

The complaint

Mr O complains that BMW Financial Services (GB) Limited, trading as Alphera Financial Services, defaulted his account and terminated his credit agreement without notice.

What happened

In March 2022 Mr O entered into a regulated hire purchase agreement with Alphera to finance his purchase of a used car. He was to make 48 monthly payments of £422:06.

In June and July 2023, due to ill health and being out of work, Mr O missed two of his monthly payments. This resulted in his account being defaulted, and in September Alphera terminated his agreement, Mr O says he was not sent advance notice of the termination. He complained about that, and also about his account being defaulted even though he had made his August payment.

Alphera told Mr O that it had tried to contact him about his arrears several times by email and phone, but he had mostly been unresponsive. It had sent him a default notice. Mr O had still not cleared the arrears for June and July, despite being warned about the consequences of not doing so. The medical evidence he had submitted did not prove that he had been ill earlier than September. Alphera maintained that it had been entitled to terminate his agreement.

Mr O brought this complaint to our service. He emphasised that Alphera had warned him that if he missed a third payment it would default his account, and so he hadn't missed his third payment, but it had defaulted him anyway.

Our investigator did not uphold this complaint. She summarised all of the times when Alphera had emailed and phoned Mr O, including when it had advised him to contact the Citizens Advice Bureau, and she thought that Alphera had done enough to try and help him before deciding to default his account. It had sent him a default notice, and although she did not dispute that Mr O had not received it, she noted that the terms of his agreement had stated that missing payments could lead to his agreement being terminated, the car being repossessed, and his credit file being affected. She said he had been given enough time to pay back the arrears. She also thought that if the agreement had not been terminated, then Mr O would probably have just got into greater financial difficulty. She concluded that Alphera had acted reasonably.

Mr O did not accept that decision. He insisted that he had spoken to Alphera in June 2023 and had been told that a default notice would only be issued if he missed a third payment, and that Alphera was now seeking to cover that up. He said that he had offered to clear his arrears in September, but that offer had been refused. He said that Alphera's attempts to contact him had been futile because he hadn't been well enough to take calls or consider emails. And he said he hadn't been well enough to approach his doctor until September.

Mr O asked for an ombudsman's decision. He provided evidence that he had called Alphera and spent 21 minutes on the phone with them on 10 July 2023.

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.

Alphera's contact notes (on page 10 of 49) describe a phone call with Mr O on 10 July 2023. (This was after Alphera had sent him some emails and an arrears letter about his first missed payment.) The call note says that Mr O was aware that his direct debit for his June payment had been unsuccessful, and he said he would make his June payment later that week. He also said he would call Alphera at the end of July to discuss his future payments. There is no mention of the possibility of defaulting the account in this call, and given that only one payment had been missed, on the balance of probabilities I do not think that this was discussed. But in case I am wrong about this, anything that Mr O was told on that call about defaulting or not defaulting his account would have been superseded by the subsequent correspondence warning him that his account would be defaulted if he did not clear his arrears or contact Alphera.

I have seen several emails which Alphera sent to Mr O about his arrears, and asking him to get in touch, and mentioning that his account would be defaulted if he took no action. They also left voice messages on his phone. There was also the arrears letter which I've already mentioned, and then the default notice, which was sent on 11 August; both of these letters were correctly addressed. If they were not received by Mr O, that is not Alphera's fault; its obligation was to send them. And if Mr O did not know about them, he did know that he was receiving emails from them, and that he had missed (by that time) two payments.

Mr O has told us that he wasn't up to reading or listening to these messages, but I don't see what else Alphera could have been expected to do. I think it did all that it reasonably could.

By the time Mr O sent Alphera a letter from his doctor, it was October, and the agreement had already been terminated in September. The doctor's letter does not confirm that Mr O was ill earlier than September (when he had his first appointment), it only says that Mr O had told him that he became ill in June. I'm afraid that isn't proof, and so I don't think it was unreasonable of Alphera to decide not to reinstate the agreement.

I also note that in a phone call on 12 September 2023, Mr O told Alphera that he could repay the arrears in full. Leaving aside the fact that this was six days after the termination, he didn't do it. The debt was later written off as a bad debt in December. So I am not persuaded that Mr O would have done anything differently if he had received the default notice. I think the default and the termination would still have happened. So I think that Alphera's decision not to reinstate the agreement cannot be faulted.

My final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 17 December 2024.

Richard Wood
Ombudsman