

The complaint

Mrs H complains that BMW FINANCIAL SERVICES (GB) LIMITED trading as ALPHERA Financial Services (who I'll call Alphera) were unreasonable to default her account.

What happened

The detailed background to this complaint is well known to both parties. So, I'll only provide a brief overview of some of the key events here.

Mrs H took receipt of a used car in March 2024. She financed the deal through a hire purchase agreement with Alphera. Mrs H ran into financial difficulties and Alphera defaulted and terminated the agreement in March 2025 when it was around three months in arrears.

Mrs H complained to Alphera but they wouldn't reinstate her agreement as they explained the account had been in significant arrears for a prolonged period. They offered Mrs H £100 in compensation as they accepted their response had been delayed.

When Mrs H referred her complaint to this service our investigator didn't think Alphera had been unreasonable. Mrs H disagreed. She said Alphera hadn't taken sufficient account of her vulnerability; shouldn't be allowed to repossess the car without a court order; that there was an unfair relationship contrary to section 140A of the Consumer Credit Act (1974) and that the investigator hadn't taken sufficient note of the impact of bereavement on her. Mrs H asked for a decision by an ombudsman.

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.

I agree with the investigator's view of this complaint and for broadly the same reasons.

Where the information I've got is incomplete, unclear, or contradictory, as some of it is here, I have to base my decision on the balance of probabilities.

I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point, it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

Mrs H acquired her car under a hire purchase agreement, which is a regulated consumer credit agreement. This means our service is able to consider complaints about it.

When a consumer, like Mrs H, tells a business they are in financial difficulties we'd expect the business to be sympathetic and supportive. I think Alphera were supportive here as they've explained that they discussed the potential of a repayment plan with Mrs H in September 2024, but Mrs H preferred to continue to pay in full.

The Information Commissioner's Office (ICO) says when a consumer is at least three months behind with their payments then a default may be registered. And it would expect a default to be registered by the time the consumer is six months behind with their payments. Mrs H was in persistent arrears from June 2024, so I don't think Alphera were unreasonable to default the account when they did as it was fair to conclude that Mrs H was unlikely to be able to make sustainable payments towards her debt. They've explained that they weren't aware of the bereavements Mrs H had experienced until March 2025 after they'd made the decision to default the account so I don't think it would be fair to suggest they could, or should, have taken that into account and, even if they were aware of that before March 2025, I don't think that would have changed things. The account had been in persistent arrears and there was no tangible sign Mrs H would be able to sustain payments going forward.

Mrs H says that Alphera have been wrong to attempt to recover the car as they can't do that without a court order. The finance agreement explained *"If you have paid at least one third of the total amount payable, that is £13,416.33, we cannot take back the vehicle against your wishes unless we have a court order"*. Mrs H has explained that she's paid £10,700 and has suggested that's more than a third, but the relevant legislation (section 90-92 of the Consumer Credit Act 1974 (the 'CCA')) explains that one third of the total price needs to have been repaid and the total price here was £40,249. So, the correct figure was one third of that or £13,416.33. I can't therefore say Alphera would have been unreasonable to seek repossession although they've explained they've not yet done that as they're waiting for the outcome of this complaint.

Mrs H also says that there is an unfair relationship contrary to section 140A of the CCA. Only a court can decide the outcome of a legal claim Mrs H may have under section 140A but I'm required to take the provisions into account when deciding whether Alphera have been reasonable. That section of the CCA looks at the fairness of the relationship between a debtor and creditor arising out of the credit agreement. I do not consider it likely that a court would conclude that Alphera's acts and/or omissions generated an unfair debtor – creditor relationship.

My final decision

For the reasons I've given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 2 February 2026.

Phillip McMahon
Ombudsman