

The complaint

Mr A complains about the information he received from BMW Financial Services (GB) Limited trading as Alphera Financial Services (Alphera) when he acquired a used car under a hire purchase agreement.

What happened

The facts of this case are familiar to both parties, so I won't repeat them again in detail here. Instead, I'll provide a summary.

In November 2022 Mr A entered into a hire purchase agreement with Alphera to buy a used car. The cash price of the vehicle was £26,575 and the total amount payable, including interest and charges, was £34,946.48. This was to be repaid over a period of 49 months, comprising of 48 monthly payments of £436.51 and an *Optional Final Repayment* of £13,994.

Mr A says that, when he entered into the agreement, he only wanted the car for two years because, at that point, he would clear his residential mortgage and he would look to purchase a car outright, rather than on finance.

Mr A says he was informed by the selling agent that the vehicle could be returned at the 50% (midway) point of the contract – which he understood to mean 50% of the term (i.e. around 24 months) - without any additional costs or charges.

Mr A says, when he got back in touch with the selling agent in March 2024 to confirm the date at which he'd be able to return the car, he discovered he was not entitled to voluntarily terminate the agreement without costs or charges until 50% of the finance had been repaid, rather than 50% of the term.

In the months that followed there was further dialogue between Mr A, Alphera and the selling agent. In October 2024, Mr A complained to Alphera on the basis that the agreement had been mis-sold because he had been provided with false information.

Alphera did not issue a final response within the relevant timeframe. Therefore, in December 2024, it wrote to Mr A to advise him of his right to contact our service if he wished to do so.

It appears Mr A initially contacted our service about this complaint in July 2024 at which point one of my colleagues asked for some more information before proceeding with the complaint. It looks like Mr A got back in touch in April 2025. Around this time, Alphera issued its final response to the complaint. In short, it did not uphold the complaint on the basis there was not *sufficient evidence to support [Mr A's] claim that [his] finance agreement was mis-sold*. However, it offered £300 compensation in recognition of the time Mr A *had to wait to receive a final response [which] was outside of [its] typical timescales*.

Unhappy with this, Mr A asked our service to investigate matters.

One of our investigators looked into the complaint and, in July 2025, issued his findings. In short, our investigator did not think the complaint should be upheld because he was *not persuaded that there [had] been a false statement of fact*.

Unhappy with this, Mr A asked for his complaint to be reviewed again. Therefore, the complaint has 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.

Having done so, I've reached the same overall conclusions as the investigator, and for broadly the same reasons. I understand this will come as a disappointment to Mr A. However, I'll explain why I think this is a fair outcome in the circumstances.

However, before I do, I'm aware that I've summarised this complaint above in less detail than it may merit. No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here. Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts.

If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome. I will, however, refer to those crucial aspects which impact my decision.

Lastly, I would add that where the information I've got is incomplete, unclear or contradictory, I've based my decision on the balance of probabilities.

In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and (if appropriate) what I consider was good industry practice at the time. Mr A was supplied with a car under a hire purchase agreement. This is a regulated consumer credit agreement which means we're able to investigate complaints about it.

Mr A's allegations of misrepresentation are in relation to things he was told by the supplying dealer before entering into his agreement, rather than Alphera. In principle, I can consider a complaint about antecedent negotiations carried out by the supplying dealer against Alphera because section 56 of the Consumer Credit Act 1974 (the CCA) says that it can be held liable for antecedent negotiations by the supplier.

Section 56 of the CCA states:

Antecedent negotiations

1. *In this Act "antecedent negotiations" means any negotiations with the debtor or hirer –*
 - a. *conducted by the creditor or owner in relation to the making of any regulated agreement,*
 - b. *conducted by the credit-broker in relations to goods sold or proposed to be sold by the credit-broker to the creditor before forming the subject-matter of a debtor-creditor-supplier agreement within section 12(a), or*

c. conducted by the supplier in relation to a transaction financed or proposed to be financed by a debtor-creditor-supplier arrangement within section 12(b) or (c),

and “negotiator” means the person by whom negotiations are so conducted by the debtor or hirer.

- 2. Negotiations with the debtor in a case falling within subsection 1(b) or (c) shall be deemed to be conducted by the negotiator in the capacity of the agent of the creditor as well as in his actual capacity ...*
- 4. For the purposes of this Act, antecedent negotiations shall be taken to begin when the negotiator and the debtor or hirer first enter into communication (including communication by advertisement), and to include any representations made by the negotiator to the debtor or hirer and any other dealings between them.*

However, in this case, I’m not entirely convinced that the necessary arrangement between the parties was in place to give rise a valid claim under section 56 of the CCA – specifically the debtor-credit-supplier arrangement set out in 1(b) and 1(c). I say this because it appears the supplier (Business C) sold the car to the credit broker (Business E¹) who subsequently sold it the creditor which was, in this case, Alphaera.

