

## The complaint

Mr N complains that BMW FINANCIAL SERVICES (GB) LIMITED trading as ALPHERA Financial Services (Alphera) terminated a hire purchase agreement under which it supplied a car to him.

## What happened

In March 2024, Mr N was supplied with a used car through a hire purchase agreement with Alphera. The cash price of the car was £23,000. He made an advance payment of £4,000, and the agreement was for £19,000 to be repaid over 49 months; with 48 monthly payments of £330.99 and an optional final payment of £9,224.10.

In July 2024, Mr N told Alphera he was no longer working so couldn't make regular payments. The direct debit was cancelled, and it was agreed he could make payments whenever possible by standing order in the meantime while he looked for work. By September 2024, no payments had been made and arrears were continuing to accrue. Mr N made a payment of £5 and said he hoped to start working again soon. He told Alphera his intention was to keep the car and that he would clear the arrears as soon as possible.

The following month, Mr N told Alphera he was still looking for work – and would start receiving benefits shortly. He said that with his benefits payments he could put £100 per month towards the arrears. This was rejected, as Alphera thought it was unaffordable and would cause arrears to accrue further in the long term. Despite this, Mr N said he hoped to clear the arrears in full over the next few months with help from relatives, and made a payment of £439.

On 13 November 2024, Alphera issued a default notice requiring Mr N to pay the arrears balance of £879.96 by 3 December 2024. It said that if the arrears weren't paid the agreement would be terminated and he would need to hand the car back. By the start of February 2025 Mr N had made some payments totalling £750 – but the arrears had reached £1,122.93.

On 7 February 2025 Alphera notified Mr N that it had terminated the agreement and that he needed to return the car. Mr N made a complaint. He said he'd started a new job just a few days after the agreement was terminated. He asked that Alphera reinstate the agreement and allow him to clear the arrears. Alphera didn't agree, and said the decision to terminate the agreement was made correctly given the level of arrears that had accrued. It said it took reasonable steps to support Mr N and that it couldn't change its decision.

The complaint was referred to this service. One of our Investigators considered the complaint, but didn't think Alphera had done anything wrong. Mr N didn't agree. In summary, he felt Alphera hadn't treated him fairly or taken into account his genuine efforts to pay. He said he was now working again and could clear the arrears – or settle the agreement in full. He accepted that he didn't clear the arrears when he originally intended to, but wasn't given a fair opportunity to resolve things before the agreement was terminated. He said terminating the agreement and taking the car would have a disproportionate impact on him now that his finances have recovered. He recalled speaking to Alphera two weeks before the

agreement was terminated and felt he should have been warned of the imminent risk of termination at the time.

Mr N asked that the complaint be referred to an Ombudsman for a final decision. So, it's 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.

If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome. Where evidence has been incomplete or contradictory, I've reached my decision on the balance of probabilities – what I think is more likely than not to have happened given the available evidence and wider circumstances.

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 N was supplied with a car under a hire purchase agreement. This is a regulated consumer credit agreement which means I can consider a complaint about it. I acknowledge Mr N has referred to the requirements outlined in the Consumer Credit Act 1974 (CCA) as well as the Consumer Credit Sourcebook (CONC). I'd like to assure him I've considered these provisions. I recognise Mr N has referred to these to support his position that Alphera are required to treat him fairly and with forbearance and due consideration.

Under the terms of the agreement, Alphera could decide to terminate it and recover the car in some circumstances if Mr N didn't keep up with the required payments. It's clear arrears had reached a significant level by the time Alphera terminated the agreement. I've considered whether its decision to do so was fair and reasonable, taking all of the circumstances into consideration.

When a lender is aware – or ought reasonably to be aware - that a customer may be unable to pay due to a change in circumstances, it ought to take positive steps to treat them fairly by providing appropriate support, forbearance and due consideration. This can involve considering a range of possible options – and lenders should pay due regard to the best interests of their customer when doing so. There aren't any specific steps a lender is required to take, as what is most appropriate will depend on the individual circumstances of the customer.

In this case, Mr N told Alphera in July 2024 that he couldn't make his regular payments as he wasn't working – but he still intended to make some payments by standing order. By September 2024 Mr N's circumstances hadn't improved and he hadn't been able to make any substantial payments – but Alphera allowed him some more time to get things back on track as he was awaiting the outcome of a benefits application. I find this fair in the circumstances, as Mr N had suggested that he would be able to start repaying the arrears soon.

