

The complaint

Mr B complains that BMW Financial Services (GB) Limited trading as ALPHERA Financial Services (Alphera) unfairly recorded missing payment markers on his credit file.

What happened

In March 2017 Mr B entered a hire purchase agreement with Alphera for a used car. He was to make monthly repayments of £199.27 and the agreement was due to end in March 2021.

Mr B fell into financial difficulties and his account fell into arrears. In January 2019 he decided to end his agreement and hand the car back. Alphera accepted Mr B's request to terminate the agreement and the car was collected. Mr B was required to repay an outstanding shortfall to bring his payments up to 50% of the total amount payable under the agreement. The total shortfall was £3,161.58, this included the two months arrears prior to the agreement being terminated.

In April 2019 Mr B entered an individual voluntary arrangement (IVA) with his creditors, which included Alphera's balance.

In 2022 Mr B discovered that Alphera were recording missing payment markers on his credit file, despite him making payments towards the balance under his IVA. Mr B says that his other creditors receiving payments under the IVA have recorded his accounts as having defaulted from the date he entered the IVA. He believes that Alphera should also have recorded his account as defaulted from April 2019.

Alphera said it didn't record a default, because rather than '*defaulting*' on the agreement, Mr B had exercised the option under the agreement to voluntarily terminate. So, it thought it was a more accurate reflection to record missing payment markers.

Unhappy with this, Mr B brought his complaint to our service. Our investigator thought that in line with Information Commissioner's Office (ICO) Principles for the Reporting of Arrears, Arrangements and Defaults (which I'll refer to as ICO principles), it was fair for Alphera to record any missing payments up until the IVA was entered into in April 2019 and then report the account as having defaulted from the IVA date. She also felt that Alphera had caused Mr B some frustration by passing him between departments to try to get an answer, she recommended it pay him £250 to reflect this.

In response Alphera said it couldn't mark Mr B's account as having defaulted because he opted to end the agreement and hand back the car. It said the ICO principles only apply to active agreements, but Mr B's agreement had ended. In addition, it said it had only received a total of eight payments from the IVA, in nearly three years, so it thought it was accurately recording missing/late payment markers. It asked for an ombudsman to make a final decision.

On 4 April 2023 I issued my provisional decision setting out my initial findings on Mr B's complaint. In summary I said that whilst I agree that the ICO principles don't specifically mention the scenario where an agreement has been voluntarily terminated before an IVA is

entered. The guidance does refer to defaulting an account when a *debt* is owed and included in an IVA, which is what happened here. I also said it was clear from section 99(2) Consumer Credit Act 1974 that just because an agreement had ended, money accrued before the termination is still owed, and the creditor has a right to pursue the outstanding debt.

In the circumstances, I thought the ICO's principles were relevant to this complaint. And it's clear from the guidance that just because an agreement didn't actually *default* (as in being in arrears for three months or more), an account can still be recorded as defaulted, where there is an outstanding debt which is included in an IVA. The guidance also sets out that the default date should be the same date as the IVA date, which in this case was 9 April 2019.

In addition, Alphera had noted Mr B hadn't stuck to the payment arrangement under the IVA, and it had only received eight payments since April 2019, the statement it provided confirmed his payments were sporadic. I referred to ICO principle three which sets out that an account can also be defaulted, where a payment arrangement is broken, like it had here.

Taking ICO principle three and four into account, I thought it was fair for Alphera to record any missing payments up until the IVA was entered into in April 2019 and then report the account as having defaulted from the IVA date. I also felt Alphera had caused Mr B some frustration by passing him between departments to try to sort this out, so I thought it should pay £250 compensation to reflect this. As Mr B's IVA practitioners had confirmed their interest in any redress, I said Alphera should make the compensation payment directly to them.

Both parties were given the opportunity to respond to my provisional decision. And I explained to Alphera that I'd consider any further comments or evidence it had in respect of its inability to mark the account as defaulted. Mr B confirmed receipt of my provisional decision, he's accepted my decision and had nothing further to add. Alphera didn't respond to my provisional decision.

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.

In the absence of further submissions or evidence I remain of the view expressed in my provisional decision and I uphold Mr B's complaint, for the reasons I set out in my provisional decision.

My final decision

For the reasons given above and in my provisional decision, I uphold Mr B's complaint and I direct BMW Financial Services (GB) Limited trading as ALPHERA Financial Services to;

- pay Mr B £250 compensation (payment via cheque made payable to Payplan Bespoke Solutions)
- record missing payment markers from the date the agreement was voluntarily terminated on 14 January 2019 until 9 April 2019
- record Mr B's account as having defaulted from 9 April 2019; the default will remain on his credit file for 6 years from this date.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 31 May 2023.

Karen Dennis
Ombudsman