

## The complaint

Mr B complains about the end of contract charges in relation to a vehicle that was supplied through a motor finance agreement with BMW FINANCIAL SERVICES (GB) LIMITED trading as ALPHERA Financial Services (Alphera).

## What happened

In September 2021, Mr B acquired a used car through a hire purchase agreement with Alphera. The cash price of the car was £69,995. An advance payment of £10,000 is listed, so the total amount financed under the agreement was £59,995, payable over 48 monthly repayments of £794.16, followed by a final optional repayment of £36,048.73.

Mr B said that he returned the car at the end of the agreement (in April 2025) and was charged £8,500 in excess mileage fees. Mr B said he complained to Alphera about this in May 2025.

Mr B said he believes the charges are unfair and disproportionate and formed an unfair relationship. He said market conditions affected his model of vehicle and reduced its value. Mr B said the negative equity on the car affected his ability to refinance, as it was no longer an option for him to retain the car. He said the car's devaluation wasn't something he could reasonably have foreseen prior to entering into the agreement.

Mr B believes that enforcing the excess mileage charge in these circumstances is unfair. To resolve matters, Mr B said he wanted the excess mileage charges to be removed, confirmation that no further action would be taken, and for any associated entries on his credit file to be removed.

In June 2025, Alphera issued their final response, which didn't uphold the complaint. In summary, it confirmed that in April 2025, the voluntary termination (VT) request was made, the car was collected, and the condition report recorded mileage outside of the contractual allowance. It said the total mileage allowance was set out in the agreement that Mr B had signed. It also said they had referred the issue relating to market conditions to another department.

Unhappy with their decision, Mr B brought his complaint to our service, where it was passed to one of our investigators to review.

In December 2025, our investigator issued their view and recommended that Mr B's complaint should not be upheld. In summary, the investigator concluded that Alphera were acting fairly and in line with the relevant regulations by applying the excess mileage charges. Mr B didn't accept the investigator's recommendation and asked that his complaint be referred to an ombudsman for a final decision. However, in his response, Mr B made the following points:

- The addition of excess mileage charges is inconsistent and creates ambiguity.
- The investigator's interpretation of the Consumer Credit Act 1974 overlooks the purpose of section 100, which caps liability at half the total price.

- The termination rights notice suggests there should be no further liability beyond half the total amount payable, which he feels conflicts with FCA principles.
- He wasn't informed about the excess mileage charges.
- The fall in the car's value influenced his decision to hand it back.

### **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've reviewed all the evidence and information provided afresh and the relevant law and regulations, regulators' rules, guidance and standards, codes of practice and (where appropriate) what I consider to have been good industry practice at the relevant time.

I'm very aware that I've summarised this complaint above in far 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.

Secondly, I would add that where the information I've got is incomplete, unclear, or contradictory, I have to base my decision on the balance of probabilities. And although I need to have regard to the law, I'm not bound by it, and I can come to a different outcome to what a court might reach.

I'm satisfied that both parties agree that Mr B had a right to terminate his hire purchase agreement, so I've not considered it necessary to highlight the part of the Consumer Credit Act 1974 (CCA) which demonstrates this.

Nor do I consider it to be in dispute that Mr B accrued the additional mileage that has formed the basis of this complaint. Alphera provided an invoice showing Mr B travelled an additional 45,313 miles beyond his agreed allowance, and Mr B hasn't disputed this.

What appears to be in dispute is whether Alphera were acting fairly by applying the excess mileage charges that Mr B accrued during the term of his agreement.

In paying his monthly rentals to Alphera, the hire purchase agreement allowed Mr B to use the car for the duration of it. He also had the option to purchase the car outright at the end of the agreement in exchange for the final payment of £36,048.73. While Mr B was entitled to use the car, that use was subject to certain conditions, such as maintaining and taking care of the car and only driving a maximum mileage each year and overall throughout the lifetime of the agreement. The agreement set out what would happen should Mr B not meet those requirements.

