DRN-5614639

The complaint

X has complained about the quality of a car provided on finance by BMW Financial Services (GB) Limited trading as Alphera Financial Services ("Alphera").

What happened

Alphera supplied X with a used car on a hire purchase agreement in June 2022. The cash price of the car was around £24,000 and it had covered around 65 miles since first registration in March 2022. The hire purchase agreement required payments of around £470 for 48 months. X paid a deposit of around £4,800.

When X entered into the agreement, they said they intended to use the car for business use. X said that when they weren't driving it for their own business use, they intended to sublet it. They said the broker was aware of the intended use.

X said that within a few days of acquiring the car they experienced problems with warning lights on the dashboard and the headlights would intermittently stop working. X said this made it difficult for them to use the car at night and they assumed there was a problem with bulbs which they would replace.

X asked a main dealer to inspect the car in April 2023, at a cost of around £140. They said that they were unable to get a more detailed diagnostic. The diagnostic said "removed multiplug for headlight found terminals inside connector damaged. Took picture of damage send to (manufacturer) & await authority for possible replacement of wiring loom" [sic].

X complained to Alphera in April 2023. They asked for a payment holiday while Alphera was considering the complaint. In May 2023 Alphera asked X to supply evidence that the car had an inherent fault when it was supplied.

X asked Alphera for more time as they couldn't afford to pay for an inspection due to their income being affected by the faulty car. X said that Alphera didn't respond to their request for a payment holiday or more time to commission a report.

Alphera issued its final response in May 2023, it said that as it hadn't been provided evidence that the car wasn't of satisfactory quality at the time of supply, it declined to offer further support.

X said they stopped using the car for business use in July 2023 as it wasn't safe. X said they had to use the car to attend an urgent personal matter in November 2023. The car broke down and was recovered to a main dealer. They commissioned a report by an engineer, at a cost of £950 in November 2023.

X referred their complaint to our service in November 2023. They said that they had lost income due to the faults with the car, which led to them losing their home. They also said they'd experienced significant stress and anxiety which led to an impact on their mental health. Our investigator shared the report with Alphera in January 2024, and asked it to consider the new evidence.

Our investigator said that the car wasn't of satisfactory quality due to a significant electrical fault. He recommended that Alphera collect the car and unwind the agreement. He also recommended that 50% of payments be refunded from June 2022. And the full amount from August 2023. He also recommended compensation of £4,000 plus loss of earnings.
In December 2024, Alphera agreed that the car wasn't of satisfactory quality after considering the report, but it disagreed about the level of compensation and consequential losses. It said that the agreement had a term which limited liability for loss of profit. It also asked for evidence that X had lost their home as a direct result of the faulty car.

X also disagreed with the investigator. They said that Alphera's mistakes had caused life-changing ill-health and led to them losing their home and business. They said they tried to mitigate by looking for alternative employment, but this was hampered by life changing poor health. In addition they explained that having to continue making payments under the agreement led to rent arrears which caused them to have to give up their home and proximity to support networks and family. They said their reputation had been impacted by the faulty car. They said the award for compensation and loss of earnings did not go far enough and there should be no cap until the settlement has been made, they suggested that it should run to three years after the decision is issued. They also said that they should receive a refund of 75% of the monthly payments until July 2023 and 100% thereafter. They said that the faulty car had stopped them from being able to establish their new business proposal, and had ultimately led to them terminating their business permanently on health grounds.

In December 2024 our investigator mediated with the parties to arrange for the car to be collected and an interim settlement made for those items that were not in dispute by either party.

The complaint was passed to me to make a decision. I issued a provisional decision which said:

I want to set out that I'm primarily required to consider what happened up to when Alphera sent its final response letter as the events preceding this relate to what it has had the chance to consider. Things moved on from then, so I've tried to be as pragmatic as possible when dealing with this complaint when thinking about what parts I can decide. But I need to be able to draw a line under the complaint with my decision because it will mark the end of our process. If there are further complaints about events that occurred after the final response letter that are not clearly included within this decision, they would have to be taken up separately. I'm issuing a provisional decision as I think it makes sense to deal with what has happened up to the point Alphera made its more recent offer with regards to the faults with the car. If either party has any objections to that they can let me know in response to this provisional decision.