Alphera gave Mr N the option to voluntarily end the agreement early if it wasn't affordable for him – but he didn't want to do this as his preference was to keep the car. When Mr N later offered a payment arrangement, Alphera didn't agree on the basis that it wouldn't be affordable in the long term. Although Mr N was receiving benefits by that point, his income was significantly reduced. The payments Mr N offered were less than a third of what he was contractually required to pay – and if Alphera had accepted his offer he would have been left with more to pay later on as arrears would have continued to accrue. As there was no

guarantee that Mr N's financial circumstances would improve in the near future, I don't think Alphaera treated him unfairly by declining his offer.

By November 2024, Mr N's agreement was four months in arrears. Although Mr N was able to make a payment around that time with the help of family, there was no guarantee that this support would continue or that he'd be able to clear the arrears within a reasonable timeframe. So, I don't find it unreasonable that Alphaera sent a default notice at that stage.

Overall, I think the steps taken by Alphaera were fair and reasonable in the circumstances, and I'm satisfied it took Mr N's circumstances into due consideration. Mr N wasn't able to clear the arrears before the date required in the default notice. I can see Alphaera allowed a further two months before it decided to terminate the agreement. Although Mr N had been able to make some payments, he hadn't been able to significantly reduce the arrears by that stage. Taking everything into account, I think the decision to terminate the agreement was a fair one.

Mr N contacted Alphaera a few days later, saying he was back at work and was looking to pay the arrears. But by that point Alphaera told him the agreement had already been terminated, and said it was too late to reinstate it. While I understand Mr N doesn't agree, I don't think it was unreasonable for Alphaera to draw a line under things. There was no contractual requirement for Alphaera to reinstate the agreement after it had reasonably decided to terminate it. Alphaera had already allowed Mr N multiple opportunities to clear the arrears, and he hadn't been able to do so up to that point – despite being given two months longer than it set out in the default notice.

I understand Mr N doesn't feel he was given enough of a warning that the agreement might be terminated. But the default notice outlined that the agreement would be terminated if the arrears weren't cleared by 3 December 2024 – so I think he was reasonably on notice that termination was likely – even though it didn't happen straight away. I can also see Alphaera tried to call Mr N before terminating the agreement, but was unable to reach him. I can see there was a call on 4 January 2025, when Mr N reiterated that he intended to clear the arrears. I can't see that Mr N contacted Alphaera again until after the agreement was terminated. He says he called again a week or two before the termination – but neither Mr N nor Alphaera has been able to provide any records of such a call taking place. Even if there was another call, that wouldn't necessarily mean Alphaera had treated Mr N unfairly or that it wasn't entitled to terminate the agreement. Mr N hadn't been able to reduce the arrears by a substantial amount by that point – and I haven't seen enough to persuade me that he'd have been in a position to clear the arrears in full even if he was told over the phone the agreement was about to be terminated.

I appreciate this will come as a significant disappointment to Mr N, and he's concerned about the repercussions the decision to terminate the agreement will have on him going forward. But for the reasons I've explained I'm satisfied that decision was reached fairly, and I see no grounds to require Alphaera to reinstate the agreement or do anything further. I don't dispute that Mr N made genuine attempts to clear the arrears and get things back on track before it was too late – but that doesn't mean Alphaera's decision was an unreasonable one. As I've outlined, I'm satisfied Alphaera waited a fair and reasonable time for Mr N's situation to improve before terminating the agreement, and arrears were continuing to accrue during that time.

Mr N says he's now in a position to settle the agreement in full if doing so will allow it to be reinstated. Our Investigator has previously asked Alphaera if it's willing to reinstate the agreement, and it's said it isn't. For the reasons I've explained I'm satisfied the decision to terminate the agreement wasn't unreasonable, and I don't require Alphaera to reinstate it. If Mr N wants to make a further offer to settle things directly with Alphaera he can do so. If

Alphera proceeds to repossess the car (assuming it hasn't already), I'd suggest it work with Mr N to find an affordable payment arrangement for any remaining balance owed – taking his circumstances into due consideration.

Alphera should also remember that – if Mr N paid more than a third towards the finance agreement – unless he hands the car back voluntarily it would need a court order to repossess it.

### **My final decision**

My final decision is that I don't uphold Mr N's complaint about BMW FINANCIAL SERVICES (GB) LIMITED trading as ALPHERA Financial Services.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 29 December 2025.

Stephen Billings  
**Ombudsman**