

## **complaint**

Mr I complains that BMW Financial Services (GB) Limited (trading as Alphera) wrongly took action for breach of a finance agreement on a car, even though the car was being used in a way agreed from the start.

## **background**

Mr I is a director of a business (which I shall call Z), largely run by his son and his son's wife. They wished to buy a car for the business. But Mr I says they were told finance was not available to Z, so to put it in the name of a director. It went in his name. He says they were told the car would initially have to be registered to Mr I but could later be registered to Z. The hire purchase agreement was made in June 2014. In October 2015 Alphera told Mr I that under the terms of the agreement he was required to keep the car registered in his name (rather than Z's) and to insure it. He would be issued with a default notice which would give him 20 days to confirm he had made the change. Mr I then complained about the situation. He provided an email sent by his son on behalf of Z, which had been sent to the credit broker and dealer before the car was bought. It said that Mr I was buying it on behalf of his son, and that it would be delivered to his son in Scotland.

Following our involvement, Alphera suggested two main options:

- Refinancing the car in the appropriate name, which would be subject to the usual credit checks;
- Or providing evidence that the car was now registered to Mr I and insured by him, with him as the main driver.

If neither of those was acceptable it would look to the dealership to repurchase the car. Mr I would be expected to pay a charge for fair use of the car.

Mr I said he did not wish to accept either of the first two options. He said that was because it did not address the fact that it was agreed by the broker to buy and use the car in the way they had been, and it was only 18 months later that Alphera raised an issue about it. He also referred to lack of communication and conflicting information from Alphera which had caused unnecessary stress. They had been accused more than once of not responding to contacts when they had, and after six months nothing was resolved. He asked for the ombudsman to decide on the complaint.

## **my provisional decision**

After considering all the evidence I issued a provisional decision to both parties on 8 August 2016. I shall summarise that.

There was no doubt that Mr I and his son were open with the credit broker and the dealer that they wished to have a credit agreement for Mr I to purchase the car, but for his son to be the main user for his business. Despite that Mr I was sold an agreement which in the smaller print says that he is obliged to keep the car in his possession and must not allow anyone other than him to be its registered keeper. So I think that the hire purchase agreement was misrepresented to Mr I. Alphera is responsible for any misrepresentations made by the supplying dealership during the credit broking process.

Alphera had effectively suggested three options. I did not think either of the first two were fair and reasonable, or possibly even feasible. The third option (of the dealer repurchasing the car) might not be unfair, if Mr I wished to return the car now, partway through the agreement.

I sought further views of both parties on three options for a way ahead:

- Alphera allowing the car to be registered to someone other than Mr I in the particular situation here, even though that would not normally be allowed;
- changing the agreement so that Z was the customer (and registered keeper and insurer) but Mr I was a guarantor for the lending;
- cancelling the agreement, recovering the car at no cost to Mr I, refunding the deposit and paying some compensation.

Both parties said they preferred the last option, and agreed on the question of it being collected at no cost, though gave some significantly differing views about financial aspects in particular.

Alphera said it would refund the £500 deposit, and reduce the arrears (Mr I has not paid since November 2015) by 10% (£504). It thought that took into account use of the car since payments stopped. It offered an additional £1,000 for the stress caused and issues relating to Mr I's credit file. Mr I would need to pay the rest of the arrears.

Mr I wanted:

- his credit file cleared of anything in relation to the agreement;
- time to transfer a personalised number plate;
- a refund of £7,365 to allow for payments made less fair wear and tear cost of the car;
- £1,000 in compensation for the stress and upset.

It seemed fair enough to allow a little time to transfer the number plate, and both parties agreed on compensation regarding the stresses involved (and I agreed that was fair and reasonable). So that left the issues of Mr I's credit file and payment/refund in respect of use of the car.

Mr I calculated the £7,365 figure he thought should be refunded to him by taking what he calculated as the cost of fair usage, and subtracting that from the payments he did make between July 2014 and November 2015. He calculated the fair usage cost by multiplying the mileage rate HMRC allow for business use of private vehicles by the mileage travelled and then subtracting from it the total running costs of the car. But the MHRC figure really isn't designed to be used in that way: it isn't intended to cover the total cost of running the car and it takes no account of the type of car.

For two years Mr I had had the use of a car worth about £40,000 when he got it and for which he had agreed to pay £630 a month (£779 in the first month). Plainly at the time, he thought that it was worth that amount per month. But he hadn't paid anything for over six months. He had good use of the car - from the figures he gave, in 25 months it had covered

just over 21,000 miles. That was a higher mileage than envisaged in the agreement, which allows for an excess mileage charge to be made if more than 8,000 miles are done per year.