X has provided detailed submissions both before and in response to our investigator's view. I acknowledge their strength of feeling and they put forward their point of view passionately and articulately. I've read and considered everything they've said, including watching videos supplied before and after events, but I've summarised the key points here. Some of the information that I've seen has been obscured or summarised at X's request to ensure they can't be identified. While I might not comment on everything (only what I consider key) this is not meant as a discourtesy to either party – it reflects my role resolving disputes informally.

Firstly, I am very sorry to hear about the difficulties X has described to this service. However, I think it is worth noting at this early stage that I am not intending on making the size of award that X has asked for. I know X is unlikely to be happy with this decision. However, my role is to resolve disputes informally. They don't have to accept it and may choose (after

seeking legal advice as appropriate) to take more formal action against the supplier, such as through a court.

I also need to make clear that this Service is neither the industry regulator nor a court of law. We don't fine and punish businesses, nor do we award punitive damages. Our role is to assess whether a business has acted fairly and reasonably and, if not, whether it's taken fair steps to put things right.

Where the evidence is incomplete or inconclusive, or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances. X has referred to other decisions by this service in cases which considers similar to their own case. I should make clear that my decision is based on the evidence and information relating to X's case, rather than any other complaint that might, on the face of it, appear to have similar features.

I should also point out that the Financial Ombudsman decisions don't have precedent value as certain court judgments do. I need to consider X's complaint by deciding what I think is fair and reasonable in the individual circumstances. Even saying that, it's important to note that while the financial arrangement and goods supplied had similarities in the decisions X referred to, the circumstances were very different. Our powers to make an award also might not cover the full extent of compensation being claimed, such as claims for loss of amenity. I'll discuss this in more detail later.

The agreement in this case is a regulated credit agreement. As such, this service is able to consider complaints relating to it. Alphera is also the supplier of the goods under this type of agreement, and is responsible for a complaint about their quality.

X said they brought the complaint to our service in their capacity as a consumer. They said that they entered into the agreement in a personal capacity. But they also described the impact the faulty car had on their business as a sole-trader, and indeed on the impact it had on a proposed business to sub-let the car.

In order to consider the complaint, I have to consider whether X is in fact a consumer. The rules about what complaints we can consider are set out in the Financial Conduct Authority's handbook also known as DISP. This defines a consumer as "a natural person acting for purposes outside their trade, business, or profession"". This is difficult as X acts in both capacities here, but I think given their intended use of the car and the impact on their profession they are not a consumer. But they do meet the definition of a micro enterprise, which also allows us to consider the complaint. But it might have implications for the consequential losses that I can award which I'll come onto later.

As this was a business-to-business agreement the Supply of Goods (Implied Terms) Act 1973 is relevant to this complaint rather than the Consumer Rights Act 2015. I am satisfied there are relevant implied terms that apply here in respect of the requirement to supply goods of 'satisfactory quality'.

The quality of goods will be satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, the price and all the other relevant circumstances. So it seems likely that in a case involving a car, the other relevant circumstances a court would take into account might include things like the age and mileage at the time of sale and the vehicle's history. The quality of the goods includes their general state and condition and other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability can be aspects of the quality of goods.

Alphera is responsible for the quality of the car when it was supplied and not ongoing issues. In this case as around ten months had elapsed since the goods were supplied to X before they reached out to Alphera. I don't think it was unreasonable for Alphera to have wanted some independent evidence that the car might have an inherent fault, especially given the description of the fault, the mileage covered and that it appeared to be intermittent.

Alphera acknowledged the complaint and let X know that they needed to provide further evidence within 14 days, or it would likely reject the complaint. I appreciate that X asked for more time, and it doesn't appear that they received a response to this request as the final response was sent the following day. But I don't think Alphera was unreasonable for giving its answer based on what it had. As a matter of courtesy, it could have responded to X to let them know that it didn't intend to allow more time. But X was free to supply further evidence at a later date when they got it, but I can't see that they did this, or continued to discuss things with Alphera.

X said they couldn't afford to get a report at the time. They asked Alphera for a payment holiday, and told it that the problems with the car were impacting their income and causing financial hardship. A payment holiday isn't something that Alphera needed to offer while considering a complaint about the car's quality. But this might have been a missed opportunity for Alphera to explore whether X was in financial difficulties. If X was in financial difficulties, they could have let Alphera know they were experiencing difficulty paying for priority bills such as rent. There might have been options such as making an assessment of income and expenditure in order to ensure priority bills were paid, breathing space or perhaps deferring payments for a temporary period. However, based on what I've seen, even if Alphera had offered a payment arrangement I'm not persuaded that X would have agreed as it would have impacted their credit file.

