

The complaint

The complaint is brought by a third party “A” on behalf of the late Mr T, and is about the way BMW Financial Services (GB) Limited trading as Alphera Financial Services dealt with the settlement of a car hire-purchase agreement taken out by Mr T.

A holds Letters of Administration enabling her to represent the late Mr T. A is assisted in bringing the complaint by the late Mr T’s brother, also Mr T. To aid clarity, I’ll refer throughout my decision to any correspondence or submissions from Mr T’s brother as being made by A.

What happened

Mr T had a car, supplied by Alphera under a hire-purchase agreement taken out in 2019 over a 5-year term. Sadly, two years into the agreement Mr T died. He left no will. His family notified Alphera, and it set out a number of options to enable the estate to deal with the finance arrangements. They were:

1. to take over the agreement and retain the vehicle;
2. to settle the outstanding balance (at the time, around £28,000) and take ownership of the car; or
3. to return the car and voluntarily terminate the hire-purchase agreement, subject to meeting 50% of the total amount payable under the agreement (around £7,600)

A says options 1. and 2. weren’t viable, as at the time there wasn’t enough money in the estate to maintain the monthly payments or pay off the debt, and the absence of a will or Grant of Representation meant the car couldn’t be sold at that point. A further says that she found option 3. unacceptable, as the car was worth more than the amount that would have been payable under the agreement.

Alphera said that it couldn’t take instructions from A until she obtained Grant of Representation. This took almost a year. During that time, the hire-purchase payments continued to fall due and arrears developed on the account. A advises that the car also depreciated in value. As a result, when A did obtain Grant of Representation and sold the car, the amount required to settle the hire-purchase agreement still resulted in a shortfall.

A was unhappy that Alphera wouldn’t simply allow her to hand back the car with nothing further to pay, and with the fact that interest and arrears were allowed to accrue while awaiting Grant of Representation. She believes that the account should have been frozen until this was obtained, and then interest only charged if there was a delay in clearing the balance.

Alphera has declined A’s request that it revert to the original settlement figure. It says that it followed the appropriate legal process and that it was unable to proceed with any of the options until A could demonstrate it had the appropriate power to deal with Mr T’s estate. Alphera acknowledged that the time taken to obtain Grant of Representation had resulted in additional costs. However, it didn’t consider this was its responsibility, and so it didn’t uphold the complaint.

Our investigator was sympathetic to A's situation, but didn't think Alphera had acted unreasonably in the options it had provided for dealing with the finance arrangements. He shared Alphera's view that it wasn't liable for costs incurred due to the delay experienced in obtaining Grant of Representation.

A hasn't accepted the investigator's conclusions and has asked for this review.

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 fully appreciate A's strength of feeling and the emotional impact of having to deal with such a difficult situation. It can't have been easy for the family and those feelings would undoubtedly be made worse by the thought that Alphera wasn't treating them fairly.

However, when determining what's fair and reasonable, I can't just decide a complaint based on what 'feels fair'. That would potentially be arbitrary and possibly unfair and open to challenge. Instead, under our rules I'm required to take into account relevant law and regulations, regulators' rules, guidance and standards, codes of practice and – where appropriate – what I consider to have been good industry practice.

There's no regulatory rules that set out how a finance provider must respond to the situation in which A was placed. The Financial Conduct Authority has general principles about treating customers fairly, paying due regard to its customers' interests and managing conflicts of interest fairly. All of these have some bearing on this complaint, but I don't believe the circumstances here are sufficient for me to conclude that Alphera failed to meet these principles. In particular, they wouldn't enable me to disregard the legal position between the parties.

The hire-purchase agreement between Mr T and Alphera is subject to the relevant provisions of the Consumer Credit Act 1974 ("CCA") and the terms and conditions agreed between the parties. Neither the CCA nor the agreement makes any particular provision for termination in the event of the death of the borrower. The general legal position is that liabilities that accrued under the agreement – for example, the obligation to repay the debt, the right to receive interest – continue and fall to be settled by any asset value in the estate.

Alphera gave A three options when it was notified of Mr T's death. Those options are consistent with what I'd expect to see; there's nothing unusual or inherently unfair in what Alphera offered. I appreciate A might have preferred Alphera to offer a fourth option of waiving interest and allowing her to hand back the car with nothing further to pay (subject to any remaining balance being less than the value of the car at that time). But Alphera wasn't obliged to offer this option. It was entitled to receive at least the amounts set out in the options it did offer.

At the time of A's enquiry, the payments made under the hire-purchase agreement were less than 50% of the total amount payable. Alphera's proposal was in line with the CCA provisions on voluntary termination. As A wasn't at that point in a position to take on the agreement or to settle it in full, this was the only option that might have been open to A to take.

I appreciate A felt – and continues to feel – that this was unacceptable, as it would have meant losing out on the potential value of the car at that time. But I'm afraid that doesn't enable me to rewrite the agreement that Mr T entered into, or to disregard that what Alphera

offered was in line with the CCA.

It's most unfortunate that the delay in obtaining Grant of Representation – through no fault of A – meant that by the time A was in a position to act, the figures had changed in terms of the amount to settle the debt and the market value of the car. But I can't reasonably say that any of this delay was down to Alphera, or that it was obliged to freeze the debt, which was properly due, until Grant of Representation was obtained.

I know A feels aggrieved that when they did present Letters of Administration to Alphera, it said that it didn't need the document and merely needed the settlement payment. I also acknowledge that A feels Alphera ought to have made it clear that interest would continue to accrue until the debt was paid. I can see how Alphera could have been a little more helpful. But given that A didn't want to take on the hire-purchase agreement, wasn't legally in a position to sell the car to discharge the debt until she obtained Letters of Administration, and in any event rejected the option to 'crystallize' the amount due by exercising option 3., I'm satisfied that these factors made no real difference to the overall outcome.

My final decision

For the reasons I've set out here, my final decision is that I can't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask A, on behalf of the late Mr T to accept or reject my decision before 7 November 2023.

Niall Taylor
Ombudsman