

The complaint

Mr B complains that BMW Financial Services(GB) Limited trading as ALPHERA Financial Services treated him unfairly in relation to a default on a hire-purchase agreement he had with it. He is assisted in bringing the complaint by a relative Mr K.

What happened

In July 2022 Mr B acquired a car from Alphera under a hire-purchase agreement. Under the terms of the agreement Mr B was to make monthly payments of £374.62 over a 60-month term, ensuring the car was fully insured, maintained, and kept in Mr B's possession and control. A further condition of the finance was that the credit agreement was not being taken out on behalf of someone else.

After a year Alphera became concerned that Mr B was not adhering to the terms of the hire-purchase agreement. It noted that the finance repayments were being made from a third party bank account and that the car was uninsured. Alphera wasn't satisfied with the explanations and evidence it received from Mr B and Mr K. It had concerns that the finance was being 'fronted' contrary to the terms of the hire-purchase agreement, and told Mr B it would be defaulting and terminating the agreement.

Mr B was unhappy with Alphera's actions and with the help of Mr K, he brought his complaint to us. Our investigator's initial assessment concluded that Alphera's actions were reasonable in the circumstances. However, following further representations from Mr K and subsequent correspondence with Alphera, the lender acknowledged that it hadn't issued a default notice in line with the requirements of the Consumer Credit Act 1974 ("CCA"). The investigator also thought Alphera hadn't been sufficiently clear in its requirements as regards the photographs and documents it sought from Mr B to show the agreement wasn't being fronted.

The investigator proposed that Alphera pay Mr B £200 compensation for the trouble and upset its errors had caused, allow Mr B to continue with the hire-purchase agreement, and to make arrangements with him to bring the monthly payments up to date.

Alphera agreed to the proposal. But Mr K felt further compensation was due, He said the car hadn't been driven since Alphera's error, it now had an engine warning light when starting, and that it had gone down in value. He suggested that in addition to further compensation, Alphera should reduce the monthly repayments on the car. The investigator wasn't minded to propose a different settlement, so the matter has been passed to me for review and determination.

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.

Having reviewed the photos, insurance documents and representations Mr B made to Alphera in July 2023, I can see why Alphera had concerns over whether the hire-purchase was being fronted. Payments were being made from Mr K's account rather than from Mr B.

Mr K was a named driver on the vehicle insurance and while Mr B described himself as the main driver and keeper of the vehicle, the photographs supplied appear to show the car outside Mr K's home address. The car insurance expired on 14 July 2023, but a new policy did not start until 20 July 2023, after Alphera contacted Mr B.

The lack of comprehensive insurance in place would be sufficient to put Mr B in breach of the terms of his agreement with Alphera. So even if Alphera had no concerns about fronting, it would still have been entitled to conclude that Mr B was in default of his other obligations and give him notice of termination if the position were not rectified.

As Mr B did respond to Alphera by getting the car insured, the lack of appropriate notice of termination became relevant. Alphera has recognised this and, given that the agreement was never terminated, has said it is agreeable to continuing with the finance arrangements. It has offered to compensate Mr B for the distress and inconvenience arising from that lack of notice, and while I don't doubt that Mr B was upset at the situation, I'm satisfied the £200 proposed in this respect is a fair sum.

I see no proper basis to require Alphera to offer further compensation. The arguments Mr K has put forward offer no persuasive reason why I would expect Alphera to do so, or to amend the monthly payments due under the agreement. It's not clear why Mr B stopped paying for the car, which Mr K says remained in Mr B's possession throughout. But for the avoidance of any doubt, I don't consider Alphera's error warrants an adjustment to the finance repayment terms, beyond any arrangement the parties reach for repayment of any arrears. I simply leave it to Mr B to decide whether, on reflection, he now wishes to accept the proposed resolution, which I consider a fair outcome to the dispute.

My final decision

My final decision is that in full and final settlement of this complaint, BMW Financial Services(GB) Limited trading as ALPHERA Financial Services should:

1. confirm to Mr B that the hire-purchase agreement remains in force;
2. contact Mr B to discuss a mutually acceptable arrangement for repayment of any outstanding arrears; and
3. pay Mr B £200 in recognition of the distress and inconvenience he's experienced

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

Niall Taylor
Ombudsman