It doesn't seem to now be in dispute that there is a significant fault with the car. That's because X commissioned and paid for a detailed expert report which confirms that there was an inherent fault with the electrics. It is dated November 2023, and the mileage was 37,375. I've included an excerpt from the report here:

It is the opinion of the examiner from the findings of this report that, in the first instance, the vehicle has multiple management and electronic/electrical faults, which are physically present. The vehicles management systems indicate multiple fault codes present which clearly confirm defects are present, with the visible condition of the vehicles wiring at the N/S front headlamp assembly having sustained elevated thermal degradation, which is a manufacturing defect and would have been present/or developing at the point of purchase.

The examiner is of the opinion that the vehicle in its present condition is unsafe to be driven on the public highway as the safety/electronic devices cannot truly be relied upon. The further issue that the vehicles electrical wiring is a fire hazard is a major concern and the examiner is of the opinion that the vehicle should be isolated, powered down and not used other than at one's own risk.

But as far as I can see this report was only shared with Alphera in January 2024 when our investigator first picked up the case. Therefore it would be difficult to say that Alphera acted unfairly prior to this because it didn't have the evidence.

In X's case the car was used when it was supplied, but it was supplied as an ex-demonstrator model with minimal mileage and the cash price was around £24,000. I think a reasonable person would have expected it to be free from even minor issues for quite some time. As all the parties now agree that the car wasn't of satisfactory quality, and I agree, I'm not going to go into a lot of detail on that here.

What's left to decide is whether the offer from Alphera fairly resolves the complaint for X.

Impaired use

X said that they were having issues with the car within a short time after acquiring it. But I've not seen sufficient evidence of that. If the car wasn't performing as it should then I would have expected them to raise it with either the selling dealer or Alphera – and I haven't seen that they contacted it until around April 2023. Alphera wasn't responsible for anything the selling dealer did post sale. Alphera is the supplier of the goods, but I can't fairly hold it responsible for things going wrong if it wasn't put on notice of the issue, and didn't have an opportunity to help.

I appreciate that X said they incorrectly assumed that the problem was due to faulty bulbs. I do have one job card which shows that the car was inspected in April 2023, the mileage was 27,987 at this point. It indicates that contact would be made with the manufacturer to see if it would pay for a repair. It also breaks down the cost of some consumables such as brake fluid and a pollen filter, plus labour charges. X said that they were unable to use the car for 81 days in the tax year ending April 2023. I don't have sufficient evidence of that being caused by the car not being of satisfactory quality. The overall mileage covered by the time the car was handed back was 37,784 so it might be hard to argue the use of the car was impaired. So I don't yet intend to make any award for impaired use for that period.

After the inspection

X said they couldn't afford to get an inspection report at the time they first contacted Alphera and were only able to do so much later in November 2023. Our investigator sent this to Alphera in January 2024 and asked it if it needed additional time to consider the new evidence. Our investigator received a response from Alphera in July 2024 indicating that the car could be repaired under warranty, and it believed that was the suitable remedy. Our investigator pointed out that a main dealer had inspected and tried to repair the car under warranty which had failed. So I think Alphera were on notice that there was a problem and X needed further help once our investigator supplied the report and described the ongoing impact on them in January 2024.

Following our investigator's view Alphera agreed to collect the car and to start calculating the refund of the deposit pending the ombudsman decision in December 2024. I understand the car was collected with a final mileage of 37,784 in February 2025. Ending the agreement and allowing rejection was a suitable remedy in part.

In March 2025 Alphera proposed to do the following:

- *end the agreement with nothing further to pay*
- *refund X's deposit*
- *refund the monthly instalments from the date of the inspection*
- *pay £750 in compensation*

X maintains that they should receive:

- *Refund of the deposit*
- *Refund of payments for impaired and loss of use*
- *£20,000 in compensation*
- *Receive £113.85 per day in loss of earnings since being supplied the car*

Use of the car

X has told us that the final mileage on the car was 37,784. It is fair that they pay for their use of the car. There was no mileage cap on the agreement, but the mileage seems significant considering they said their use was impaired and they stopped using it in July 2023. I'm not persuaded, based on the evidence that I currently have, that their use has been as impaired as they've described. I appreciate that X might say that their intended use was always going to result in much higher mileage. But there's not sufficient evidence of that, and I'll discuss consequential losses in more detail later.

