 2022 - setting out why I intended to partially uphold Mr S' complaint. I won't copy that decision in full, but I will instead provide a summary of my findings.

I started out by explaining that having carefully considered everything and bearing in mind the complaint that was before me, I thought that there were three questions that were potentially relevant to my determination of Mr S' complaint.

These questions were:

1) Was Mr S entitled to withdraw from his hire-purchase agreement with Alphera?
2) If not, did Mr S have the right to cancel the agreement?

3) If Mr S didn't have the right to cancel or having that right isn't relevant given the circumstances of this case, what effect do the early settlement regulations have on the amount Mr S needed to pay to settle his hire-purchase agreement?

I then proceeded to consider the first of these questions.

Was Mr S entitled to withdraw from the hire-purchase agreement?

I explained that the right to withdraw from a credit agreement comes from s66A of the Consumer Credit Act 1974 ("CCA"). This provision gives a customer the right to withdraw from a regulated consumer credit agreement, without giving any reason, within 14 days of the start date.

I then went on to explain that the 14-day period usually begins the day after an agreement is signed. In this instance on this would have been 4 May 2021. Notice of withdrawal can be given in any way and, should a customer choose withdraw in this way, they are required to repay the credit advanced, in full, plus any interest accrued. There is no penalty for withdrawing from an agreement in this way and a consumer only needs to pay interest for the period the credit agreement was in force. So if Mr S was able to exit his agreement in this way, he would only have had to pay around £16.45 in interest.

However, I pointed out that s66A(14)(a) excluded the right of withdrawal from a credit agreement where there was *"an agreement for credit exceeding £60,260".* Mr S' agreement for credit was for £76,000.00. So this left me satisfied that Mr S' agreement was an excluded agreement for the purposes of s66A of the CCA.

I did accept that Mr S said he was misled into believing that he could withdraw from the agreement. However, I thought that the position in relation to Mr S' right to withdraw from the credit agreement was set out in the '*Right to Cancel'* section on the first page of Mr S' signed and executed credit agreement. It said:

"Right to Cancel
There is no right of withdrawal under Section 66A of the Consumer Credit Act 1974"

And for reasons that I thought would become clear in the proceeding section of my provisional decision, I didn't think that the credit broker (the dealer Mr S' purchased his vehicle from) provided Mr S with incorrect information or misrepresented the position to him.

So overall and having considered everything, I was satisfied that Alphera didn't unfairly refuse to allow Mr S to withdraw from his credit agreement, because the agreement Mr S entered into with Alphera excluded the right to do so.

As this was the case, I then proceeded to consider the second of the potentially relevant questions.

Did Mr S have the right to cancel his agreement and if so what does this mean here?

Even though Mr S didn't have the right to withdraw from his credit agreement, I nonetheless gave thought to whether there were any other relevant provisions of the CCA or any other regulations that allowed Mr S the option of not going ahead with his agreement. In doing so, I had regard to the Consumer Credit Sourcebook ("CONC") and in particular CONC 11.1.

CONC 11.1.1R states:

Except as provided for in CONC 11.1.2 R or where PROF 5.4.1 R (1) or PROF 5.4.1 R (2) applies, a consumer has a right to cancel a distance contract without penalty and without giving any reason, within 14 calendar days where that contract is:

> *(1) a credit agreement;*
> *(2) an agreement between a consumer and a firm the subject matter of which comprises or relates to credit broking, debt counselling, debt adjusting, providing credit information services or providing credit references, other than an agreement that relates to any of those activities in relation to a consumer hire agreement.*

*[**Note**: article 6(1) of the Distance Marketing Directive in relation to distance contracts that are consumer credit agreements]*

Mr S' credit agreement was a distance contract covered by CONC 11.1.1(1). I thought that this meant that Mr S had the right to cancel the agreement. The effect of Mr S' agreement being cancellable was that Mr S could within 14 days of it notify Alphera that he wished to cancel the finance agreement.

However, under CONC 11.1.13, exercising these rights would also result in the underlying supply agreement also being cancelled. In effect, what this meant was that Mr S cancelling his credit agreement with Alphera in this way would also result in his agreement to purchase the car being cancelled and he would be required to return it to Alphera.

I thought that these were the terms that the broker was referring to when it told Mr S that he would be entitled to a refund if he decided he didn't want to go ahead with the purchase when the car arrived. Indeed, I thought that what Mr S has said about his discussions with the broker suggested that he was more concerned about potentially not wanting the car when it arrived, rather than cancelling the finance and keeping the car. And as Mr S did have the right to walk away from the transaction, within 14 days of the agreement, I didn't think that the broker provided Mr S with incorrect information or misrepresented the position in relation to his ability to exit the finance agreement.

Furthermore, I thought that the issue here was that Mr S didn't change his mind about buying the car. He still wanted to buy the car but what he changed his mind about was how he paid for it. And it was my view that the right to cancel didn't cover this scenario. And so, in effect, Mr S wasn't looking to cancel the agreement and what he was in reality looking to do was pay off the finance and take ownership of the vehicle.

Therefore, as Mr S wasn't entitled to withdraw from the agreement and what he was asking to do didn't amount to a request to cancel, I thought that Alphera was entitled to treat Mr S' request to pay off the finance as a request to settle the agreement early. And this led to me going on to consider the third of the potentially relevant questions in relation to Mr S' complaint.

What effect do the early settlement regulations have on the amount Mr S needed to pay to settle his hire-purchase agreement?

I explained that S94 of the CCA allows a borrower to settle a credit agreement and discharge their indebtedness early. And where a consumer requests to settle a credit agreement early, like Mr S' actions indicated that he wished to do here, the Consumer Credit (Early Settlement) Regulations 2004 ("the regulations") set out how a lender should work out what the customer needs to pay in order to settle the amount outstanding.