The Consumer Credit Act 1974 (CCA) is relevant in this case. Specifically, sections 99 and 100 set out the rights consumers have to voluntarily terminate their hire purchase agreements and the liability that is due on termination.

The "Termination: your rights" section of Mr B's hire purchase agreement also refers to the liability that is due on termination and, in his case, that was £42,084.21. Various sections of the agreement Mr B had with Alphera also referred to the liability on early termination,

including where excess mileage, damage charges or other charges may increase the final liability.

Mr B said that Alphera were acting unfairly by applying the charge for excess mileage. In his response to the investigator's view, he referred to cases in law which he felt supported his complaint. Whether or not it's fair for a lender to apply the charge will be unique to every case, as it will depend on the terms of the agreement that has been entered into. In other words, what I've to decide is whether the agreement Mr B entered into—rather than what another party might have entered into with another business—has been constructed in a way that allows the charging of excess mileage without contravening what is set out in the CCA regarding voluntary termination. In Mr B's specific case, I think it has. I'll explain why.

As explained by the investigator, section 99 of the CCA sets out that any liabilities which accrue prior to termination aren't affected by the termination. What this means is that Mr B is liable to pay any charges which have built up prior to the termination of the agreement, and that these charges are in addition to the other liability for early termination.

The first page of Mr B's hire purchase agreement has a section headed "Excess Mileage Charges". This section sets out the mileage allowance and what charges will apply if that mileage is exceeded. It says that if the agreement is terminated early, the mileage allowance will be reduced to reflect the shorter period of hire and that "your obligation to pay any excess mileage charge will accrue immediately prior to termination." I'm satisfied Mr B's agreement is worded reasonably clearly when setting out when excess mileage charges accrue.

The agreement also has a section headed "Termination: your rights". This section contains specific wording which Alphera were required to include in the agreement, and in summary it sets out that so long as Mr B has paid at least half the total amount payable under the agreement, he will not have to pay any more. Mr B referred to this in his response to the investigator and considered the agreement inconsistent. I've thought about whether this conflicts with the rest of the terms of the agreement—specifically those that explain charges for exceeding the mileage might apply.

Having read all of the terms of the agreement as a whole, I don't think the agreement is either unclear or misleading concerning the charges for excess mileage. I think it explains that the excess mileage charge can be applied in addition to other charges for VT. I don't therefore consider that the way this specific agreement has been constructed has prejudiced Mr B.

I'm also satisfied that any excess mileage charge that would be applicable under this agreement will have accrued prior to termination. It follows that Mr B is liable to pay the excess mileage charge and that this is consistent with what is allowed to be charged under section 99 of the CCA.

So overall, I'm not persuaded Alphera has acted unfairly or unreasonably towards Mr B in respect of the excess mileage charges.

Mr B raised concerns about the impact that changes in the market had on the value of his car, and that the unforeseen nature of this influenced his decision to hand the car back rather than keep it. I've considered this carefully; however, I don't think it would be reasonable to place the burden of market changes and their financial consequences on Alphera.

I don't consider that Alphera would have had any prior knowledge of the market or its movements in relation to the value of Mr B's car. The agreement entered into by Mr B doesn't make any allowances or considerations for financial relief (in relation to VT) in the event of the vehicle being devalued due to market influences. As such, in the circumstances, I don't consider that Alphera needs to take this into account.

Mr B also said he was unhappy that his credit file was impacted as a result of the collection activity not being paused during his complaint.

The Information Commissioner's Office (ICO) Principles for the Reporting of Arrears, Arrangements and Defaults at Credit Reference Agencies says: *"Lenders that supply data to the CRAs are required to ensure that the data is accurate, up to date and meets agreed quality standards"*.

As I've concluded that the amount being disputed is fair in the circumstances, I don't consider that Alphera was obligated to pause its collection activity, and I'm satisfied it was reasonable for it to ensure that accurate credit information, in relation to Mr B's agreement with them, was recorded on his credit file.

### **My final decision**

My final decision is that I don't uphold Mr B'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 B to accept or reject my decision before 6 March 2026.

Benjamin John  
**Ombudsman**