

## **The complaint**

Mrs S complains that BMW Financial Services (GB) Limited trading as ALPHERA Financial Services ("Alphera") has unfairly reported adverse information in relation to a hire purchase agreement she had with it for a car.

## **What happened**

In September 2018 Mrs S entered into a four-year hire purchase agreement with Alphera for a used car. The agreement contained an excess mileage term which set out that if the car was returned at the end of the agreement with a mileage in excess of 60,000, then Mrs S would be charged 08.7p per mile over that limit.

In October 2022 Mrs S made arrangements to return the car. Alphera explained the process which included the car being collected on its behalf by a third-party company which would also record the car's mileage. The car was collected in November.

In December 2022 Alphera sent Mrs S an excess mileage invoice for £1,938.65. This invoice's payment was due in that same month. Mrs S contacted Alphera and said she disagreed with the reported mileage and asked for proof of the reading. She said she thought the mileage had been under the 60,000 limit. Alphera explained it would have to get the evidence from the third-party company that had collected the car.

Later in December 2022, Alphera sent Mrs S a pending default arrears letter for the excess mileage fee amount. This letter explained that if the payment wasn't made then adverse information may be reported to the credit reference agencies about the account.

In January 2023, Alphera sent Mrs S a Default Notice in respect of the outstanding excess mileage invoice. Around one-week later, Alphera sent Mrs S the evidence that the mileage recorded for the car had been around 91,000 at collection. Mrs S contacted Alphera, and a payment plan was set up to clear the outstanding amount commencing in February 2023.

Mrs S was unhappy to discover a late payment marker for this account on her credit file for January 2023. She complained to Alphera. Alphera didn't uphold her complaint as it said although it had taken time to provide the requested evidence to Mrs S it hadn't said it would suspend the impact on her credit file. The excess mileage was, Alphera said, a contractual payment which had been due to be paid in December and that it had correctly reported accurate information to the credit reference agencies as it was obliged to.

Mrs S was unhappy at Alphera's response and complained to this service. She also raised concern that a third-party had contacted her about the car as she believed this could amount to a breach of the data protection rules as she hadn't given Alphera permission to pass her details on to anyone.

Our investigator didn't recommend Mrs S's complaint should be upheld. He said that Alphera had to report data that was accurate and fair as to how a consumer had managed an account to the credit reference agencies and, here, he thought Alphera had done so. Our investigator said he hadn't seen any evidence that Alphera had told Mrs S that it would

suspend the payment for the excess mileage fee. He said he thought Alpheria had been entitled to take that action that it had.

Our investigator also said that Mrs S would need to raise her complaint about a possible data breach with Alpheria first and allow it to investigate before this service could consider that.

Mrs S disagreed with the view of our investigator. She said Alpheria had said it wouldn't report adverse information and also that once she had cleared the payment plan then any adverse information would be removed. She also asked that the data breach matter be looked at.

As the parties haven't been able to reach an agreement the complaint has been passed to me.

### **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.

Looking at the terms and conditions of the hire purchase agreement, I think the excess mileage fee is clearly set out. It states that the maximum mileage the car can be returned with at the end of the agreement is 60,000 otherwise an excess mileage fee will be applied. Any mileage over that limit will be charged at the rate of 08.72p per mile. The agreement also says that any payments that are made late under the agreement will be reported to the credit reference agencies and may have an impact on applying for other credit.

The car was collected by a third-party company on behalf of Alpheria and as part of that collection a handover form was completed which included the car's mileage. It was this reported mileage that led Alpheria to prepare and send Mrs S the excess mileage invoice. This excess mileage fee is therefore a contractual payment and the December 2022 invoice stated that this amount was due on the date of the invoice.

I appreciate Mrs S was entitled to challenge the excess mileage, but unfortunately, she was mistaken in her belief the car had travelled less than 60,000 miles. This was also corroborated by the car's MOT undertaken in October 2022 which recorded the mileage as being over 91,000 at that time. So, the mileage recorded at collection by the third-party company was more likely than not accurate and Mrs S was liable for this cost.

Looking at the notes of contact maintained by Alpheria, I can't see any reference to suspending the payment for the excess mileage while her challenge as to that was considered. So, although it took time for Alpheria to obtain the information from the third-party company and then provide that to Mrs S, I can't reasonably say it wasn't entitled to still expect payment from her in the full outstanding amount. I've also seen that Alpheria sent Mrs S both a pre-default notice and default notice for the excess mileage fee when no payment was made by her. I think it was clear that adverse information may be reported about this account to the credit reference agencies if the excess mileage fee wasn't paid when due in December 2022.

Mrs S later agreed to enter into a payment plan for the excess mileage fee which commenced in February 2023. I have seen Mrs S is unhappy that the adverse information reported on her credit file wasn't removed when this payment plan was fully paid up.

As a regulated credit company Alpheria has obligations to report accurate and fair information about how a consumer manages a credit account with it. Looking at the

circumstances here, I think as the excess mileage fee was a contractual payment then Alphera was obliged to report any adverse information as to Mrs S's handling of this account. She didn't enter into a payment plan until February 2023 and so payment was missed/late. I think it was also fair that Alphera reported this to the credit reference agencies.

While I don't know what was said between Mrs S and Alphera about what would happen at the end of the payment plan, I haven't seen any evidence that would support it said it would remove any adverse information from her account. I don't think it's likely that such a statement would have been made by Alphera in light of its obligations to the credit reference agency.

So, although I am sorry to disappoint Mrs S, I'm not upholding her complaint that Alphera acted unfairly in both reporting the adverse information about the account to the credit reference agencies and then in not removing that information at the conclusion of the payment plan.

In regard to Mrs S's complaint that there may have been a data breach, I have seen in Alphera's notes that she raised with it a concern that someone had made contact about a missing car key. However, Alphera said it hadn't provided any of her personal information to another party and recommended Mrs S contacted the third-party company that had collected the car to see if they could assist. I don't know if Mrs S followed that advice.

Under this service's rules we can only investigate complaints that have first been made to businesses and they have had an opportunity to investigate. I don't think I can reasonably say that Mrs S has made a formal complaint about the possible data breach to Alphera even though she had already raised this issue. If Mrs S believes that Alphera's denial of passing her data on isn't correct, then she should raise this with it and give her reasons. Alphera will then be able to investigate what happened in regard to Mrs S's data. If Mrs S is then unhappy at the response from Alphera she can then make a further complaint to this service.

For the reasons given above, I'm not upholding Mrs S's complaint as I don't think Alphera has acted unfairly.

### **My final decision**

For the reasons set out above, and I appreciate this will be of disappointment to Mrs S, I'm not upholding her complaint. I'm satisfied that Alphera hasn't acted unfairly when reporting the adverse information about this account to the credit reference agencies.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 12 February 2024.

Jocelyn Griffith  
**Ombudsman**