Therefore, on the face of it, it may be difficult to argue that Business C – whom Mr A alleges provided him with false information - was acting as an agent of Alphaera under section 56 of the CCA in their negotiations with Mr A. After all, Alphaera do not appear to have financed an agreement between Mr A and the Business C. Rather, it seems to have financed an agreement between the Mr A and the Business E whom, as far as I am aware, did not engage with Mr A prior to the sale.

But I don’t intend to explore this further because it has no bearing on the overall outcome I’ve reached. I say this because, even if the right arrangements were in place (which may well be the case), I don’t think the complaint should be upheld. I’ll explain why.

If Mr A was given a false statement of fact or law, and if that false statement was a significant reason why he entered into the agreement, I may think the agreement had been misrepresented to him

Establishing what was discussed between Mr A and the supplying dealer isn’t straight forward given I wasn’t party to any of the conversations they had.

In order for me to be satisfied the finance agreement was misrepresented, I would need to be persuaded there was evidence Mr A was told what he testifies he was told and hadn’t merely misinterpreted the advice.

However, I don’t think the evidence Mr A has provided clearly shows the matter of voluntary termination was discussed *before* the agreement was entered into or, if it was, that he was given incorrect information.

Mr A points to a WhatsApp conversation he had with the selling agent in March 2024 (nearly 18 months after the agreement was entered into) who when asked to confirm when the car could be returned, says:

¹ Business E are listed as the credit intermediary on the finance agreement.

...it's 50% of your PCP contract, best thing to do is clarify with the finance company and let them know why you want to return the vehicle.

I accept the information Mr A was given here was somewhat unclear – after all the selling agent could be referring to 50% of the term or 50% of the total amount payable under the agreement. But, in any event, it does not confirm that Mr A had been given a false statement of fact 18 months earlier. It is equally plausible, had the same question been asked at the time of sale and the same information provided, that Mr A merely misinterpreted the advice.

Indeed, I note in an email from Mr A to Alphera dated 28 October 2024, Mr A says:

The sales agent assured me that I would be able to return the vehicle...at 50% of the contract, which we understood to mean March 2024, given that it is a three-year contract.²

This adds weight to the possibility that Mr A misinterpreted somewhat ambiguous advice, as opposed to being given an express false statement of fact.

But, putting that to one, the supplier hasn't accepted that they gave Mr A that advice. So, the two parties' testimonies are at odds with each other. With that being the case, I turn to the contemporaneous evidence.

As our investigator noted, the hire purchase agreement contains a section titled 'Termination; your rights', which is located close to the signature section, which reads:

You have the right to end this agreement. To do so, you should write to the person you make your payments to. They will then be entitled to return of the goods and to half the total amount payable under this agreement, that is £17,473.24. If you have already paid at least this amount plus any overdue instalments and have taken reasonable care of the goods, you will not have to pay any more.

Whilst I appreciate Mr A believed the agreement could be terminated the agreement midway through the term, this is not supported by the contemporaneous evidence which says the agreement could be terminated once half the total amount payable (including the final payment) had been paid. In short, there is no documentary evidence to support what Mr A has said here.

Mr A has said that, upon signing the agreement, the documents were *largely blank, except for those sections that were completed by the computer*. Mr A has gone on to say that he *signed the agreement based on verbal assurances made face-to-face, believing that all terms had been mutually agreed upon*.

Whilst I don't doubt or disbelieve Mr A here, I would find it unusual for a finance agreement to be signed with key pieces of information omitted - and then added in at a later date. But even if that were the case it is not, in and of itself, evidence Mr A was given a false statement of fact.

What's more, it is not in dispute that Mr A was given a copy of the complete agreement – including the section outlined above - and if the option to return the vehicle after a period of time without cost was something he thought was important - I would've expected him to seek further clarification of it. I have not been provided with any evidence to suggest further clarification was sought at the time.

² As noted the term of the agreement was, in fact, 49 months.

Having considered everything, I'm not persuaded, on balance there's enough evidence to support what Mr A has said he was told about the point at which he could voluntarily terminate the agreement without cost. Because of that I'm not persuaded, on balance, that there's been a misrepresentation or that the agreement was mis-sold.

With that being the case, I don't think Alphera need to take any further action.

For completeness, I note Alphera has offered £300 in recognition of the time it took to respond to Mr A's complaint. As complaint handling is not an activity³ our service can consider I make no further comment with regards to this offer.

My final decision

For the reasons I've explained, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 21 August 2025.

Ross Phillips
Ombudsman

³ As set out in Dispute Resolution Rules 2.3.1R.