When I was proposing that Mr I was compensated separately for the stress and upset of these events, I did not see that any significant reduction of the monthly payments was justified. I thought Alphaera's offer of 10% off the arrears (as well as return of the deposit, with interest) was fair and reasonable. But I thought that in the circumstances here Alphaera should also waive any excess mileage charge.

I could see why Mr I got frustrated with Alphaera, not just because of the initial problem but because of its delay of over three months in providing any substantive response to his complaint about that (while it tried to get information from the broker). At the same time it was sending letters about the account including a default notice. I could understand why Mr I might have thought that withholding payments would help get a response to his complaint: but he did need to continue paying for the car while he had it. When it seemed clear that, if the mis-representation had not occurred, Mr I would never have made the agreement, I thought it would be fair and reasonable for any record of this account to be removed from his credit file - once the arrears were paid.

So subject to any further comments or evidence from Mr I or Alphaera my provisional decision was to uphold the complaint. I intended to order Alphaera to:

- return the £500 deposit, with interest at 8% per year;
- reduce the arrears figure by 10%;
- waive any excess mileage charge;
- arrange to collect the car at no cost to Mr I, giving him a reasonable chance to transfer the personalised numberplate;
- pay Mr I £1,000 in compensation;
- cancel the agreement and remove any record of it from Mr I's credit file, once the arrears were paid.

Alphaera said it accepted the decision but just queried whether there would be a deadline set to pay off the arrears.

On Mr I's behalf his son and daughter in law said that if they returned the car with no option of further finance, they would be left in a disadvantaged position ie without a car. They suggested that the situation might even make the agreement null and void. They said they would like to have an early settlement figure for the agreement, as they wished to consider the possibility of exchanging the car for another. They also put forward two other options, with Alphaera either changing the agreement from Mr I to a different company (not Z), or allowing an early settlement and offering new finance (without a deposit) on a different car to the other company.

### **my findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I'm not in a position to declare the agreement null and void: that would be a matter for a court to decide.

Nor do I think I could instruct Alphera to offer finance to the other business as Mr I's son and daughter in law suggested as an option. Lending to a company is significantly different from lending to an individual, and Alphera would need to make its own judgement about whether that that business was creditworthy and on what terms.

Our aim in cases like this is, as far as possible, to put the consumer back in a similar position to the one they would have been in if things had been done properly. If things had been done properly here, and Mr I had been told that he could only have the hire purchase agreement for a car registered to and insured by him, then I don't think he would have gone ahead with the agreement. His son and wife would have needed to find another way to arrange finance for a car for Z. That is the same position they will be in now if they return the car as described in my provisional decision: and Mr I will have back the same £500 deposit he paid initially (with interest) if he wanted to let them use that as a deposit for a new agreement. I think that getting a formal early settlement figure in the usual way, alongside appropriate elements of the compensation, would be likely to leave Mr I worse off than my proposal.

So my view about the appropriate redress remains the same. If Mr I wishes to help his son and daughter in law get another car, they can arrange alternative finance - which is what they would have needed to do in the first place if things had been done properly. If, having identified other finance, they wish to keep the same car it is open to them to see if Alphera would be willing to sell it to them outright at a market rate - as an alternative to it being returned.

I am sure Mr I and his family would like to put this situation behind them. I think the record of the account in default and/or arrears on Mr I's credit record, and the fact that that will not be removed until the arrears are paid, should provide sufficient incentive to pay the arrears reasonably promptly. It is in neither party's interests for them to remain outstanding: So I will not set a particular deadline. Alphera will remain entitled to take reasonable action to recover the money still owed, if Mr I does not make reasonable arrangements to pay the remaining arrears once my decision has been implemented.

### **my final decision**

My final decision is that I uphold this complaint as described above. In full and final settlement I order BMW Financial Services (GB) Limited to:

- return the £500 deposit, with interest at 8% per year;
- reduce the arrears figure by 10%;
- waive any excess mileage charge;
- arrange to collect the car at no cost to Mr I, giving him a reasonable chance to transfer the personalised numberplate (unless Mr I or his relatives arrange with Alphera to buy the car outright instead);
- pay Mr I £1,000 in compensation;

- cancel the agreement and remove any record of it from Mr I's credit file, once the arrears are paid.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr I to accept or reject my decision before 24 October 2016.

Hilary Bainbridge  
**ombudsman**