The report was dated November 2023, and the mileage was 37,375. It clearly sets out that the car shouldn't be used and should be powered down. It describes driving the car in its condition as "one's own risk". The final mileage of the car was 37,784 and X has acknowledged that they did drive it on another occasion in November 2023 and the car broke down with mileage of 37,367, but this seems to be before the report. It seems like they also covered around an additional 400 miles since the report, which they explained was due to moving home. I'm currently thinking that the evidence shows that X didn't have use of the car to a substantial extent after November 2023. So their payments should be refunded in full after this point.

Compensation for distress and inconvenience

It would be hard to imagine it hasn't been inconvenient for X to be without the car that they are paying for. X has described the inconvenience, distress and loss of reputation they have suffered from the issues with the car. Particularly, the impact on their income and employment which has had knock on effects in every area of their life, including losing their home. I am very sorry to hear about this. I need to point out that I am unable to award for long term health issues as a consequential loss. These are known as claims for loss of amenity. If X considers there is a wider claim in relation to their health here, then before accepting any decision by me they might wish to take appropriate legal advice as to how my award (and their acceptance of it) might impact any other claims they might be considering.

Deciding compensation is not an exact science here. And issues and problems in everyday life are expected when a complaint needs to be raised. However, here X suffered more than the usual problems you might expect in everyday life, and it went on sometime. I have thought about our website guidance on such awards. I do think from what X has said that the issues with the car and their claims for reimbursement have caused considerable inconvenience, upset and worry. I'm also persuaded that there may have been temporary loss of reputation as I've seen communication from a business partner which suggests once the car is rejected, the relationship could resume. Although Alphera's initial response wasn't unreasonable, once it had the new evidence of the fault in January 2024 it didn't accept liability for the faults with the car until December 2024. Although I have to balance this with the fact that the complaint was with our service by this point, the remedy was in dispute, and X had made several requests for additional time to gather evidence. Therefore, I think the suggested compensation of £750 is fair and reasonable here. I know X has claimed significant health impacts and wants £20,000 – however, as I have said I can't make awards for loss of amenity. If X wants to pursue this and a more substantial award, they should note my prior comments.

Loss of income and further compensation

X is also claiming other damages or financial losses as a result of a breach of contract. But there's a lot to think about when deciding whether losses should be payable in these sorts of situations. I need to think about whether the losses were directly flowing from the breach of contract; whether X has tried to mitigate their losses; and whether they were reasonably foreseeable or too remote.

X said that the broker was aware of their intended business use, and it seems that Alphera accept this. I'm not completely satisfied that it ought to have been aware, or would have supported, that X intended to sub-let the car though as that might breach the contract.

Alphera might be responsible for the antecedent negotiations carried out by the broker. It might have been reasonably foreseeable that X acting in their capacity as a sole trader, would suffer loss of income, as a result of the car not being of satisfactory quality. But its important to note that up to the point of the final response there wasn't sufficient evidence of the satisfactory quality fault.

One of the terms of the agreement says "we will not be liable for any loss of profit, loss of business or other economic loss (in each case whether direct or indirect loss) or for any indirect or consequential loss or damage which arises out of or in connection with this agreement". X might say the term is unfair as the broker was aware of the intended use of the car. But I don't find that I can apply the same test for unfair terms as might apply to a consumer here. That's because X wasn't a consumer, they entered into the agreement wholly or predominantly for business use, so has different statutory protection than a consumer would have. As this was a business-to-business transaction, it's subject to the provisions of the Unfair Contract Terms Act 1977 (UCTA).

UCTA provides that Alphera can't exclude or restrict its liability for the breach except so far as this satisfied the requirement of 'reasonableness'. The "reasonableness test" is set out in section 11 and schedule 2 of the UCTA.

I've thought about what the law says, but, firstly, I need to be clear that it is for a court to decide whether the reasonableness test in UCTA has been satisfied. Having regard to the law, I've thought about the circumstances at the time X entered into the agreement with Alphera and what I consider to be fair and reasonable in the circumstances of their complaint.

