

Complaint

Ms A says that BMW Financial Services (GB) Limited (trading as “Alphera” Financial Services) unfairly terminated her hire-purchase agreement.

Background

In October 2022, Alphera provided Ms A with finance for a used car. The cash price of the vehicle was £52,000.00. Ms A paid a deposit of £10,000.00 and required finance for the remaining £42,000.00.

Alphera accepted her application and as a result she entered into a 49-month hire-purchase agreement with it. The amount lent was £42,000.00 and the loan had interest of £13,138.15. So the balance to be repaid of £55,138.15 (which does not include Ms A’s deposit) was due to be repaid in 48 monthly instalments of £698.19 followed by an optional final repayment of £21,625.03 which Ms A had to pay if she wished to keep the car.

In February 2023, the car was involved in a road traffic accident. There is no dispute that the car sustained significant damage and that Ms A contacted her insurer to initiate a claim. I understand that the insurance claim was eventually withdrawn but the car was repaired. In April 2023, Alphera issued Ms A with a default notice on the agreement. Ms A was told she needed to pay £40,749.63 by 11 May 2023 in order to avoid the agreement being terminated and Alphera commencing steps to recover the car from her.

There followed an exchange of correspondence between Ms A and about the reasons for the default notice being sent and then further information being requested from Ms A. However, Alphera terminated the agreement in June 2023 as it had not received the £40,749.63 payment by then. Ms A was unhappy with this and complained.

Alphera didn’t uphold Ms A’s complaint, it was satisfied that it had provided Ms A with sufficient opportunity to have prevented the agreement being terminated. However, as Ms A had not provided what it had requested it was entitled to terminate the hire-purchase agreement in the way that it did. Ms A remained dissatisfied with Alphera’s conclusions and referred her complaint to our service.

Ms A’s complaint was reviewed by one of our investigators. She thought that Alphera had acted unfairly when terminating the hire-purchase agreement in the way that it did. So the investigator upheld the complaint and told Alphera to reinstate the agreement and set up a repayment plan with Ms A for any payments needed to bring the account up to date.

Alphera disagreed with the investigator’s conclusions and as this was the case the case was passed to an ombudsman as per the next stage of our dispute resolution process.

My findings

I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint.

Having carefully considered everything provided, I've decided to uphold Ms A's complaint. I'll explain why I've done so in a little more detail.

There is no dispute that Alphera issued Ms A with a default notice on 21 April 2023. It's worth noting that such notices are typically, but not always, sent when a customer has accrued substantial arrears on a credit agreement and the relationship between the customer and the lender is on the verge of breaking down (indeed, it's fair to say that a default notice is a precursor to a default and a default typically signifies that the relationship between a lender and a borrower has broken down). However, in this case, Ms A was not in arrears on the agreement.

The default notice itself stated that Alphera considered that Ms A was in breach of Clause 7(m) of her agreement which permitted it to terminate the agreement where:

"any events or circumstances arise which, in our reasonable opinion, is likely to materially and adversely affect your ability to perform all or any of your obligations under this agreement."

It's worth noting that Alphera provided no explanation of the events or circumstances it considered were likely to materially and adversely affect Ms A's ability to perform all or any of her obligations under the hire-purchase agreement. In any event, I understand that Alphera issued the notice because it had become aware that Ms A's insurer had recorded a Motor Insurance Anti-Fraud & Theft Register ("MIAFTR") marker on the car. This was after the car had been involved in a road traffic accident and there was a suggestion that it might have been a total loss.

I can understand why Alphera might have had concerns about Ms A's ability, or at least willingness, to perform her obligations under the agreement by making her payments had the vehicle been a total loss. However, there is no dispute that Ms A provided Alphera with evidence that her insurer had removed the marker *before* the date that was specified in the notice of default and that the car was being repaired. So bearing in mind what has been said and provided, I've not been persuaded that Alphera did have reasonable grounds to doubt Ms A's ability to perform her obligations under the agreement.

While Alphera accepts receiving a letter from Ms A's insurer confirming that the marker had been removed, it says it subsequently wrote to Ms A asking her to provide a copy of her fully comprehensive insurance document. And as she did not provide this information it proceeded to terminate the agreement. I've considered whether this was fair and reasonable.

In the first instance, I've noted that Ms A says that she sent the insurance documentation to Alphera but it disputes receiving it prior to it terminating the hire purchase agreement. I've seen a copy of the document and I'm satisfied that Ms A was insured on the car at the time any request for the documentation was made.

