

The complaint

Mr A is unhappy about the support he received from BMW Financial Services (GB) Limited trading as ALPHERA Financial Services (Alphera) when he was in financial hardship.

When I refer to what Mr A and Alphera have said, it should also be taken to include things said on their behalf.

What happened

In July 2018, Mr A entered into a hire purchase agreement with Alphera to acquire a used car, first registered in 2016. The cash price of the car was around £21,750 and the total amount payable was approximately £26,009. Mr A provided an advance payment of around £1,000. The duration of the agreement was set at 49 months, consisting of 48 payments of around £319 and an optional final repayment of around £9,697.

On 23 March 2020, the United Kingdom (UK) government announced that UK would enter a lockdown due to the Covid-19 pandemic. In May 2020 Mr A requested financial assistance from Alphera, due to his income being impacted by the pandemic, and Alphera agreed to give Mr A a three-month payment deferral for the months of May, June, and July 2020. After this three-month period no payments were made by Mr A until he made a one-off payment of £1,058.70 in November 2020. This is an amount Alphera told him would bring his payments up to date. Following this, Mr A kept making payments towards his credit agreement. In February 2021, Mr A again contacted Alphera and requested a further payment deferral. Mr A said this deferral should've covered March, April, and May 2021 payments, but Alphera took a May 2021 payment. So, his deferral period ended a month too early. Mr A said this caused his bank account to go overdrawn, so he had to borrow money during that month from family.

After this period no further payments were made towards the credit agreement as all direct debit payments were rejected. Alphera sent a default notice to Mr A on 13 April 2022 and as no contact was made by Mr A, they terminated Mr A's credit agreement in May 2022.

Mr A said that he knows he had fallen behind on his payments, but he said that he didn't try to avoid the issue and wanted to work out a way of catching back up. But, he said, that since the pandemic Alphera has been difficult to get in contact with. He said at times it would take him over 30 minutes of being on hold on the phone before he was able to reach anyone at Alphera. And he said that, had they answered his calls in February and March 2022, a payment plan would have been in place. Mr A told our service that he doesn't have the time to wait on hold all day when calling Alphera because he must attend to his job, as well as deal with personal issues surrounding one of this family members. He said that he received the default notice and the termination letter, but both have arrived on the same day. He said, had he received the default notice earlier, he would've definitely contacted Alphera. He said they also initially reported incorrect information to the credit reference agencies as they were reporting his deferred payments as late on his credit file, which was having a negative impact. He said that his credit file has now been fixed but at that time it prevented him from getting any other form of finance. He says it also took him some time chasing Alphera before

the reporting to the credit file was all amended. Overall, Mr A didn't think that Alphera, treated him fairly, so he complained to them.

In June 2022, Alphera responded to Mr A's complaint. In this correspondence they said that they will not be upholding his complaint. Alphera said that from June 2021 they didn't receive any payments from him. They said that for the months Mr A was in a payment deferral, they have not reported any missed or late payments, but for any other payments they were required as a responsible lender to report factually to credit reference agencies.

In the correspondence, they explained that on 13 April 2022, they issued a default notice to Mr A. This was due to high arrears balance, following several arrears letters, and after noticing that the car was registered to a third party which they said was classed as a breach of the terms and conditions of the agreement. The default notice provided Mr A with 20 days to remedy the default by amending the V5C document back into his name and address and to contact them to discuss the outstanding arrears balance. But they said that, as they received no contact from Mr A by 6 May 2022, they decided to terminate his agreement. So overall, due to the breach of the terms and conditions and considering that Mr A didn't make any payments between the months of June 2021 to April 2022, they felt that to terminate his agreement was the correct action to take.

Mr A was unhappy with Alphera's response, so he referred his complaint to our service.

Our investigator was satisfied that Alphera haven't been unreasonable, and he didn't think that Alphera needed to do anything more to resolve Mr A's complaint.

Mr A disagreed with the investigator, so the complaint has been passed to me to decide.

After reviewing the case, I issued a provisional decision on 18 April 2023. In the provisional decision I said:

"What I've provisionally 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 considering what is fair and reasonable, I need to take into account the relevant rules, guidance, the law, and, where appropriate, what would be considered to have been good industry practice at the relevant time. Mr A acquired the car under a hire purchase agreement, which is a regulated consumer credit agreement. Our service can look at these sorts of agreements.