From what I can see, X isn't representing a business that is likely to have an in-depth knowledge about how exclusions in hire purchase agreements work. Although X is a business person, they are a sole trader and not a sophisticated business. I don't think their bargaining position meant that they would have been able to ask Alphera to remove the exclusion clause from the agreement. But I don't know if the broker gave them the option of using a different finance company without such an exemption, or if getting a business to business agreement without this exemption is possible. X's business is not comparable with Alphera. And I'm not aware that they received an inducement to agree to the exclusion clauses.

X signed the agreement, which suggests they accepted the terms. The key information on the agreement sets out the extent of Alphera's liability.

I don't think X would have entered into the agreement expecting any major issues with the car. The car was almost new and should have been free from even minor defects. But I'm aware that X had a previous car which they also used for business. The trade or profession seems to be something that they have done for some time, they were not a novice, and they could have contemplated the car being off the road for some reason beyond their control. For example through accident, repairs or theft. It might not have been unreasonable for Alphera to expect that X had made contingency arrangements for if the car was off the road, such as some form of business insurance. So I don't think that the exclusion clause relating to limiting liability for loss of income was unreasonable.

Even if I were to say the exclusion term was unreasonable, the problem in this case is that I

don't currently find I have the grounds to say Alphera should be responsible for the loss of income X says they incurred. Alphera wasn't aware of the issue initially until April 2023. X wasn't able to supply sufficient evidence that the car wasn't of satisfactory quality when it was supplied, and the onus was on them to do so. An independent report wasn't carried out until November 2023, and I can't see it was shared with Alphera by X. Our investigator shared it in January 2024. I can appreciate that X has told us about the severe impact of their mental health condition on their ability to work, and this stopped them being able to mitigate to an extent. But as I've mentioned Alphera weren't on notice until January 2024. X has shown us detailed personal notes of invoices and their profit and loss calculations, and supplied their bank statements in full. It's clear that they are not getting the same income that they were. But this isn't enough for me to determine what, if anything, X lost out as a result of the issues with the car, rather than something else, such as ill health. And I refer X back to the comments I've made about loss of amenity. So I don't currently have clear grounds to direct Alphera to reimburse X for loss of income.

I've also thought further on X's claim that they lost their home as a direct result of the fault with the car. As I've already explained, X could have informed Alphera if they were in rent arrears and it likely would have offered some support so that they could prioritise other bills such as rent. So as there was an opportunity to mitigate the situation, I'm not intending on increasing the compensation for this.

Other losses and calculating the settlement

X has supplied a diagnostic from April 2023, but it's not clear how much if anything they were
charged for this, particularly as the invoice contains charges for consumables which Alphera aren't responsible for. If X can supply more evidence of the cost of the diagnostic in isolation, rather than the other repairs that were completed, in response to the provisional decision, I may make an award in the final decision.

In December 2024, while the complaint was with our service, Alphera agreed to collect the car and unwind the agreement. It also agreed to make an interim payment of those items not in dispute. Alphera said it received the deposit on a different date from when X said they paid it. In response to this provisional decision X should provide suitable evidence of the date of payment (such as a statement from the issuer showing the transaction). For the avoidance of doubt, I'm intending on setting out that the simple interest calculation should be made from when the payment was made, not when it was received by Alphera.

X said that they paid an early cancellation charge as a result of ending their insurance early, and that came about because the car wasn't of satisfactory quality. X supplied evidence that their insurer deducted an administration charge of £60. So I think X should also be refunded this amount.

I intend to also set out a direction that a breakdown of the settlement calculations is provided by Alphera to X by spreadsheet so that they can maintain their records. This is something that is standard practice following a settlement as a matter of courtesy. But our service will not be involved in checking those calculations for accuracy.

When the car was collected X let us know that they disputed any charges that might be passed on by Alphera for damage caused by fair wear and tear. This isn't something that forms part of this complaint so I'm not dealing with it in this decision. If charges are passed on then X will need to contact Alphera if they are unhappy with that.

