

The complaint

Miss P complains that BMW Financial Services (GB) Limited, trading as Alphera Financial Services ("Alphera"), unfairly terminated her hire purchase agreement.

What happened

Miss P acquired a used car financed through a hire purchase agreement she signed with Alphera on 17 October 2021.

Between October 2022 and November 2023 Miss P had difficulty making payments and fell into arrears multiple times. Alphera issued several Default Notices. The last one was in October 2023 with an outstanding balance requested of £1,041.76. On 7 November Alphera terminated the agreement and initiated recovery of the vehicle.

Miss P requested that the agreement be reinstated and Alphera asked for an income and expenditure (I&E) affordability check. Miss P complained to Alphera.

Alphera did not uphold the complaint. In its final response it said Miss P's expenses outweighed her income and as a responsible lender it was unable to allow the agreement to continue if it was placing the customer into further financial difficulty. Miss P wasn't satisfied and brought her complaint to this service.

Our investigator concluded that Alphera hadn't acted unfairly. Miss P didn't agree and asked for a decision from an ombudsman.

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.

I realise this will come as a disappointment to Miss P but having done so I won't be asking Alphera to do anything further.

In deciding what I believe to be fair and reasonable in all the circumstances, I'm required to consider relevant law, rules, guidance, codes of practice as well as what I consider to have been good industry practice at the time.

I trust Miss P won't take it as a discourtesy that I've condensed the complaint in the way that I have. Ours is an informal dispute resolution service, and I've concentrated on what I consider to be the crux of the complaint.

I've seen a copy of Miss P's signed hire purchase agreement. In signing the agreement Miss P agreed to be bound by its terms and conditions. It says:

6. Our Rights to End this Agreement Early

We will have the right to end this agreement, after sending you any Notices required

by law if any of the events listed in clause 7 (Events of Default) below occur and you do not remedy them within the required period.

I've seen that Alphaera sent a Notice of Sums in Arrears on 30 September 2023. The arrears total was £1,041.76. It requested Miss P get in contact to discuss the account. I can see that Alphaera sent a Default Notice letter dated 11 October. To remedy the breach Miss P was required to pay the arrears in full by 31 October 2023. Miss P has confirmed to this service she received this letter as well as two previous Default Notices. And I'm satisfied Alphaera acted fairly with its Default process.

Alphaera is also required to act in line with its obligations set out in the Consumer Credit sourcebook (CONC). Section 7.3 sets out obligations for the treatment of customers in or approaching arrears or in Default. CONC 7.3.3 says:

Where a customer under a regulated credit agreement fails to make an occasional payment when it becomes due, a firm should, in accordance with Principle 6 (customer's interests), allow for such unmade payments to be made within the original term of the agreement unless:

(1) the firm reasonably believes that it is appropriate to allow a longer period for repayment and has no reason to believe that doing so will increase the total amount payable to be unsustainable or otherwise cause a customer to be in financial difficulties; or

(2) the firm reasonably believes that terminating the agreement will mitigate such adverse consequences for the customer and before terminating the agreement it explains this to the customer.

Miss P said she had been having difficulty making the monthly payments and accepted she'd received two previous Default Notices. She said she always paid a lump sum to cover the missed payments. She said after the third Default Notice she was given three options - to sell the car, get a car which was much cheaper or pay her outstanding balance. Miss P said she cleared the balance as agreed but a few days later was called from a third party informing her they were coming to recover the car.

Miss P's Default Notice expired on 31 October. I've seen a copy of contact notes between Miss P and Alphaera. In a call on 2 November Miss P told Alphaera she couldn't clear the arrears as she wasn't working but expected to start a new job in one to two weeks. Alphaera advised her of her exit options and followed up with a confirmation email. The email stated Miss P had until the close of business on 6 November to make a payment and satisfy the Default Notice. After that the agreement would proceed to some form of termination. I'm satisfied Miss P was made aware of her options and the deadline.

Miss P also called Alphaera again to check if the instalment just made could be part of her arrears payment but was advised this wouldn't be the case.

She made the payment on 7 November by which time the agreement had terminated. I'm satisfied Alphaera acted fairly by terminating the agreement at this point.

On 12 November Miss P asked for the agreement to be reinstated. I can see from the internal contact notes that Alphaera noted that Miss P hadn't been able to pay due to unemployment and reinstatement of the agreement would need to be supported by proof of affordability. She was asked to provide proof of employment and access to open banking for an affordability assessment.

I can see from the contact notes between 14 November and 18 December there were emails and calls back and forth regarding whether the supporting documents had been sent and received. And on 18 December Miss P raised a complaint. She said she'd sent the employment contract but hadn't received the open banking link so she hadn't been able to input her income and expenditure details. I appreciate there were some delays with Alpheria with regards to I&E information sent in by Miss P and I can understand her frustration at this point. But when Alpheria did receive it and completed an affordability check the data showed Miss P had a negative disposable income despite three months into her new employment.

In its final response in mid-February 2024 Alpheria said that as a responsible financial lender it was unable to allow an agreement to continue if it is placing its customer into further financial difficulty. And I agree with its position. When disposable income is in the negative then it's possible other priority commitments (e.g. rent, mortgage, council tax) may be missed to make the car payments. This is a situation Alpheria is obliged to avoid where possible.

I'm sympathetic to the fact this is not the news Miss P would like but I'm satisfied Alpheria acted fairly when terminating Miss P's agreement. I agree with the investigator that Miss P should reach out to Alpheria to discuss her options to avoid further financial difficulties.

My final decision

My final decision is I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss P to accept or reject my decision before 8 May 2025.

Maxine Sutton
Ombudsman