I'm very aware I've summarised this complaint very briefly, in less detail than has been provided, and largely in my own words. No discourtesy is intended by this. If there's something I've not mentioned, I haven't ignored it. I've not commented on every individual detail. But I've focussed on those that are central to me, reaching what I think is the right outcome. This reflects the informal nature of our service as a free alternative to the courts.

I've considered whether Alphera have done enough to support Mr A, when he told them that he was experiencing financial hardship. When doing so, I've also thought about the relevant rules and guidance at the time. The rules and guidance mentioned below refer to 'customers' and 'consumers', and I will be using these words interchangeably, but in this decision the words are to have the same meaning.

On 24 April 2020, the Financial Conduct Authority (FCA) published additional guidance which came into effect on 27 April 2020 – "Motor finance agreements and coronavirus:

temporary guidance for firms". This guidance introduced temporary measures for consumers whose finances had been impacted by Covid-19, and it builds on Principle 6: "A firm must pay due regard to the interests of its customers and treat them fairly". In relation to the payment deferrals, the guidance states the following: "Where a customer is already experiencing or reasonably expects to experience temporary payment difficulties as a result of circumstances relating to coronavirus, and wishes to receive a payment deferral, a firm should grant the customer a payment deferral for three months unless the firm determines (acting reasonably) that it's obviously not in the customer's interests to do so".

This guidance was further updated by the FCA in July 2020, and later in September 2020. Both updates build on the previous guidance that was issued and stipulate that payment deferrals can be granted for a total period of six months. It is also important to note that within the mentioned guidance it states that: "There is no expectation under this guidance that the firm makes enquiries with each customer to determine the circumstances surrounding a request for a payment deferral, or whether this is not in the customer's interests. Firms can, however, choose to make the enquiries they consider necessary in order to satisfy themselves that the customer is eligible for support and to identify whether the customer would benefit from any additional support, provided that this does not delay the provision of timely support".

I've considered that in May 2020, when Mr A informed Alpheria of his financial difficulties, some of the above mentioned FCA guidance on Covid-19 had not yet been published or in force. But I've considered that before, and after, the additional Covid-19 guidance was in force, there was other guidance such as the FCA – Consumer Credit Sourcebook (CONC), and in particular CONC 7, titled "Arrears, default and recovery (including repossession)", which say that firms should treat consumers in default or in arrears difficulties with forbearance and due consideration.

Treating consumers with forbearance would include such things as considering suspending, reducing, waiving, or cancelling any further interest or charges, allowing deferment of payment of arrears, and accepting token payments for a reasonable period of time. And from what I've seen, it looks like Alpheria was trying to help Mr A, by treating him with forbearance and due consideration. I say this because, when Mr A had difficulties making payments towards the finance agreement, they gave him an initial three-month payment deferral for May, June, and July 2020. I think this was a reasonable decision and in line with the guidance provided by the FCA. But I've gone on to consider whether they should've done more when he asked for further help after those initial three-months. I can see that they also agreed to provide further help to Mr A, as they agreed to a further three-month payment deferral for the months of March, April, and May 2021 payments.

I think the FCA Covid-19 guidance, mentioned above, was intended for customers in situations like the one Mr A found himself in, and it was in force at the time. I think Alpheria were right to agree a deferral for a total of six months, but I can see that Alpheria took a May 2021 payment. So, I don't think they treated Mr A fairly as they ended Mr A's deferral period a month too early. This means that they didn't fully act in line with the guidance provided by the FCA. Therefore, I think it's fair and reasonable that Alpheria should treat the May 2021 payment as a deferred payment. They should also remove any adverse information recorded on Mr A's credit file for this payment as well as for the other five deferred payments if this has not yet been done. Mr A said that because of Alpheria taking this May 2021 payment, his bank account was overdrawn so he had to borrow money from family. So, I've considered the impact this had on him, and I think Alpheria should pay him some compensation for distress and inconvenience caused. I will address how much compensations should be paid later on in this decision.

I've gone on to consider what should've happened after May 2021, when the payment deferral would've ended. From the account statements provided by Alphera I can see that Mr A didn't make any further payments, so I think most likely he was still facing financial difficulties at that time. The FCA expected firms to offer tailored support to customers who were still facing financial difficulties after taking out the maximum six-month payment deferrals. The Tailored Support Guidance, issued by the FCA in January 2021, which originally came into force in October 2020 and was updated in November 2020, indicated that the FCA expected firms to be flexible and employ a range of short-term and long-term forbearance options.

