

The complaint

Mr K complains about the administration of a hire purchase agreement he had with BMW Financial Services (GB) Limited trading as ALPHERA Financial Services ('Alphera'). He says some of the actions they took have caused him financial detriment and the communication has been poor. He thinks the value of the car has fallen significantly and Alphera has not given him a fair settlement offer, given the mistakes it has made.

What happened

Mr K acquired a car using a hire purchase agreement that was started in September 2019. The vehicle had a retail price of £70,205. Mr K paid a £5,000 deposit meaning £65,250 was financed. This agreement was to be repaid through 36 monthly instalments. There were 35 monthly repayments of £1,144.66 and then a final instalment of £35,359.97. If Mr K made repayments in line with the credit agreement, he would need to repay a total of £80,423.07

Mr K complained to Alphera saying that it didn't act properly when he was experiencing financial difficulties. Alphera has also not included important information in the contract, and in 2021, it said that Mr K could cancel the agreement which Mr K said he wanted to do. But he says that Alphera didn't assist him to end the agreement, and so it should now do this.

Alphera has considered this complaint. It thinks that it was right to default the loan, and then terminate the agreement, as Mr K was unable to repay the finance. He had only made five repayments in total. It did agree that its customer service could have been better at times, and it has offered Mr K £250 compensation for some delays, particularly in the consideration of the complaint. Mr K didn't agree with this, and he brought his complaint to the Financial Ombudsman Service.

Our Investigator didn't uphold Mr K's complaint. He said that Alphera had made some errors in the way it administered Mr K's complaint. In particular, there were some delays in responding to his queries and in the handling of the complaint. But these were rectified soon after they were made and haven't affected how Mr K managed the account. He wasn't persuaded that Mr K had agreed to end the contract in 2021.

Mr K didn't agree with the Investigator. He largely reiterated the points he had made earlier. But in summary he said that:

- He did accept the offer to unwind the contract (because it didn't include important information) that was made in 2021, it shouldn't be down to him to evidence that he accepted this.
- And he didn't need to follow this up as he accepted the offer and Alphera should have contacted him.
- He didn't need to make any further repayments after this time given that the contract would be unwound.
- He wouldn't hand over the vehicle without an agreed settlement as he would be in week position regards negotiating the contract

Because Mr K didn't agree, this matter has been passed to me to make a final decision.

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.

In considering what is fair and reasonable, I need to have regard to the relevant law and regulations, regulators' rules, guidance and standards, codes of practice and (where appropriate) what I consider was good industry practice at the relevant time.

The agreement in this case is a regulated hire purchase agreement – so we can consider a complaint relating to it.

There has been a significant amount of correspondence in this complaint about the events that took place before and after the agreement was terminated. I have read all of this, but I won't refer to it all here or talk about all the issues that have been raised. This is partly to avoid providing too much detail about Mr K's circumstances, and partly as I don't need to refer to all of it to reach my decision. So, I'll just talk about what is needed for me to decide if Alphaera has acted fairly. If I've not commented on a piece of evidence or argument this is because I don't need to do this to say why I have decided this case.

The problems with the contract, and did Mr K accept the offer Alphaera made to put this right

Alphaera didn't include the 14 day cancellation period in the hire purchase agreement. There isn't any indication that Mr K wanted to cancel the agreement at inception, and he went on to continue to repay it for around five months afterwards, until he fell into difficulty with it. As a starting point I don't think it's reasonable to say that Mr K would have cancelled the agreement if this information had been contained in it. So, I don't think it would be fair to make an award that reflects this.

However, in June 2021, Alphaera wrote to Mr K and informed him of this. To put things right it offered to end the agreement, collect the car, refund Mr K's deposit, clear any outstanding balances due and remove any adverse information from his credit file. I think this was the right thing to do and it gave Mr K an opportunity to consider if the contract was right for him. And I think it rectified that Mr K wasn't made fully aware about the contract at the start of it.

Mr K says he accepted this offer orally, and by email, but there isn't a record of a communication that shows he accepted the offer at this time.

The records that I have seen, show that Mr K and Alphaera spoke in June 2021. Mr K asked if there would be additional costs for servicing the car as it was due a service in the very near future. He was told that if he accepted the agreement he would not be charged for the servicing. Mr K was also provided information about how to return the car and the return of the deposit. All of this information was provided to him by email on the same day as the telephone conversation.

Alphaera's records show that as it didn't receive a response it contacted Mr K again in July 2021. It did this by telephone and email and asked him to respond within seven days or it would assume he wanted to continue with the agreement. Mr K didn't respond to these communications.

Mr K says that as he accepted the offer that Alphaera made in June 2021 and so he essentially thinks that he should be put back in the position he would have been if this has been actioned. But the evidence I have doesn't support this, there is no clear and persuasive

evidence from the time that he wanted to accept this offer. I'm not upholding Mr K's complaint on the basis that the contract should be unwound as was offered.

