

## **The complaint**

Miss H complains about BMW Financial Services(GB) Limited trading as ALPHERA Financial Services (“BMWFS”). She complains about adverse information on her credit file following a refinancing agreement which wasn’t put in place.

## **What happened**

Miss H referred a complaint to us along with her representative. As the complainant is Miss H, for ease, I have addressed my decision to her only throughout, when referring to what she and her representative has told us.

In May 2017, Miss H acquired a used car using a hire purchase agreement with BMWFS. The agreement was taken over 48 months, with regular monthly repayments to be made and an optional final repayment of £6,569, if Miss H wished to purchase the car at the end of the agreement.

When the agreement ended, Miss H looked to refinance the outstanding optional final repayment. In June 2021, she says she agreed a new monthly repayment with BMWFS. Miss H says she was expecting to receive her new agreement to e-sign but didn’t receive it. She says she chased several times for it.

When Miss H eventually did manage to e-sign the agreement, she says she received an email saying authentication failed. So she says BMWFS advised her to send them her identification.

BMWFS sent her the agreement by post to sign and Miss H says she sent it back. BMWFS say they didn’t receive it.

Miss H says she contacted BMWFS again in May 2022 and was told it is no longer possible to refinance the outstanding balance on her initial agreement. So, she raised a complaint with them.

While BMWFS were looking into things, Miss H received a letter demanding the outstanding balance due on her May 2017 agreement. Adverse information was also reported on Miss H’s credit file by BMWFS.

BMWFS responded to Miss H and explained, following a review of all the communication between them, and based on the amount of communication they had with her over the course of a year, they were rejecting her complaint. They summarised the times they contacted each other and also acknowledged that Miss H might have had problems e-signing the agreement, but they say there were occasions where Miss H said she sent the agreement back, but there’s no evidence of this.

Miss H, unhappy with BMWFS’s response, referred her complaint to our service. She would like the adverse information removed from her credit file and would like BMWFS to take the car back and clear the finance.

Our investigator found that BMWFS didn't need to do anything further. He explained that he had requested evidence that the relevant paperwork was sent to BMWFS in order to refinance, but Miss H couldn't provide it.

In summary he explained that he could see Miss H had issues with e-signing the agreement, so BMWFS sent the documents by post. He said as time went on and the documents requested weren't received, it seems fair that BMWFS weren't able to refinance the final repayment due to the time that had lapsed.

The investigator thought that BMWFS's reporting to Miss H's credit file needed to give an accurate picture of the account, so he was satisfied that BMWFS didn't need to do anything further. The investigator went on to explain that Miss H had use of the vehicle for over a year after the initial hire purchase agreement ended, and Miss H hasn't made any payments towards it.

Miss H disagreed with the investigator's view. Among other things, she said that she believed she chased BMWFS on several occasions to get the refinance document signed, but didn't believe BMWFS supported in maintaining communication. She queried why no alternative solution was offered by BMWFS, rather than relying on the lack of a signature on the refinancing document.

As Miss H disagreed with the investigator's outcome, the complaint was passed to me to decide.

*I issued a provisional decision on 13 April 2023 where I explained why I intended to uphold Miss H's complaint. In that decision I said:*

*"Miss H complains about a car supplied under a hire purchase agreement. Entering into consumer credit contracts such as this is a regulated activity, so I'm satisfied I can consider Miss H's complaint about BMWFS.*

*There are aspects of Miss H's complaint I haven't commented on – and that's deliberate. What follows are my comments on what I believe to be the main points to resolve this complaint in a fair way. I don't think I need to make findings at each individual stage, as it's clear something went wrong which I've explained below.*

*Ultimately, what I need to consider here is whether it was fair and reasonable for BMWFS to report adversely to Miss H's credit file about the late payment on the May 2017 agreement. In order to reach my decision on this, I will need to consider the actions of both parties in the lead up to BMWFS declining to refinance the final repayment due.*

*BMWFS has provided their file on this complaint. Within it, I can see notes to show they had incorrectly recorded Miss H's email address on their system. This mistake had only come to light in early November 2021. This had meant that she would not have received the documents or other emails each time they were re-sent to her by email, prior to November 2021.*

*Thinking about things here, I can appreciate how frustrating this situation must have been for Miss H. Miss H has summarised the times she contacted BMWFS between May 2021 and November 2021. They are consistent with the notes BMWFS hold for Miss H. I can see she contacted BMWFS on several occasions, which is understandable, given she was expecting to receive a document to electronically sign.*

*BMWFS also posted documents out to Miss H for her to sign which she says she sent back a few days after receiving them by first class post. BMWFS say they didn't receive the signed documents.*

*BMWFS also say they re-sent the link to e-sign the refinancing agreement in November 2021. This was once they updated Miss H's email address – and Miss H also confirmed she had received it. Unfortunately Miss H says she had issues signing them. She emailed BMWFS her identification as requested and further chased them, and says she didn't receive a response.*

*I think the circumstances above indicate that Miss H had attempted to engage with the process early on and had continued to do so for many months. So, had things not gone wrong with the way Miss H was sent the documents to e-sign, I think it is likely they would have been signed by Miss H and the agreement put in place – which would have led to the May 2017 agreement being settled.*