I can see Alphera kept sending arrears letters to Mr A in the period of June 2021 to April 2022, followed by a notice of default letter in April 2022. The correspondence asked Mr A to contact Alphera to discuss his situation, if he was having difficulties making his payments. From the evidence available, I can see that during this 10 month plus period, from June 2021 to April 2022, Mr A only sent one email to Alphera in September 2021. I can also see that Alphera called and emailed him following this and requested that he make contact with them. But I can't see that Mr A made any contact until May 2022, which was after he received the letter saying his agreement was terminated. Also, Mr A made no further payments towards his agreement and, as arrears continued to accrue, Alphera continued to send arrears letters to him.

I know that Mr A said at times it would take him over 30 minutes of being on hold on the phone before he was able to reach anyone at Alphera, and he said that had they answered his calls in February and March 2022 a payment plan would have been in place. He has also told us that he was busy dealing with personal issues surrounding one of this family members and focusing on his job. So I've taken all of this into consideration, and I sympathise with Mr A for the difficulties that he was experiencing. I think it would've been good to have seen Alphera answer their calls quicker, but I'm mindful that this difficulty was against the backdrop of an unprecedented global pandemic which would have also impacted their ability to provide their usual level of service. And I think it would've been reasonable for Mr A to make more attempts at contacting Alphera than he did. Overall, I think Alphera did try to work with and to get in contact with Mr A to discuss provision of tailored support to him. But he didn't make any payments towards the credit agreement for over 10 months. It's also not unreasonable for Alphera to report any missed payments to credit reference agencies, except for the deferral months of May, June, July 2020 and for the March, April, May 2021 payments, as Alphera has a duty to report accurate and fair information to credit reference agencies.

I've also considered whether it was right for Alphera to terminate Mr A's credit agreement. I can see that Mr A's financial difficulties lasted longer than six months and that he hasn't made any payments towards the finance agreement since June 2021. So, a large number of arrears had accrued, and, like I mentioned above, Mr A should've made more of an attempt at contacting Alphera. Alphera sent Mr A a default notice on 13 April 2022, which set out the arrears on the account and explained what would happen if he didn't act on the state of the account. So, I think the correspondence Mr A received from Alphera gave him enough information to understand that Alphera could terminate his finance agreement and repossess the car, had he made no contact or payments towards the credit agreement. As no resolution or arrangement was agreed by the set date in the default notice, I don't think it would've been reasonable for Alphera to allow further arrears to accrue. So, I don't think it was unreasonable for Alphera to terminate the agreement when they did in May 2022. I think Alphera were patient with Mr A while they waited to see if his circumstances would change. Also, I don't think it would've been reasonable for Alphera to allow the arrears to increase indefinitely, so I think their decision to terminate the contract was a reasonable one. They also acted in line with the terms and conditions of Mr A credit agreement.

Mr A said that he received the default notice and the termination letter but both on the same day. He said, had he received the default notice earlier, he would've definitely made contact with them. Alphera provided our service with a copy of the default notice letter they issued to Mr A, which I can see is dated 13 April 2022. Also, from their contact notes it seems that, most likely, this letter was dispatched on that date. So based on what I've seen, I'm satisfied that it's more likely than not that this was posted to Mr A at that time. It may be that he has not received this correspondence earlier due to issues with the post. While it's very unfortunate when things get delayed in the post, I don't think it would be fair for me to hold Alphera responsible for that. It's not something over which they have any control.

I note that Alphera also indicated that they terminated the credit agreement because the car was registered to a third party which they said was a breach of the terms and conditions of the agreement, in addition to the breach caused by the outstanding arrears. But I don't need to consider this aspect as I have already decided that I didn't think it was unreasonable for them to terminate the agreement when they did in May 2022, based on the accrued arrears on the account to that date.

Mr A has referred to negative comments made online by other customers of Alphera and said that these should be taken into account. But we consider each complaint on its own individual merits, and I don't think it would be fair to draw negative inference from the experiences that others may have had in different circumstances. Mr A has also questioned whether we have had similar complaints regarding Alphera at our service. But as our service provides an informal dispute resolution route, our decisions don't create binding precedents. Whilst there may be similarities between complaints, all complaints are considered on their individual facts and merits. Here, I make my decision based on what I think is fair and reasonable considering all the circumstances of this particular complaint.