Was Alphera acting reasonably when it defaulted the finance and then terminated the agreement

Mr K first missed a payment in May 2020. He contacted Alphera after this and he was provided information about a payment deferral. In May 2020 Mr K and Alphera agreed that the loan repayments would be deferred for three months due to the impact of the Covid 19 pandemic. The repayments would stop in June 2020 and would restart in September 2020. In August 2020 Mr K asked for a further deferred payment period. This was again agreed and the repayments were due to restart on 2 December 2020. Alphera tried to collect the payment due in December 2020 by direct debit, but this was returned unpaid. Mr K has made no further repayments to the finance. He has paid five payments in total.

I've noted the correspondence between Mr K and Alphera between December 2020 and February 2021. Mr K asked for a further deferral period which Alphera said it wouldn't agree to. And there was some correspondence about what Mr K would pay going forward. Mr K again said he couldn't repay the finance.

In March 2021 Mr K asked for a statement of the account. And he told Alphera that he would clear the arrears and restart his repayments as soon as he could. He received that statement in April 2021 and says he was told that there would be no negative impact on his credit report if he started to make the loan repayments. In May 2021 Alphera provided some information and a settlement letter to Mr K and information about his arrears. He was told he needed to clear the arrears within ten working days.

In June 2021 the offer I've talked about above was made by Alphera.

After this there was a long period where Mr K wasn't in contact with Alphera. The agreement wasn't unwound, and Mr K was still unable to pay it. The car wasn't collected.

In April 2022 Alphera sent Mr K an arrears letter which said he owed £22,341. He indicated he was trying to sell the car and he said that Alphera were very slow to respond.

In May 2022 Mr K asked if his outstanding balance could be reduced and he asked if the earlier offer was still available. Alphera didn't properly respond to Mr K's request for information, but it defaulted the loan in June 2022. Mr K asked for the time for this to be extended but Alphera terminated the agreement in July 2022. By the time the agreement was ended Mr K hadn't made a repayment in 19 months, and he had been trying to sell the car for 15 months.

Later in July 2022 Mr K's account was passed to a third party collection agency who failed to resolve the problems. And in May 2023 Alphera started to take legal action against Mr K for a return of the goods. This legal action is currently on hold.

Given what I have outlined above, I think it's established that Mr K was unable reliably to make the contractual loan repayments. And in the communications Alphera sent, in particular the default and termination notices, he was told that he needed to make up the arrears or the finance would default and be terminated.

A default usually comes about when the relationship between the lender and the borrower has broken down to some degree. And I think this was the case here. Mr K was having problems making the repayments and Alphera and Mr K were not able to communicate about this properly.

Overall, I don't think it's reasonable to say that Mr K had the ability, or intention, to pay the car finance. By this I mean it's clear that Mr K was unable to pay the contractual loan repayments on time when they became due and make up the payments he had missed. I don't think there was a reasonable prospect of him being able to pay the car finance by the time it defaulted, and the agreement was terminated.

I don't think it was unfair of Alphera to recognise this and take the appropriate action. So, I don't think that Alphera was acting unfairly when it defaulted the loan and terminated the agreement.

The information Mr K was provided and the delays in providing this

I've also looked at how all this was communicated to Mr K. As I've said I haven't reproduced all the correspondence, and I don't think I need to. I have looked at it all and have noted that there were numerous communications from Alphera, via, text message, email, and letter about the loan repayments and arrears.

Mr K was informed about the default and termination and that Alphera would take steps to recover the car after the agreement was terminated. I think Alphera fully informed Mr K about all of this.

There were some delays in Alphera communicating with Mr K and I agree that he didn't receive timely responses to all of his information requests. These are acknowledged and well documented. I won't detail them here.

But this doesn't change that, as I've found above, I don't think that Mr K was able to pay the finance. So, I don't think that further communications, would have altered what happened with the finance. I think the agreement was terminated as Mr K was unable to repay it. I don't think this would have changed if Alphera had provided better communication to him. And so I don't think any poor communication or customer service should mean that Alphera should have administered the finance differently.

Much of Mr K's complaint is about the value of the car falling over the time that he has used it. Mr K thinks he has lost this money, and this could have been avoided if Alphera had acted differently. But Mr K didn't ever own the car, it was owned by Alphera, and so any reduction in value in it is not his loss, it is Alphera's. Mr K shouldn't receive compensation for this.

Added to this Mr K has had use of the car for around five years and he has only paid a nominal amount for it. It's difficult to see how Mr K has suffered a loss here when he has had use of a car for this length of time without paying for it.

Overall, I don't think that Alphera needs to do any more here. I appreciate this will not be the answer that Mr K is looking for and I hope his circumstances have improved. But overall, I'm not upholding this complaint.

There were some delays in Alphera responding to Mr K and it acknowledges that it could have done better here. I'm sure some of the delays and poor customer service would have caused Mr K frustration and distress as he says. But I think the £250 that Alphera has already offered to Mr K is reasonable for this.

I understand Mr K still owes Alphera a significant amount. When Alphera is arranging how Mr K should repay this, I would remind Alphera of its responsibility to treat Mr K fairly and with forbearance. and positively assist him with this debt.

My final decision

BMW Financial Services (GB) Limited has already made an offer to pay £250 to settle the complaint and I think this offer is fair in all the circumstances. So, my decision is that BMW Financial Services (GB) Limited should pay £250.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 11 July 2025.

Andy Burlinson
Ombudsman