Alphera agreed with the provisional decision. X disagreed and repeated and reiterated a number of points they made previously. I've summarised the points here:

- A final decision in line with the preliminary decision would rob them of any dignity. A reasonable person would not expect them, in such a compromised state of ill health, to endure the rigours and costs and significant stress of raising court proceedings, which is why they have gone to considerable lengths to provide case submissions. Their capacity to test Alphera's liability in court could be life threatening.
- The compensation offer is demeaning. It is beyond doubt that they had experienced severe long and enduring pain and suffering as well as life changing impact on their daily way of life which extends to years of suffering. This meant that the compensation should be within the band of greater than £5,000.
- The cumulative impact of the faulty car was both foreseeable and directly consequential. To deny compensation on the grounds that the link is not clear enough risks applying a standard of proof which is closer to a court of law than what is intended under the informal fair and reasonable remit.
- They did not have use of the car to a substantial extent up to November 2023, they stopped using it in July 2023. The investigator recommended that 50% of payments should be reimbursed before July 2023 and 100% after. But they thought 75% of all monthly payments before July 2023 and 100% after was fair. Alphera agreed with the investigator so this amount should be paid as a minimum.
- They paid a deposit of £4,799 on 8 June 2022, and supplied a copy of the invoice, although the agreement was entered into on 1 June 2022. They understood that Alphera made its offer on 14 November 2024.
- The inspection report confirmed that the contract was breached from the start. It is only fair that the final decision should reflect Alphera's unfair treatment and mistakes have caused life changing pain and suffering. The decision did not acknowledge that they sent a plea letter to Alphera in June 2023 emphasising their request to reject the car. As this remained unanswered, they took that as a clear signal that Alphera wished to remain uncommunicative.
- They paid for a diagnostic in April 2023 and only sought reimbursement of the amount paid for that and not the consumables. They took out a recovery policy (at cost) in the event the car broke down when they moved home.
- X reiterated the investigator's opinion that the governing legislation is the superior consideration over the liability clause, which meant that they should be awarded loss of profit. There was an imbalance of power between them, as a sole trader, and Alphera a sophisticated multinational finance provider. The suggestion that they should have arranged separate business insurance assumes a level of sophistication and foresight that is unrealistic for most sole traders acting without legal counsel.
- X said that they also acquired another car at the same time which was intended to be part of their business. So they had built in contingency plans, but couldn't have imagined that both cars would end up being faulty.
- The exclusion clause should be considered unenforceable under UCTA. Even if the clause is enforceable the ombudsman retains discretion to depart from it. The other case that the ombudsman service dealt with is an example where mechanisms to award loss of profit do exist.
- The contract did not have a clause which precluded subletting the car. The car was intended to be used 24/7 and would have been sub-let if it was fit for purpose, perhaps reaching mileage of around 100,000. But it only reached 37,784 so it would be hard to argue that the use of the car was not very impaired.
- They had supplied evidence that they didn't work for 81 days due to issues with the

car. They should not be criticised for thinking that the issues were bulb related.

- Alphera didn't give a payment holiday or breathing space, offer more time or signpost for financial advice. It didn't offer an open door to communicate after the final response. Alphera didn't acknowledge a copy of the inspection report in November 2023 until December 2024 and still took a further three months to collect the car in February 2025.
- The decision was at risk of glossing over the experience of losing a cherished long-term home, because it said that they may have been able to avoid it. They had tried to minimise losses and overheads and made decisions in terms of their health, and the realities of the unfolding financial crises. They had been unable to afford their rent by December 2023 which was made worse by Alphera's insistence on them making the hire purchase repayments for the faulty car. They had acted responsibly by making the decision that they could no longer afford to rent their longstanding home, due to the levels of debt accruing. Had they not taken those steps the level of debt would be much higher.

As X disagreed, I'll now go on to make my final 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'm sympathetic to X's situation and their circumstances. Despite my natural sympathy, I need to be impartial when I look at this complaint. That means I need to consider everything both parties have provided before I make my final decision.

I've attempted to summarise above the submissions I've received from X as I want them to know that I've carefully considered all the points they made and the evidence they provided. However, they've repeated and reiterated a number of points that they made previously, which I addressed in my provisional decision. So, I don't intend to address the same points again. Instead, I've tried to concisely explain why the additional comments and evidence I've received since I issued my provisional decision haven't changed my mind.

I have no doubt that X is extremely unwell, and I hope that they're getting the support they need. Our service is able to consider pain and suffering but the impact that X describes in detail is more than a temporary issue, and I'm not able to determine if it was entirely caused by the fault with the car. They've described at length how there has been a life changing impact on their daily way of life. I think awarding compensation that comprehensively reflects that is beyond the scope of what I can reasonably award, and falls under the heading of loss of amenity. An ombudsman could choose to dismiss such a complaint in its entirety, but I've decided there is an answer I can give here, albeit one that X might not be happy with.

