

## The complaint

Mr C complains that BMW Financial Services (GB) Limited, trading as Alphera Financial Services, has treated him unfairly by terminating his hire purchase agreement after agreeing a payment deferral plan.

## What happened

In July 2019 Mr C acquired a used car financed through a hire purchase agreement with Alphera. The car was approximately five years old.

In 2020 Mr C took an agreed payment break with Alphera initially for three months which was extended to six months. Mr C said Alphera did not start taking the payments again after the deferral. He said he contacted Alphera to find out what was happening. He began direct debit payments after Alphera had admitted its mistake. Mr C said this resulted in an additional £135 per month being taken by direct debit per month.

Mr C said he never missed a payment before or after the break but in July 2022 Alphera terminated his hire purchase agreement. Mr C brought a complaint to Alphera.

In its final response letter Alphera said all the correct processes were followed leading up to the termination of Mr C's agreement. It said the relevant amount of contact was attempted regarding the arrears balance with no response from Mr C. It said a default notice had been issued that requested urgent contact within the time period provided on the notice and this was not responded to.

Mr C wasn't satisfied and brought his complaint to this service. He said whenever he received an arrears letter it clearly stated that if he had received a payment break then he could ignore the letter. He said he had been working away offshore for long periods so he may have missed letters regarding the agreement. Mr C said this had destroyed his credit rating showing he had missed payments every single month which he said wasn't true. Mr C said at this point he wanted to agree a plan to pay the arrears of Alphera's mistake so his credit rating could go back to normal and he could keep the car.

Our investigator concluded that Alphera had shown reasonable forbearance with respect to Mr C before it had decided to terminate the agreement. And that there was nothing to suggest Alphera had reported incorrectly on Mr C's credit file. Mr C asked for a decision from an ombudsman. I was minded to uphold the complaint so I sent a provisional decision on 7 August 2023. I said:

- *In the letter confirming the deferment it said: "This means your agreement will be extended by 6 months in total. You will of course have the benefit of continued use of the vehicle during the extended period of the agreement."*
- *I'm satisfied these six payments were the agreed payments deferred by Alphera due to Covid 19. They were an extension of Mr C's existing agreement.*
- *In his complaint to this service Mr C said he never missed a payment before or after*

*the payment break. I can see from the ledger that the payment due on 1 May 2020, prior to his request for payment deferral, did not go through. I can see the payment that was due to be paid on 30 November was also rejected. The same occurred in December 2020. So it does appear that Mr C had three missed payments which were in addition to the deferred payments. One of these was the original repayment and two of them included the additional interest and the depreciation adjustment.*

- *I'm satisfied these three payments did not form part of the deferral agreement.*
- *Alphera also provided contact notes from Mr C's account. I can see that on 5 January 2021 Mr C called Alphera concerning an arrears letter he had received. Alphera advised him that the direct debit was not in place. This was reinstated. During this call Alphera agreed a payment plan to spread the balance of the arrears over the remainder of the agreement. It also waved deferral interest starting from 31 January 2021 from his regular payments.*
- *Three separate payments were made in January 2021 by direct debit. These included the regular hire purchase agreement payment, the depreciation payment as well as a payment for £53.72. This latter payment was the first for the arrears payment plan. The ledger shows that Mr C continued with his regular and depreciation payments going forward. But payments for the arrears stopped.*
- *So I'm satisfied Mr C continued to be in arrears for the May, November and December 2020 payments.*
- *Mr C said that the payments in May, November and December weren't taken due to a mistake by Alphera. On the ledger the May payment was attempted but the ledger records it as a rejected direct debit due to the instruction having been cancelled. For the November and December the payments were rejected as there were no direct debit instructions. It appears Alphera attempted to take the payment in May and it seems more likely than not that Mr C cancelled the direct debit in advance of the May 2020 payment and didn't set it back up to begin in November. But I'm satisfied that in January 2021 Mr C was aware he was in arrears.*
- *Mr C said he received arrears letters but they clearly stated that if he had received a payment break then he could ignore the letter. I've seen a copy of several letters between May 2020 and July 2022.*
- *There are two payment deferral letters which outline in table format the payments and charges for the deferral. In the letter dated 19 May 2020 it says:*
  - *"Please do not cancel your direct debit...*
  - *If you have any outstanding arrears at the start of the payment deferral or have recently cancelled your direct debit please read under 'outstanding arrears' below...*
  - *If you have any outstanding arrears at the start of the payment deferral, including any that were a result of you cancelling your direct debit, these need to be paid in addition to the monthly payments shown above. Please call us and we will help you to find an appropriate way to make these payments."*
- *In the letter dated 14 August 2020 there is a box around a paragraph entitled 'outstanding arrears'. It says:*

