

The complaint

Mr M complains that a car supplied to him, using a hire purchase agreement taken out with BMW Financial Services(GB) Limited trading as ALPHERA Financial Services ("Alphera"), was misrepresented.

What happened

Mr M referred a complaint to us along with his representative. As the complainant is Mr M, for ease, I have addressed my decision to him only throughout, when referring to what he and his representative have told us.

In December 2023, Mr M acquired a used car using a hire purchase agreement with Alphera. The car was around two years old, its cash price was £29,990, the agreement was for 37 months, made up of 36 regular, monthly repayments of £347.50, followed by an optional final payment of £19,583.69. The advance payment recorded on the agreement was £4,500.

A few months prior to acquiring the car, Mr M was referred to a clinic where tests were held to determine whether he had a condition which impacted his memory and his ability to make decisions. In May 2024, it was confirmed that Mr M had a form of dementia. The diagnosis meant that Mr M was no longer allowed to legally drive.

Between acquiring the car and Mr M having been given a dementia diagnosis, Mr M attempted to return the car to the supplying dealership on at least one occasion. Mr M believed the car was misrepresented and was coerced into keeping the car.

Mr M said the supplying dealership stopped trading and so complained directly to Alphera.

Mr M received a letter from his medical practitioner in October 2024, explaining that they had been seeing him for around two years due to the decline in his memory and that he was a vulnerable adult who had been a victim of fraud on multiple occasions whilst undergoing assessments to receive his dementia diagnosis.

Mr M later referred his complaint to our service due to the time it was taking to resolve things.

Our investigator upheld Mr M's complaint. He said that he was persuaded by the comments made by Mr M and thought it was fair and reasonable for Alphera to accept rejection of the car. The investigator also thought Alphera could retain the monthly repayments made towards the agreement by Mr M, up until July 2024, as Mr M used the car and it was also when he complained to Alphera.

On the same day our investigator issued his view, Alphera also issued their final response. Alphera upheld Mr M's complaint and offered to unwind the agreement and remove any arrears that had accumulated, as well as remove any adverse information from Mr M's credit file in relation to this complaint.

Our investigator issued a further view and explained why he reached the outcome he had. In summary, our investigator thought it was fair and reasonable for Alphera to proceed with allowing Mr M to reject the car as they set out. But, among other things, the investigator also thought that Alphera should refund the advance payment made towards the agreement.

Alphera disagreed with the investigator's outcome and asked for an ombudsman to review the complaint. And so it has been passed to me to decide.

I issued a provisional decision on 9 July 2025 where I explained why I didn't intend to uphold Mr M's complaint. In that decision I said:

"I'm aware I have summarised events and comments made by both parties very briefly, in less detail than has been provided, largely in my own words. No discourtesy is intended by this. In addition, 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 point or argument to be able to reach what I think is a fair outcome. Our rules allow me to do this. This simply reflects the informal nature of our service as an alternative to the courts.

First and foremost, I'm sorry to hear about Mr M's medical diagnosis. I appreciate it is a difficult time for both Mr M and his family, and I hope Mr M is reassured that the provisional decision I have reached is a fair one, considering all the circumstances.

Mr M complains about a car supplied to him under a hire purchase agreement. Entering into consumer credit contracts such as this is a regulated activity, so I'm satisfied I can consider Mr M's complaint about Alphera.

When considering what's fair and reasonable, I take into account relevant law, regulations and guidance. Section 56 of the Consumer Credit Act 1974 ("S56") is relevant to this complaint. S56 explains that, under certain circumstances, a finance provider is liable for what was said by a credit broker or supplier before a credit agreement is entered into. I'm satisfied S56 applies here. So, I can consider what Mr M says happened and was told about the car and finance by the dealer before he entered into the contract.

What I need to consider here is whether the car was misrepresented to Mr M. A misrepresentation would have taken place if Mr M was told a 'false statement of fact' about the car, and this induced him into entering into the contract to acquire it when he otherwise would not have.