Mr A said that Alphera was initially reporting incorrect information to the credit reference agencies as they were reporting his deferred payments as late on his credit file. I understand that Mr A's credit file has now been amended, but Mr A said that at that time this prevented him from getting any other form of finance. So, I've considered this, but I've not seen enough evidence for me to conclude that Alphera's reporting of adverse information on Mr A's credit file was most likely the reason for Mr A directly incurring a loss. From the available evidence, I haven't seen anything to suggest that the adverse information recorded on his credit file was why he couldn't obtain credit. So, I can't say that most likely it's Alphera's action that directly caused him a financial detriment. But I've considered that contacting Alphera on numerous occasions about the negative information on his credit file has understandably caused Mr A a degree of inconvenience and stress while trying to sort out this issue. And I've also considered the distress and inconvenience that was caused to Mr A when Alphera incorrectly took the May 2021 payment causing his bank account to go overdrawn. So overall, I think they should pay him £150 for the distress and inconvenience that all of the above has caused him.

My provisional decision

For the reasons given above, I intend to uphold this complaint and direct BMW Financial Services(GB) Limited trading as ALPHERA Financial Services to:

- 1) Treat the May 2021 payment as deferred;*
- 2) Remove any adverse information recorded on his credit file for the duration of the deferral monthly payments in May, June, July 2020 and March, April, May 2021;*
- 3) Pay Mr A £150 compensation for the distress and inconvenience caused."*

I asked both parties to provide me with any additional comments or information they would like me to consider by 12 May 2023.

Mr A responded and provided additional information for me to consider, so I've considered his response and my comments are found below.

Alphera responded and said they have nothing further to add.

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.

Mr A, in response to my provisional decision, provided a lot of points, so I've taken everything into consideration but if there's something I've not mentioned, I haven't ignored it. But I've focussed on aspects that are central to me, reaching what I think is the right outcome. And this reflects the informal nature of our service as a free alternative to the courts.

After my provisional decision, Mr A reiterated that, at times, it would take him over 30, and sometimes even more than 40, minutes of being on hold on the phone before he was able to reach anyone at Alphera. He said that he also tried calling many times but, as the telephone is a tool to do his job, he couldn't be on hold for such long periods. He also said that when he spoke to someone in March 2022 to request a breakdown of payments, this wasn't sent to him. He said that he requested his payment history as he believed payments were not being assigned correctly and that he was waiting for this to arrive before calling back to agree a payment plan. Mr A said that he didn't send an email to chase this as he said history had taught him that Alphera doesn't respond to emails. So, he feels that he was not avoiding the issue as otherwise he wouldn't have called them when he received the default notice. He feels that, had Alphera been more responsive, he wouldn't be in the situation he is in now.

As I already mentioned in my provisional decision, I think it would've been good to have seen Alphera answer their calls quicker, but this case was unfolding against the backdrop of an unprecedented global pandemic, which could have also impacted their ability to provide their usual level of service. And, I still think it would've been reasonable for Mr A to make more attempts at contacting Alphera than he did if he wanted to get a plan put in place. He didn't make any payments toward the credit agreement for over 10 months, besides the one small payment of around £54 made in March 2022. Since no payments were being made during the 10 months, arrears continued to accrue, so Alphera continued to send arrears letters to Mr A. These letters contained a breakdown of payments that were made and of ones that were missed. In addition, the letters contained opening and closing balances of his account. Furthermore, Mr A could view and manage his finance agreement online. I see this was explained to him on a couple of occasions. It was once explained to him in an email sent in October 2020, this email also contained a copy of his payment history, which was provided to him following a request he made.

In addition, Alphera was sending statements for his account with an approximate six-month frequency. So, from all this correspondence Mr A would've been aware of what was outstanding, and he would've been aware that his direct debits weren't being collected. Also, considering the amount of arrears that had accrued, I don't think it would've been reasonable for Alphera to allow further arrears to accrue. Alphera's contact notes indicate that a payment history was sent to Mr A in March 2022, as requested. But even if it wasn't, I think most likely, Mr A was aware of the position of his account as arrears letters and statements were being sent to him. So, I don't think this prevented him from getting a plan put in place. Also, during the March 2022 call, Mr A was advised to contact his bank to get the direct debits reinstated, but I can see that the direct debit for March and April 2022 payments were returned unpaid. So I think, most likely, Mr A's financial situation hasn't improved by that

time, or he didn't intend on putting a plan in place. And, like I already mentioned, I don't think it would've been reasonable for Alphera to allow further arrears to accrue.

