

The complaint

Mr M has complained that BMW Financial Services(GB) Limited, trading as ALPHERA Financial Services ('Alphera'), has refused to close his finance agreement, despite not supplying him with the car that it was for.

What happened

Mr M had a car financed through Alphera. I'll call this 'Car 1'. But he decided he wanted a different car, and found one he liked. I'll call this 'Car 2'. He explained to the dealership that he had outstanding finance on Car 1, and wanted to part-exchange it.

This arrangement went ahead, and the dealership arranged the finance for Car 2, also through Alphera. The price agreed for Car 2 was £16,140.01, with a part-exchange value of £5,250 being agreed for Car 1. This would go to settling the outstanding finance of £3,320.34 for Car 1, with the remaining funds being used as a deposit for Car 2. It was agreed that the dealership would drive to drop off Car 2, and collect Car 1.

The agreement 'went live' on 23 March 2023, and the finance on Car 1 was settled as agreed. However, when the drop off/pick up was due to happen, there was a disagreement, and the dealership didn't supply Car 2, or collect Car 1. In essence, the deal fell through.

Mr M contacted Alphera. It explained it had been in contact with the dealership to get the details it needed to unwind the agreement. But it said that until this was done, Mr M would need to keep up with his monthly repayments.

Mr M then brought his complaint to our service, and one of our investigators looked into what had happened. She said that, as the finance agreement for Car 2 had already been executed by the time the dealership pulled out, Alphera was obliged to provide Car 2, in exchange for the repayments. But as Alphera wouldn't now be able to supply Car 2, the way to resolve matters was to put things back to how they'd been before, when Mr M still had the agreement for Car 1. She thought Alphera should reopen the agreement for Car 1 or, if this wouldn't be possible, set up a new agreement for Car 1, with the same figures and terms as before.

Our investigator noted that prior to the second agreement being executed, Mr M had needed to make monthly repayments for Car 1. These had stopped, because of the part-exchange. So, Mr M had full use of Car 1, but without paying for it. This meant it would be fair for Alphera to require Mr M to make the original repayments that haven't been made. She said Alphera should set up an affordable repayment plan, or add up the missed payments and spread these out over the remaining term (if affordable for Mr M). It should discuss the most suitable option with Mr M.

Our investigator also thought the matter had caused Mr M distress and inconvenience. He'd not been supplied with the car, had made multiple calls to try to sort things out, and hadn't been able to apply for finance for another car, due to the agreement for Car 2 being on his credit file. She thought £250 compensation was fair to address this.

Our investigator said Alphaera should:

- unwind the current hire purchase agreement and remove any adverse information regarding it from Mr M's credit file;
- reopen the finance agreement that was in place for Car 1, or, if it can't be reopened, to set up a new agreement for this instead with the exact same terms and amounts, and if a new credit search is required for this, to remove the search once the agreement is open;
- contact Mr M to arrange an affordable way for him to repay the missed payments for Car 1; and
- pay Mr M £250 for the distress and inconvenience this has caused him.

Alphaera agreed with our investigator's view. Mr M did not, as he felt that £250 doesn't reflect what he's experienced.

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.

Both Alphaera and Mr M largely agree with our investigator's proposal, and I also agree that it's fair, for the same reasons she gave. So, that leaves me to:

- clarify some points of the address, for the avoidance of any doubt; and
- consider whether £250 compensation is fair.

First, I'll clarify some of the redress. As some of it's quite complex, this will avoid any room for doubt.

As the agreement for Car 2 is being unwound – as if it never existed – it follows that all information relating to it should be removed from Mr M's credit file (not just negative information).

As regards the historical repayments for Car 1, these should not be retrospectively marked as having been missed. This is because the agreement for Car 1 no longer existed at the time. Further, it's my understanding that Mr M made one repayment towards Car 2. If this is the case, or indeed if he made more, these should be deducted from the total of the 'missed' payments for Car 1. This is because Mr M never had Car 2.

Further, if it's decided that the best way for Mr M to repay these amounts is to spread them across the terms of the reinstated or new agreement for Car 1, then this will alter the monthly repayments. This is why I've said in my redress this agreement should be 'based on' the exact amounts and terms of the original agreement. But in all other respects, it should be like-for-like.

Finally, I've thought about whether £250 is a fair sum for the distress and inconvenience Mr M has suffered. I appreciate it's been very stressful, particularly with having a new baby. But I feel that £250 is a significant amount, and is reasonable in the circumstances. This should be paid directly to Mr M, without setting it off against sums owing for Car 1.

Putting things right

To put things right, Alphera must:

- unwind the current hire purchase agreement and remove all information regarding it from Mr M's credit file;
- reopen the finance agreement that was in place for Car 1, or, if it can't be reopened, to set up a new agreement for this instead, based on the exact same terms and amounts. If a new credit search is required for this, it must remove the search once the agreement is open, and it must not mark the historical unmade repayments as having been missed retrospectively;
- contact Mr M to arrange an affordable way for him to repay the 'missed' payments for Car 1 (ensuring it deducts any repayments made towards Car 2 from the total sum); and
- pay Mr M £250 for the distress and inconvenience this has caused him, without setting this off against the sum he owes.

My final decision

It's my final decision to uphold this complaint. I require BMW Financial Services(GB) Limited, trading as ALPHERA Financial Services, to take the actions set out above, in the section entitled 'Putting things right'.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 2 April 2024.

Elspeth Wood
Ombudsman