

The complaint

Mrs W is unhappy that BMW Financial Services (GB) Limited, trading as ALPHERA Financial Services (who I'll call Alphera), have terminated her finance agreement.

What happened

The details of this complaint are well known to both parties, so I won't repeat them again here. Instead, I'll focus on giving my reasons for my 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.

I was very sorry to hear about Mrs W's situation and I can understand that Alphera's decision to terminate her agreement must be distressing for her. I'm afraid that having considered the information available I don't think Alphera have been unreasonable, and I'm not asking them to take any further action. I'll explain why.

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 W acquired her car under a regulated consumer credit agreement and as a result our service is able to look into complaints about it.

The terms of the credit agreement allowed Alphera to terminate it and recover the car if payments were missed.

The Financial Conduct Authority's Consumer Credit Sourcebook (CONC) explains that lenders should consider consumers in default or in arrears difficulties with forbearance and due consideration. Having considered the events leading up to the termination of Mrs W's account I think Alphera have.

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, in December 2022, after Mrs W had missed three consecutive payments, that's what Alphera did.

I can see that Mrs W tried to arrange a repayment plan with Alphera. I don't think Alphera were unreasonable not to agree to a plan as their analysis of Mrs W's income and expenditure suggested Mrs W couldn't sustainably afford a reasonable level of repayment.

The account was subsequently brought up to date, but in early 2023 Mrs W missed a further three payments. Alphera decided to issue a notice of default, and when payment wasn't received in line with that notice, they terminated the agreement. I don't think Alphera were unreasonable when they decided to do that. The history of the account and their analysis of affordability would, in my opinion, have suggested Mrs W had little chance of paying back what she had agreed.

While I can see there is some dispute about whether all of the arrears letters were received by Mrs W it seems the default notice which allowed Alphera to subsequently default the agreement, terminate it, and collect the car, was received and I can see it was addressed to the address we hold on file for Mrs W.

And, even if that default notice hadn't been received, I think given the history of the account that Mrs W would have been very aware that payments hadn't been made for several months and the account was likely to be defaulted, as she had been in a similar situation at the start of the year. Mrs W's husband called Alphera the day before the account was due to be defaulted, but the terms of the notice were clear, payment needed to be made by 18 April 2023 and, as it wasn't, I don't think Alphera were unreasonable not to allow more time.

I understand that the car is adapted, and I've noted Mrs W's explanation of her disability. I can understand that without the vehicle her mobility would be limited. But I'm satisfied that Alphera showed forbearance here and it wouldn't be reasonable for them to keep the agreement active indefinitely.

Alphera have explained that it may be possible for Mrs W to retain the car if the agreement is settled in full. Our investigator has previously provided the contact details of Alphera's solicitors if Mrs W wishes to contact them.

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 W to accept or reject my decision before 1 February 2024.

Phillip McMahon
Ombudsman