In response to my provisional decision, Mr A said that when he contacted Alphera in November 2020, he was given an incorrect outstanding arrears figure. He said that had they provided him with the correct amount at the time, he could've paid it and he wouldn't now owe as much. From the contact notes, I can see that Mr A did request this figure at that time, but the notes don't say what actual number was provided. However, in October 2020 Mr A was sent his payment history and he was also being sent the arrears letters mentioned above, so I think had an incorrect figure been provided he would've questioned it at the time. Also, three months later he was sent another statement allowing him to notice any incorrect figures he could have been quoted, and he could have addressed this when he called Alphera to request a payment deferral in February 2021.

Mr A is still unhappy that Alphera was initially reporting incorrect information to the credit reference agencies as they were reporting his deferred payments as late on his credit file. I believe Mr A when he tells us this but, as I mentioned in my provisional decision, Mr A's credit file has now been amended. Also, I know that Mr A is unhappy because he said that at the time, this prevented him from getting any other form of finance. However, I've not seen enough evidence for me to conclude that Alphera's reporting of adverse information on Mr A's credit file was most likely the reason for Mr A directly incurring a loss. This is because I haven't seen anything to suggest that the adverse information recorded on his credit file was why he couldn't obtain credit which, most likely, directly caused him a financial detriment. And I've already taken into consideration the inconvenience this had caused him when thinking how much Alphera should pay him for the distress and inconvenience.

Mr A said that the registration of the car not being in his name was not something he was aware of at all, so he doesn't believe this should have been used as leverage to terminate his finance agreement. But, as per my provisional decision, I don't need to consider this aspect as I have already decided that I didn't think it was unreasonable for Alphera to terminate the agreement when they did in May 2022, based on the accrued arrears on the account to that date.

Mr A has pointed out some discrepancies with the final response letter he received from Alphera and questioned how their incorrect application of the deferrals affected his agreement with them. But, as per my provisional decision, I have already indicated that Alphera should treat the May 2021 payment as deferred and I've also asked them to remove any adverse information recorded on Mr A's credit file for the duration of the deferred monthly payments for May, June, July 2020 as well as for March, April, May 2021.

Mr A mentioned that when he applied for the payment deferrals, he didn't realise this was going to increase his monthly payments significantly. But I can see that he was sent a Payment Deferral and Advance Notice of Direct Debit letter which explained in detail how the deferrals would work. Also, if the payments weren't affordable, he could've raised this with Alphera at the time.

Mr A also thinks that the default notice letter should've been sent by signed-for post, but I can't hold Alphera to such a standard as it is not a legal requirement.

Mr A said that an email he sent on the 8 February 2021, where he mentions that Alphera destroyed his credit rating and stopped him from getting any sort of finance, should be taken as evidence that this prevented him from getting any other form of finance. But this is not enough evidence for me to conclude that Alphera's reporting of adverse information on Mr A's credit file was most likely the reason for Mr A directly incurring a loss. And, I haven't

seen anything to suggest that the adverse information recorded on Mr A's credit file was why he couldn't obtain credit.

Also, as I don't think Alpheria registered the default on Mr A's credit file unfairly, I can't hold them responsible for the fact the Mr A couldn't get the job he was shortlisted for.

So overall while I sympathise with Mr A for the difficulties that he is experiencing, I think the proposed resolution in my provisional decision is still fair and reasonable.

My final decision

For the reasons given above, and as outlined in my provisional decision, I require BMW Financial Services(GB) Limited trading as ALPHERA Financial Services to:

- 1) Treat the May 2021 payment as deferred;
- 2) Remove any adverse information recorded on Mr A's credit file for the duration of the deferral monthly payments in May, June, July 2020 and March, April, May 2021;
- 3) Pay Mr A £150 compensation for the distress and inconvenience caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 11 July 2023.

Mike Kozbial
Ombudsman