I can appreciate that X might not feel able to deal with taking the matters to court. But I need to stress the importance of getting legal advice before accepting any decision that I make, as it might limit or extinguish the extent to which they could make a further claim if they so decide in future.

I'm conscious that the decision is lengthy, so for ease of reading, I've included headings for the main issues in dispute that I need to decide.

<u>Compensation</u>

I have to explain that I'm in no way critical of actions X took, such as their assumption that the fault was relating to bulbs rather than something more serious; or that they decided to give up their home when they did.

Alphera's initial response to the complaint was issued in May 2023. Based on the evidence it had at that time it wasn't unreasonable considering it didn't have sufficient evidence of an inherent fault.

I've explained that I'm primarily required to consider Alphera's answer up until it issued a final response in May 2023. Alphera hasn't disputed me looking at some post final response events. So for completeness I'm also considering some splinter issues including communication it received from X after the final response.

X has supplied a further copy of their communication with Alphera in June 2023 which they said is an example of how it remained uncommunicative and why they didn't contact it again. They said that it didn't grant them a payment holiday and it didn't meaningfully engage with a request for more time. It didn't refer them for specialist financial advice despite the clear and unfolding crisis.

I had already considered X's contact with Alphera in June 2023, when I made my provisional decision. X's letter, which was copied to the media at the time, asks to exercise the final right to reject. But I don't think there was anything in this letter which meant it ought to have changed its stance from the final response. X could have continued to contact Alphera after the final response, as the impact on their financial circumstances developed, and particularly once they had the report, they weren't prevented from doing so. Overall, I think at times Alphera could have engaged more with the complaint, while the complaint was with our service, and I've already considered this when making a decision on the level of compensation. Had Alphera engaged more then X might have been signposted for specialist support for their debts, and may have been offered some breathing space temporarily. But as I said in the provisional decision, I have to balance this with what it was required to do when looking into a complaint about the car's quality, and the evidence that X supplied it before it issued its final response.

I'm not persuaded that the compensation should be increased from what I set out in my provisional decision, for the reasons I explained, as there isn't any materially new information that I've needed to consider.

Loss of income

X said the investigator had set out that the legislation was superior to the exclusion clause. There was an imbalance of power so the clause should be considered unenforceable under UCTA, or the ombudsman could depart from it. X also said that the other case they had given as an example where mechanisms to award loss of profit do exist.

As I explained in my provisional decision, I don't need to confirm whether the clause is enforceable as that is for a court to decide. And I've explained that we consider each case individually because the other case they referred to will have very different circumstances (and potentially different terms).

But I still think that the clause wasn't unreasonable. The legislation the investigator referred to stands alongside the legislation that I've considered, and I have to take both into account. I've listened to what X said about the imbalance of power. But as a sole trader they did have more awareness than the average consumer, having been in the trade for a number of years. So, I think they could have foreseen a time when the car might be off the road, if not due to a fault, then perhaps another reason such as servicing or accident. And so could

have foreseen the need for additional insurance or a contingency plan to cover this. They explained that they acquired another car on the same date, which was part of the back-up plan, and couldn't have foreseen both being faulty. X said that taking out further insurance would have been too costly. I agree that they have taken some steps to set up contingency arrangements, but that doesn't change what I've said about the terms of the agreement. I stand by what I said about the clause not being unreasonable in my opinion. In addition, X's recent comments call into question whether both cars might have been responsible to some extent for X's loss of income (and the overall impact on their employment), which might also be a question better suited for a court to decide. Unlike a court I can't attribute liability to one business over another because we can only look into the individual complaint. So, I'm not including loss of income or loss of profit in my direction.

Loss of use and impaired use

X said that the car was intended to be sublet and there isn't a clause which excludes that. X has referred to this being a non-issue and I would agree to an extent because the clause hasn't been exercised by Alphera. But I think they have asked me to consider this again because of X's argument that the use of the car was significantly impaired and they expected the car to have covered around 100,000 miles. The agreement contains a clause which is usually found in most car finance agreements in one form or another. It says that X *should keep the vehicle in your possession and control* and *not to permit the vehicle to be used for hire,* which I understand is used to restrict the car from being sub-let. This clause hasn't been exercised by Alphera so I don't need to consider it further.

