

The complaint

Miss S complains BMW Financial Services (GB) Limited trading as ALPHERA Financial Services (“Alphera”) terminated her finance agreement and recorded a default on her credit file.

What happened

In January 2022, Miss S acquired a car, via a Hire Purchase Agreement with Alphera. In August 2023, Alphera terminated the agreement, saying the account had fallen into arrears and after issuing a notice of default, hadn’t been brought up to date.

Miss S complained, raising several concerns. Miss S says Alphera wasn’t supportive during a difficult period with calls going unreturned and post sent to an address she wasn’t at. Miss S complained Alphera wouldn’t reinstate the agreement, even when she offered to bring the account up to date. Miss S says Alphera hasn’t considered her circumstances, including her mental health and is unhappy a default has been recorded on her credit file.

Alphera doesn’t agree it’s done anything wrong. It says no payments were received for May, June or July 2023. Alphera says it tried to contact Miss S on a number of occasions, however, wasn’t able to meaningfully discuss the account or put a payment plan in place. Alphera says it sent a notice of default and as the arrears weren’t paid within the required period, terminated the account. As the agreement had been terminated, Alphera says it has a duty to report this to the credit reference agencies, so doesn’t agree it’s made any errors.

Unhappy with Alphera’s response, Miss S referred her complaint to this service. One of our Investigators looked into what happened and didn’t think Alphera had done anything wrong. She said she thought Alphera had made reasonable attempts to contact Miss S and as the agreement was three months in arrears, it wasn’t unreasonable for Alphera to default and end the agreement, then report this to the credit reference agencies.

Miss S disagreed with our Investigators findings. Miss S highlighted that she’d told Alphera she wouldn’t receive post, as she wasn’t at her address and that links within emails didn’t work. Miss S also said that due to her personal circumstances, Alphera should have done more to help. As the matter couldn’t be resolved, it’s been passed to me to decide.

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 S doesn’t dispute that her agreement with Alphera fell into arrears, however she says the firm didn’t do enough to help during a period of financial difficulty and that its customer service was poor.

From the evidence available, Miss S’ account was up to date, at the end of April 2023, however the direct debits were unsuccessful for May, June and July.

Miss S called Alphera shortly before her May direct debit was due to be taken, looking to amend her bank details. Alphera explained that it wasn't possible to amend the account details for the May payment as it was too close to the payment date. Therefore, Alphera explained the direct debit for May would still be taken from Miss S' existing bank details, and payments from June onwards would be taken from the new bank account. However, neither of the May or June direct debits were successful, nor was the one for July, meaning the agreement was then three months in arrears. Throughout this period, Alphera sent letters, emails, and attempted calls to Miss S to discuss her account.

Alphera has provided a copy of its contact notes, from reviewing these, the first time I can see Miss S spoke with Alphera was mid-July, to discuss setting up a payment plan. Alphera explained it would need to conduct an affordability review and sent an email to Miss S with a link, so that it could conduct an income & expenditure assessment.

Miss S says the link within the email didn't work, and this wasn't followed up by Alphera when she reported it. I haven't seen anything to say conclusively whether Alphera was made aware of this problem, however following this, the July payment also failed to be collected and Alphera sent further correspondence via letter and email to Miss S confirming arrears remained on the account and asking to discuss this. So, I think Alphera was making it clear that there remained a problem with the agreement and Miss S needed to contact it.

In August, Alphera issued a notice of default as the account remained three months in arrears. It's broadly accepted that firms such as Alphera may look to terminate and default an agreement once it's at least three months in arrears. So, I haven't found that Alphera was wrong to take these steps as it hadn't heard any further from Miss S.

The notice of default was issued via letter. Prior to this, Miss S had told Alphera she would be travelling, but I haven't seen anything to say Miss S told Alphera she wouldn't have access to correspondence at the address she'd given, or that an alternative address was provided. As it's a requirement for a notice of default to be issued via post, I don't find Alphera made an error in sending it to the address it held for Miss S. The notice set out that unless Miss S cleared the arrears within 20 days, the agreement would be terminated.

Miss S phoned Alphera 22 days later, by which point the agreement had defaulted. Miss S explained she'd faced personal challenges, including health difficulties and that she was vulnerable, Miss S therefore asked for an opportunity to maintain the agreement and bring the arrears up to date.

As Alphera had defaulted the agreement, it wasn't possible for Miss S to simply pay the arrears and maintain the agreement. Rather, Alphera escalated Miss S' request internally. From the evidence available, my understanding is Miss S wasn't in a position to settle the arrears on the day she phoned Alphera, rather, would look to do so on her next pay day which was approximately four weeks later. Alphera considered Miss S' request, however decided it wouldn't agree to reinstate the agreement. While I realise this answer will no doubt have come as a disappointment to Miss S, I'm satisfied that Alphera considered her request and while I'm sorry to hear of the challenges she'd faced, I don't find fault with Alphera's decision not to reinstate the account.

Miss S says Alphera should have done more to support her due to her ongoing health conditions. I'm sorry to hear of the difficulties Miss S faced, however the first point I can see this was discussed with Alphera was after the agreement had been terminated. So, I don't think Alphera was wrong to proceed with ending the agreement, based on what it knew at that time. Alphera did consider Miss S' request to reinstate the agreement but didn't agree to this and this is a decision I think it was entitled to make.

As the agreement was terminated following the notice of default, Alphera reported this to the credit reference agencies. It did this in line with the terms and conditions of the agreement and as outlined in the notice of default. As I don't think Alphera was wrong to default the agreement, I don't then find it was wrong to pass this information to the credit reference agencies.

As a result, while I appreciate this answer will likely come as a disappointment to Miss S, I don't find Alphera has done something wrong, so won't be asking it to do anything further to resolve this complaint. The agreement had fallen into arrears, and I think Alphera was entitled to issue a notice of default, and as the arrears remained outstanding to then end the agreement. I'm sorry to hear of the difficulties Miss S faced but can't see Alphera was made aware of these circumstances until after the agreement had been terminated. As the agreement has defaulted, Alphera is then correct to report this to the credit reference agencies. In saying this, should Miss S now face financial difficulties in paying off any amount outstanding under the agreement, Alphera should show forbearance and due consideration to her circumstances.

My final decision

For the reasons set out above, I don't uphold Miss S' complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 4 December 2024.

Christopher Convery
Ombudsman