*I've also carefully considered what Miss H said about posting the agreements back to BMWFS. As our investigator pointed out, there is a lack of evidence here. But, Miss H's testimony has been consistent about this. I think it's obvious she was engaged with the process and was trying to sort out the issue. Her version of events around when she contacted BMWFS have been backed up by phone records and emails. So, on balance, I'm satisfied the documents were most likely posted to BMWFS by Miss H when she says they were sent.*

*I appreciate BMWFS' point that at times Miss H didn't proactively contact them to look into things further. But, I think both sides could've done more here. For instance, I've seen a note from BMWFS' system that shows they were aware in July 2021 that documents hadn't been received when expected and that someone would contact Miss H, but this wasn't done for around another three months.*

*Thinking about what's fair and reasonable, I think BMWFS could've done more to resolve the situation. Had events taken place as intended, I don't think it would have ultimately led to a late payment on Miss H's May 2017 agreement, and in turn led to adverse reporting on her credit file.*

*So I do think BMWFS need to put things right here. Miss H has told our service about the stress this mistake by BMWFS has caused her. She has told our service about the lengthy calls she had to make to BMWFS to get this issue sorted, over several weeks and months. She has also told our service about a personal loss she had experienced and shared with BMWFS.*

*BMWFS say, due the time that has elapsed they are no longer able to offer refinance to the customer. And in any event, Miss H has said she wants to return the car and no longer have a relationship with BMWFS. So, I think it's fair Miss H returns the car to BMWFS.*

*Thinking about what's fair and reasonable here, I think Miss H should be put back in the position she would've been in had nothing gone wrong. So, BMWFS should essentially treat Miss H as though the balloon payment was refinanced.*

*Miss H has continued to use the car. So, I think it's fair for BMWFS to charge Miss H for this from when her initial agreement had ended, up until when she returns the car. I think a fair amount for this would be the amount agreed in the refinancing agreement for the extension that was attempted to be put in place.*

*I've asked BMWFS for a copy of the refinancing agreement that was due to be put in place in June 2021, once Miss H's initial agreement had come to an end. BMWFS hasn't managed to provide me a copy of it yet, despite requesting for it over two months ago. In the interest of resolving this complaint in a timely way, I have still given my initial thoughts below on what I think would be a fair and reasonable way to resolve things.*

*Logically, I think it makes sense for BMWFS to charge Miss H what was agreed under the June 2021 refinancing agreement that was due to be in place. But I'm mindful that I do not have sight of it to consider the costs. So, if BMWFS do object, I suggest they provide a copy of it before the deadline set in this provisional decision.*

*If BMWFS are unable to provide me with a copy of the June 2021 refinancing agreement that was intended to be put in place, or obtain it to consider the costs themselves, they should let me know, so that I can think about what would be fair and reasonable in the circumstances.*

*It is likely payment for the fair usage of the car will be requested by BMWFS in a lump sum due. So I expect BMWFS to treat Miss H with forbearance and due consideration when requesting payment to be made here, given likely the large amount involved. This might involve a suitable repayment plan."*

I set out that I intended to uphold this complaint. And I gave both parties the opportunity to send me any further information or comments they wanted me to consider before I issued my final decision.

#### Responses to the provisional decision

BMWFS hadn't responded to my provisional decision before the deadline I set.

Miss H responded and said, among other things, that she could not help but feel like BMWFS' response to her complaint had been due to discrimination.

Miss H also didn't feel that the £150 I intended to instruct BMWFS to pay was a fair reflection for distress and inconvenience caused, but it was a relief that a resolution has been reached for this complaint.

Miss H also has said that while she agrees with how I set out how I intended to uphold this complaint and she said she is willing to explore returning the car to BMWFS, she would need her credit file rectified before any exchange could happen so she could secure finance on another vehicle.

#### **What I've decided – and why**

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

Miss H says she feels BMWFS has discriminated against her given the problems she's experienced but hasn't provided an explanation as to why she feels this way. Having looked at all the evidence, I accept she has received poor service, but I haven't seen anything to suggest BMWFS has discriminated against her. So I hope that it helps Miss H to know that someone impartial and independent has considered her concerns here.

Miss H has suggested the payment I intended BMWFS to make for distress and inconvenience caused wasn't enough. Considering the circumstances, I think it is a fair amount and I'm not persuaded to change it.

Miss H also has said she was concerned whether aspects of what I intended BMWFS to do would be acted on in a timely manner, and that it was important to her that BMWFS did so. I cannot direct BMWFS to act on certain aspects of my decision first, but I would expect BMWFS to be understanding of Miss H's circumstances and to help resolve this complaint with her. If Miss H accepts my decision, I suggest she contacts BMWFS directly to discuss next steps and I would expect them to resolve things in a timely way.

Given the circumstances, I still consider my provisional decision to be fair and reasonable. And neither party has added anything which gives me cause to change things here.

### **My final decision**

For the reasons I've explained, I uphold this complaint and I instruct BMW Financial Services(GB) Limited trading as ALPHERA Financial Services to:

- Remove any adverse reporting on Miss H's credit file from the date the original agreement ended.
- Pay Miss H £150 to compensate her for the distress and inconvenience that she's been caused.
- Arrange for the car to be collected from Miss H (if this has not been done already) – at no cost to her.
- BMWFS are entitled to charge Miss H usage in line with the June 2021 refinancing agreement that was intended to be put in place from when the original agreement ended to when the car is collected.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss H to accept or reject my decision before 26 May 2023.

Ronesh Amin  
**Ombudsman**