I'm mindful of a few things here. From my understanding, no other third-party was present during any antecedent conversations that may have taken place. And from my understanding, the supplying dealership has now stopped trading. So, there is limited information available to show what conversations were held and in what capacity they were held in.

The initial test that I need to apply here is whether Mr M was told a false statement of fact. And in this instance, our service hasn't been informed by Mr M what specific false statement of fact he was told. So, I can't fairly say that Alphera has misrepresented the car or agreement here as no false statement is being alleged.

What is being alleged here is that Mr M was coerced into retaining the car when he approached the supplying dealership to return it. However, S56 is only relevant in relation to antecedent negotiations and not events that occurred after an agreement is in place. So I can't consider events that occurred after the agreement was taken out when considering whether a misrepresentation took place. So, it follows that I don't think the car has been misrepresented to Mr M.

Mr M also says that due to his cognitive impairment and vulnerability at the time the agreement was taken out, it was miss sold to him. In other words, Mr M argues that he was unable to advocate for himself while discussing acquiring the car. I want to be clear that I have a great deal of sympathy for Mr M's situation. But I have considered the Financial Conduct Authority's handbook, and in particular, the consumer credit sourcebook, CONC, when making my findings.

The purpose of CONC is to set out the detailed obligations that are specific to credit-related regulated activities carried out by firms. The relevant part of CONC here is 2.10.4G, where it says:

"A firm should assume a customer has mental capacity at the time the decision has to be made, unless the firm knows, or is told by a person it reasonably believes should know, or reasonably suspects, that a customer lacks capacity."

I'm mindful that Alphera or the supplying dealership were unaware of Mr M's circumstances and there is no evidence to show that Mr M disclosed any information to them about his condition. While I appreciate Mr M has supplied a letter from their doctor explaining how he has previously been a victim of fraud, I'm not persuaded that a scam or a type of fraud took place here, from what I have seen.

Considering everything here, I don't think it is fair to say that Alphera are at fault for making their lending decision to Mr M.

During our involvement, Alphera made an offer to Mr M in a final response they issued. If Mr M would like to accept this offer, I would suggest he gets in touch with Alphera directly to see if it is still available."

Responses to the provisional decision

Alphera responded and said they had nothing further to add.

Mr M responded and, amongst other things, asked for clarity on aspects of the provisional decision reached on this complaint.

Mr M also brought to our attention Alphera's actions since being notified of his complaint. These being what was described as intimidating letters demanding payments and Alphera's pursuit of payments, despite being aware of his dispute. Also, how Alphera's final response to Mr M was delayed.

Mr M also said that the car had minimal use whilst in his possession.

Mr M also pointed out that Alphera's conduct since the complaint was raised should form part of the overall assessment.

As both parties responded to my provisional decision before the deadline set, I have proceeded to the 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.

Having done so, I'm not persuaded to change my outcome from what I reached in my provisional decision. And I'll explain why below.

As explained in my provisional decision, I have a great deal of sympathy for Mr M's circumstances. However, while taking that into consideration, I must be fair to both parties as my role is to remain independent and reach what I think is a fair and reasonable outcome to this particular complaint.

Mr M has explained things that have happened since Alphera were made aware of his dispute. While I have considered this, the crux of the issue here is what occurred during the sales process – and specifically, whether a misrepresentation occurred. And as I've already explained, evidence is lacking to suggest a false statement of fact was made which induced Mr M into taking out the agreement he had.

As such, I don't require Alphera to do anything further. Mr M has asked for clarity on what this means to him. And, while I appreciate this will come as a disappointment, broadly speaking, this means that Alphera are not required to refund the deposit Mr M had paid.

If Mr M wishes to accept the offer Alphera made in their final response (and it is still available), then I suggest he gets in contact with them directly to understand more about it.

My final decision

For the reasons I've explained, I don't uphold this complaint. So, I don't require BMW Financial Services(GB) Limited trading as ALPHERA Financial Services to do anything more here.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 14 August 2025.

Ronesh Amin
Ombudsman