S5 of the regulations allows a lender to calculate a settlement for (and valid until) a date 28 days after the request for a settlement figure was made. And interest would be charged for

this 28-day period. Furthermore, if the agreement in question has a term for longer than a year, like Mr S' four year agreement did, s6 of the regulations allows the lender to defer the settlement date, for the purposes of calculating an interest rebate, by a further 30 days.

Therefore, as Mr S' request to repay the outstanding amount on his agreement amounted to an early settlement of an agreement which had an original term of longer than one year, I was satisfied that the regulations permitted Alphera to charge interest for a period of 58 days from the date of the settlement request.

I acknowledged that Mr S considered it unfair for him to have been charged £936.82 when he settled the hire-purchase agreement the day after it was entered into. But I explained that paying for goods with credit could provide additional protection for customers thus holding a lender equally responsible should things go wrong with the goods. Equally, I also thought that it would be helpful for me to explain that it was only fair and reasonable for me to uphold a complaint in circumstances where a lender did something wrong. In this instance, I was satisfied that Alphera correctly followed the regulations when calculating Mr S' settlement figure.

Furthermore, I hadn't seen anything to show me that the, initial, settlement figure Mr S was asked to pay was incorrect – indeed from my calculations, given the calculation would be based on the full £76,000.00 being due, interest was accruing at a daily rate of around £16.45. I realised that Mr S was later sent a settlement demand for £2,170.13. I wasn't sure how and on what basis this demand was calculated. But as Mr S only paid the correct amount of £936.82, rather than the later amount of £2,170.13, I was satisfied that he didn't lose out as a result of this further request for payment.

So having carefully considered everything, I was minded to conclude that the amount Mr S was asked to pay by Alphera to exit his hire-purchase agreement was correctly calculated.

That said, even though the amount Alphera asked Mr S to pay was correct, I thought that it was clear that Alphera's communications with Mr S once he confirmed that he wanted to pay off the finance and take ownership of the car were, at best, confusing. As I had already mentioned, at one point Mr S was even asked to pay £2,170.13 and I thought that this was bound to have caused Mr S a level of distress and inconvenience. As a result, I was satisfied that it was fair, reasonable and appropriate for me to make an award for this.

I explained that our website contains detailed examples of distress and inconvenience awards we might make and the reasons why we might make them. These are set out in different categories and levels – to show the range of awards we make.

I carefully considered the amount of compensation Alphera should pay with reference to these distress and inconvenience awards and categories. I'd already explained that the amount Mr S was asked to pay on 4 May 2021 was calculated in line with the regs. So I wasn't persuaded that Alphera did allow Mr S to pay an amount lower than he was supposed to, or that this fully addressed the distress and inconvenience Mr S experienced.

I thought that Alphera providing Mr S with conflicting settlement amounts and contradictory explanations for this, caused Mr S additional stress and worry – certainly at a level above the levels of frustrations and annoyance one might reasonably expect from day-to-day life. Furthermore, Mr S did make repeated attempts to try and address this matter with Alphera. Bearing all of this in mind, I thought that Alphera should pay Mr S £200 in compensation for the distress and inconvenience its actions, when it came to settling this agreement, caused.

Overall and having considered everything, I was minded to partially uphold Mr S' complaint and tell Alphera to pay Mr S £200 in compensation.

Responses to my provisional decision

Alphera responded to say that it didn't think that it had done anything wrong. However, it accepted my provisional decision under protest.

Mr S responded to say that he thought there were events that I had missed out in my provisional decision.

Firstly, he phoned Alphera on the day he collected his car and asked what interest he'd be charged if he settled his loan early and he was told the interest would be calculated on a daily basis. Secondly, he said that he was told the funds for the loan would only be requested once he collected the car and the car was viewed on 4 May 2021 yet the loan start date shows as 3 May 2021.

My findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I thank the parties for their responses to my provisional decision.

I'm pleased to see that Alphera, albeit under protest has accepted my provisional decision.

I appreciate that Mr S feels that he was misled into believing that he'd only have to pay interest, on a daily basis, for the period he owed Alphera the amount of the finance, once he called Alphera after picking up the car from the broker. However, even if Mr S was told this was the case, I'm afraid that this was incorrect. And as Mr S had already agreed to the finance by signing the agreement before this, I can't reasonably say that he only entered into the agreement as a result of being misled into doing so.

I've also seen what Mr S has said about the start date of his loan. But his agreement was signed and executed on 3 May 2021. This is the date that his loan went into force and this is also when the funds were transferred to the broker. Indeed, Mr S wouldn't have been able to leave with his car, on the day of purchase, unless the broker had received the proceeds of the loan and registered Alphera's interest on Mr S' vehicle. This is standard practice when purchasing a car on finance and I don't think Alphera, did anything wrong even if Mr S did subsequently change his mind after signing his agreement.

I accept that Mr S feels that he was provided with incorrect information. I appreciate why this would be annoying and frustrating. And that is precisely the reason why I've awarded him £200 in compensation. But I don't think that Mr S was misled into agreeing to the finance, that what he's said means that he was asked to pay an incorrect amount to settle his agreement or that it would be fair and reasonable for Alphera to now refund the interest he paid.

So overall and having considered Mr S' further points, I've not been persuaded to alter the conclusions I reached in my provisional decision. As a result, I'm still partially upholding Mr S' complaint and directing Alphera to pay Mr S £200 in compensation.

My final decision

For the reasons I've explained above and in my provisional decision of 15 November 2022, I'm partially upholding Mr S' complaint. BMW Financial Services(GB) Limited should pay Mr S £200 in compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 29 December 2022.

Jeshen Narayanan
Ombudsman