But even if I accepted that Alphera's agent was aware of the intended use of the cars, as they were both supplied at the same time, and I accepted that X would have covered 100,000 miles it doesn't follow that they should then get a partial refund of payments. It is only fair that X pays for their use of the car, and I think the payments they made towards the agreement are reasonable considering the mileage that has been covered overall.

X argues that the investigator set out a refund for impaired use and loss of use in their opinion, and Alphera agreed with this part on 14 November 2024. Alphera set out its final position and arguments in March 2025 while the case was waiting to be allocated to an ombudsman. Both parties have the right to do that, and an ombudsman considers the whole matter afresh. I'm sorry that will disappoint X, but I can't make a decision on points that I don't agree with.

In addition, X said they had supplied evidence that they didn't work for 81 days due to issues with the car. The evidence referred to was from another business they had a contract with. But I'd need to see sufficient evidence that they didn't work because the car wasn't working at that point, and I haven't seen enough to determine that, given the expert report didn't come about until November 2023. Similarly, I can't fairly determine the loss of use started earlier than November 2023, because that's when the expert report was commissioned. So, I haven't changed my position on loss of use and impaired use.

Other matters

I've seen a copy of the agreement which indicates that it was entered into on 1 June 2022. X has now supplied an invoice which shows that they paid the deposit on 8 June 2022. So, I'm directing simple annual interest to be paid from that date until the date of settlement to the extent that it hasn't already been paid.

X asked for reimbursement of the costs of the diagnostic in April 2023, but they've not provided me with any further evidence of what those costs were. The invoice doesn't show a cost for the diagnostic. In a sub heading on the invoice it says "*rep £0.00*" which might mean

it was conducted at no cost as other work was completed. It charges £145.20 for parts and labour and £29.04 for VAT making a total of £174.24. If X subsequently gets further evidence (for example from the garage setting out the cost of the diagnostic in isolation) then they'll be able to supply that to Alphera for a refund, so I'll include it in my direction on that basis.

X submitted new evidence that they paid for a recovery policy while they moved home. The expert report recommended the car should not be driven and there's no evidence that the car needed recovery during that journey. X has also received the benefit of the recovery policy that they paid for. So, I'm not including this in my direction.

X has asked me to set out that payments not exceeding £5,000 should be made at six-monthly intervals so that they can manage that alongside their health. The payment here isn't at such a level so as to need continuous six-monthly payments, as an interim payment has already been made. X will be able to discuss how and when they receive the settlement with Alphera if they accept the decision, but I'm not including a specific direction about delaying settlement in my decision. I haven't discounted the impact that X says the settlement might have on them, but I think this is a discussion that the parties can come to a suitable arrangement on.

As I don't consider I've been provided with any further information to change my decision I still consider my findings to be fair and reasonable in the circumstances. As a reminder, X doesn't need to accept my decision, if they think they can achieve a better outcome, they will be free to pursue the matter by other means such as through the courts.

I expect that X will be particularly disappointed in the conclusions I've reached about how Alphera has treated them, but I can assure them I've carefully considered all of their submissions in great detail before reaching my conclusion.

My final decision is the same for the reasons set out in my provisional decision and above.

My final decision

My final decision is that I uphold this complaint and direct BMW Financial Services (GB) Limited trading as Alphera Financial Services to do the following to the extent that it hasn't done so already:

- End the finance agreement ensuring X is not liable for monthly rentals after the point of collection (it should refund them any overpayment for these if applicable)
- Take the car back (if that has not been done already) without charging for collection
- Remove any adverse information about the agreement which has been reported to the credit reference agencies
- Refund X the deposit of £4,799 paid on 8 June 2022
- Refund X any payments they made after November 2023
- Refund the cost of the inspection report £950
- Refund the cost of the initial diagnostic subject to suitable evidence of the cost in isolation
- Refund the insurance administration charge of £60
- Pay 8% simple annual interest* from the date of each payment above until the date of settlement. The date of payment refers to when X made the payment.
- Pay £750 compensation
- Provide a breakdown of the settlement calculations by spreadsheet

* If BMW Financial Services (GB) Limited trading as Alphera Financial Services considers

that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell X how much tax it's taken off. It should also give X a tax deduction certificate if they ask for one, so they can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask X to accept or reject my decision before 20 August 2025.

Caroline Kirby
Ombudsman