In any event, regardless of whether Alphera received this document from Ms A, the documentation Alphera has provided indicates that it was aware that the car was showing as insured on the motor insurance database on 14 June 2023. This was five days prior to it terminating the agreement. It is not clear to me why Alphera felt that it needed a copy of the certificate of insurance, given it had already been told that the car was not being recorded as a total loss.

I have asked Alphera myself to confirm why it needed this information bearing in mind there was no longer an obvious reason for it to be concerned about Ms A's ability to perform her obligations under the agreement. Again I refer to the fact that the agreement was up to date

at this stage. However, Alphaera has not responded to my request. In any event, given it (or at the very least a party on its behalf) had run a check and had seen that the car was showing as insured on the motor insurance database, it will have known that the car was insured prior to it terminating the agreement.

I also asked Alphaera to provide me with a copy of the terms and conditions of Ms A's hire-purchase agreement. It failed to do so. Nonetheless, I have reviewed a generic copy of the terms and conditions which I understand Alphaera generally provides to its hire-purchase customers.

I accept that failing to obtain insurance cover is a general term and condition of most hire-purchase agreements. But I've already explained that Alphaera was aware the car was insured prior to it terminating the agreement. Furthermore, having reviewed the generic terms and conditions document, I can't see that there is anything in them which indicates that a customer failing to provide a copy of their insurance documentation to Alphaera on demand, is a breach of those terms and conditions.

More importantly, I can't see that failing to provide Alphaera with a copy of the insurance documentation, particularly when Alphaera knew the car was insured, would entitle Alphaera to terminate the agreement either. Given this is the case and Alphaera knew that Ms A did have an insurance cover on in place on the case prior to terminating the agreement, I'm not persuaded that Alphaera did act fairly and reasonably towards Ms A when it terminated the hire-purchase agreement in June 2023.

What Alphaera should do to put things right for Ms A

Our investigator told Alphaera that it needed to restore the hire-purchase agreement and remove the default that it recorded on Ms A's credit file. She also reached the conclusion that Alphaera should set up an affordable payment plan for Ms A to be able to make up the payments which Alphaera did not collect from her from when it terminated the agreement when it shouldn't have done so, up until the date that the agreement is restored.

Having considered matters, I don't consider this to be unreasonable, given I'm satisfied that Alphaera didn't act fairly and reasonably in deciding to terminate Ms A's agreement and she'd maintained her payments up until that point. However, I'm mindful that we are some 20 months on from when Alphaera terminated the agreement. So I estimate that Ms A will now need to make up around £14,000.00 in payments.

I don't think that this is a bar to the agreement being restored, or that it means that it would not be fair and reasonable for the agreement to be restored because of this. But given the amount that will need to be paid for the account to be brought up to date, I'm satisfied that Alphaera should only restore the hire-purchase agreement and amend what it reports to credit reference agencies once it has been able to reach a suitable arrangement with Ms A on how any payments will be made up.

I now turn to any distress and inconvenience Ms A may have experienced. It's clear that Ms A had to deal with a significant amount of stress of having to go backwards and forwards with Alphaera over the information that she needed to provide in order to avoid the agreement being terminated, only for Alphaera to terminate the agreement in any event. Ms A has also had to deal with the stress of the implications of a default being reported to credit reference agencies too.

I also appreciate that Ms A has had representatives who have not received information and updates from Alphaera as promised. But our rules only permit me to make an award for any distress and inconvenience experienced by the complainant. In this case, Ms A is the

complainant not her representatives. So I can't make an award for any distress and inconvenience that Ms A's representatives may have experienced.

Bearing in mind all of this and who I am able to award compensation for any distress and inconvenience experienced to, I think that Alphera should pay Ms A £300 for the distress and inconvenience experienced as a result of it unfairly terminating her hire-purchase agreement caused.

Fair compensation – what Alphera needs to do to put things right for Ms A

Overall and having considered everything, I think it is fair and reasonable for Alphera to put things right for Ms A by:

- arranging a payment arrangement/plan with Ms A for the payments that should have been made on the agreement in the period between when it was terminated in June 2023 and the date the agreement is restored;
- restoring Ms A's hire-purchase agreement, once an arrangement has been reached on making up the amount that will be due, has been put in place;
- should the agreement be restored removing all adverse information recorded about this agreement from her credit file;
- paying her £300 in compensation for the distress and inconvenience that was caused.

My final decision

For the reasons I've explained, I'm upholding Ms A's complaint. BMW Financial Services (GB) Limited (trading as "Alphera" Financial Services) should put things right in the way that I've directed it to do so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms A to accept or reject my decision before 20 March 2025.

Jeshen Narayanan
Ombudsman