- *“If you have outstanding arrears incurred before the start of the initial payment deferral, these need to be paid in addition to the monthly payments shown above. They are not shown in the table above. If you have outstanding arrears, you will receive a separate letter from us about your payment of the arrears.” The letter goes on to say:*
- *“If you do continue to experience financial difficulties that may prevent you from restarting or maintaining your monthly repayments at the end of the additional payment deferral, please call us at that time (and before the end of your deferral period).”*
- *Alphera has also provided this service with copies of six Notice of Sums in Arrears letters sent between June 2020 and July 2022 which Alphera was required to send by law. In each letter it says:*
  - *“Providing you are adhering to the deferral arrangements, you do not need to take any action in response to this notice and we will report no negative impact on your credit file... If you do not have an agreed deferral arrangement in place with us this notice requires your attention. “*
- *So, while I agree with Mr C that the letters did say if he had a payment break he could ignore the letter this was only the case for the deferral arrangements. The payments he failed to make in May, November and December were not part of the deferral agreement and as I said above I’m satisfied he was aware in January 2021 he was in arrears.*
- *Mr C said he contacted Alphera in January as he wanted to continue payments and sort out what arrears had occurred. He said this shows a willingness and acceptance, and not an avoidance to pay. I would agree with this, but it does appear that Mr C only made one payment towards the arrears plan and then the payments stopped.*
- *Mr C told this service that the first payment for the arrears was paid but he questioned why the payments didn’t continue. He said he’d agreed with Alphera this was an affordable payment to make and had agreed to pay the direct debit. He said he didn’t feel he needed to keep check of it as he had many direct debits. Mr C went on to say he called Alphera wanting to pay back the arrears in full once he’d realised the problem (after the termination) which he said shows a willingness to comply and do what’s right. He said he acknowledged his failings in not being more thorough in reading letters or calling and that he works offshore for long periods of time which does cause issues like this.*
- *It wasn’t clear to me from the evidence provided how the payment plan was set up and why it failed after only one payment. So I asked Alphera to provide further information. I said:*
  - *“From March 2021 onwards there is no indication that a direct debit was rejected or cancelled. If the direct debit was set up correctly I would expect to see attempts to be made by Alphera to collect it and I can’t see them on the ledger...I’d be grateful if you could let me know what the situation was with this direct debit. Was it set up as a recurring payment? Was there an error in setting up? Or was it cancelled by either party?”*

*I went on to ask how the arrears payment plan was communicated clearly in writing to Mr C. While I could see from the comments that a payment plan was agreed for the arrears, it appears this conversation about the arrears*

*payment plan took place in the context of the Covid deferment agreement, as interest on this deferment was cancelled during the same phone call. I saw a reference made to a 'Covid 19 plan letter' on 5 January, and a 'Covid 19 plan letter defer arrears correction' on 12 January. I also saw reference to a 'welcome letter' on 6 January. I asked for a copy of these letters.*

*Alphera didn't respond to my requests for this additional information.*

- We offer an informal dispute resolution service. We try to resolve complaints by customers about financial businesses by looking at what we consider to be fair and reasonable in the circumstances. My job is to come to what I think is a fair and reasonable outcome based on the evidence available to me, taking account of the relevant laws, rules, and industry practice.*
- Mr C has accepted he wasn't on top of paperwork and post due to his working arrangements. And although this isn't something I would generally hold Alphera responsible for and I can see that Alphera made efforts to bring Mr C's attention to the situation, it hasn't provided information I requested relating to confirmation of the arrears payment plan or the situation regarding the direct debit. Mr C had a responsibility to pay the arrears, but Alphera also had a responsibility to confirm the agreement and take or attempt to take payment if an agreement had been put in place.*
- Mr C has continued to make the majority monthly payments (£605.42) plus the depreciation payments in good faith. He said he will pay the arrears if a payment plan can be agreed.*

Subject to any further information I might receive I was persuaded the fair and reasonable course of action here would be to allow Mr C to settle the arrears with a revised and confirmed payment plan, to allow him to continue to make his regular and depreciation payments and for the termination of the agreement to be reversed.

Both parties accepted my findings. Mr C told this service he had paid the arrears by making a payment of £3,411.81 in April. He asked for the default marker to be removed from his credit file.

### **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 C asked for the default marker to be removed from his credit file. I asked Alphera to confirm receipt of the arrears payment. I also said to Alphera that Mr C's account should show as in arrears on his credit file up until the point that this payment is/was made and that Alphera should then remove the default. I asked it to provide any comment on this. I didn't receive a reply. So in the circumstance that Mr C has cleared the arrears I think it fair that Alphera remove the default marker.

### **Putting things right**

To put things right BMW Financial Services(GB) Limited trading as Alphera Financial Services must:

- Reverse the termination of the hire purchase agreement allowing Mr C to keep the car and continue to make his regular payments and the depreciation payments until

the end of the agreed term.

- If Mr C has paid off the arrears it should remove the default marker from Mr C's credit file.
- If Mr C has not yet paid off the arrears it should set up a new payment schedule with a new direct debit instruction over the course of the agreement term or, if Mr C prefers, allow Mr C to make a one-off payment to pay off the total arrears amount.

### **My final decision**

My final decision is that I uphold this complaint and BMW Financial Services(GB) Limited trading as Alpheria Financial Services must put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 20 October 2023.

Maxine Sutton  
**Ombudsman**