

The complaint

Mr R has complained to us about the way in which BMW (UK) Limited trading as Alphera Financial Services administered an agreement.

What happened

In May 2022 Mr R and Alphera entered into a hire purchase agreement for a car. The monthly payments were set at £935.77.

Mr R contacted Alphera in March 2023 to tell them that the car, while being shipped, had been seized at customs abroad. Alphera thought that this was a breach of the agreement and sent Mr R a default notice on 27 March 2023. It also subsequently transpired that Mr R wasn't the registered keeper of the car, which was a further breach of the agreement's terms.

Unfortunately on 10 April 2023 Mr R suffered a close personal bereavement. He contacted Alphera on 12 April, informed them of the bereavement and asked for two weeks to arrange payment of £52492.53 – which included a rebate for early settlement. The default notice expired on 16 April. When the default notice expired Alphera terminated the agreement.

When Alphera received no payment from Mr R, it entered a default on Mr R's credit file. Mr R complained to Alphera. He said he hadn't been told that he had been granted an extension of time to pay. He could have got funds from friends and family to pay the debt if Alphera had communicated properly with him. And he wanted to pay the lower settlement figure rather than the figure without the rebate, which was £61636.35. And the negative marking on his credit file should be removed.

On 17 May 2023 Alphera sent its final response to Mr R. In summary it said that it had allowed Mr R until 28 April to settle the outstanding amount. They were unable to allow any further time. Alphera said it had acted correctly throughout and had allowed ample time. It said that the car would be recovered, sold at auction and Mr R would remain liable for the outstanding amount after the sale.

Mr R brought his complaint to our service and our investigator looked into the complaint and issued an opinion. In summary, he did not think that the complaint should be upheld. He said that there were too many uncertainties around the offers of loans, Mr R's ability to repay those loans and whether the necessary paperwork for such loans could be completed in time.

Mr R disagreed with the opinion and provided testimony from the people offering the loans to say the funds were available to him. As he remained unhappy, the complaint has been passed to me to decide.

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.

Mr R complains about a hire purchase agreement. Entering into regulated consumer credit contracts such as this as a lender is a regulated activity, so I'm satisfied I can consider Mr R's complaint against Alpheria.

I've looked at this complaint on the balance of probabilities – that is, what I consider is most likely to have happened in light of the available evidence.

Alpheria has told us that it thinks there were two breaches of the agreement in this complaint. Mr R hasn't told us that he disagrees with this. However for the avoidance of doubt I've looked at the credit agreement which Alpheria and Mr R entered into.

On page two of the summary for the agreement it stated that one of the key responsibilities for Mr R was to keep the vehicle in his possession and control. It also said that he had to be the registered keeper of the car. These were also set out in paragraph 4(g) of the terms and conditions.

"Although we will own the vehicle during the agreement, you will be the registered keeper of the vehicle and you must pay any speeding fines, parking charges and other fees and charges that become payable in relation to the use of the vehicle."

"4. Your Care of the Vehicle

Until the Vehicle is returned to us at the end of this agreement or you become the owner of the Vehicle, you must: ...

... (g) keep the Vehicle in your possession and under your control and not sell, rent or dispose of it or attempt to do so or allow someone other than you to become registered at the Driver and Vehicle Licensing Agency as the Vehicle's registered keeper;"

Having considered the circumstances, I'm satisfied that the car being seized by customs meant that it was no longer in Mr R's possession or control, and that this amounted to a breach of the agreement. I'm also satisfied that there was another breach of the agreement because Mr R wasn't the registered keeper of the car.

Next I've considered the communication between Alpheria and Mr R. Mr R told us that when he contacted Alpheria on 12 April 2023, given the extenuating circumstances and the large sum which was required, he asked for an extension. When Mr R didn't hear back from Alpheria he contacted them again on 14 April. Both representatives he spoke to gave him email addresses and asked him to put his request in writing. I've seen records of these telephone calls provided to us by Alpheria. And I've seen that Mr R contacted it on other occasions.

Even though Alpheria terminated the agreement, it seems that it did decide on an informal extension of time for Mr R to pay. However I can't see from these records that Alpheria ever informed Mr R that it had decided to grant an extension to 28 of April 2023. So, on balance I'm satisfied that Alpheria made an error in that respect.

Next I've looked at whether or not Mr R would have been able to repay the sum required, if Alpheria had told him that he had the extra time to pay. Mr R provided evidence to us about funds available to him. These funds would have come from two companies, one of which is run by a family member and one of which is run by a friend. Mr R said each company would have been able to give him roughly half the amount needed to cover the debt, so in total would cover the whole amount. And we've received email testimony from these individuals, who have told us that the money would have been available for Mr R in April. Mr R has also been able to provide us with statements for these companies showing available funds.

I've carefully considered this evidence. Mr R hasn't indicated that he could have paid the debt using his own funds, and he told us that one of his reasons for asking for the extension was that the sum of money involved was large. What I need to consider is whether – on the balance of probabilities – I think it's likely Mr R could have used the funds offered by friends and family to pay. Offers such as these are doubtless well-intentioned, but it's not often easy or straightforward to withdraw from a company a sum of money in excess of £20,000. Company money can be needed for a wide variety of causes, many of which would take priority over a loan to a friend or relative. Some might be urgent. Overall I don't think that offers of loans are persuasive enough for me to say that Mr R would have been able to pay Alphaera. So, in those circumstances, I don't think Alphaera's failure to explain the extension had an impact on whether or not Mr R paid.

Mr R has said that it's not fair for his credit file to have a default marking, because his non-payment was due to Alphaera not communicating with him. But as I've explained above, I don't think it's most likely this was the case. Overall, I think it's fair and reasonable for Alphaera to have conveyed the information to credit reference agencies in the circumstances. So on balance I'm satisfied that Alphaera doesn't need to put anything right in this complaint.

My final decision

My final decision is that I do not uphold this complaint

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 16 February 2024.

Katrina Hyde
Ombudsman