

The complaint

Mr F complains that Alphabet (GB) Ltd unfairly charged him for damage to a vehicle when he returned it at the end of his hire period.

What happened

In July 2018 Mr F entered into a regulated hire agreement with Alphabet (GB) Ltd in respect of a car. In or around August 2022 he returned the car at the end of the agreement term. Alphabet identified six areas where the car had been damaged beyond normal wear and tear. In September it sent Mr F an invoice for them, as he was liable for them under the hire agreement. The deadline for payment was in September, but Mr F made no payment until October 2022, when he paid £400.

Meanwhile, Mr F had complained about the charges. In September 2022, Alphabet sent him its final response, in which it agreed that one of the damaged areas ought not to have been charged. It maintained that the other five had been correctly charged. Four of those, which between them made up £400 of the charges, are no longer contested. The fifth, two tears in the upholstery of the driver's seat, remain in dispute, and this item was invoiced for £368.97, being the total outstanding balance due after October 2022; this was not paid until March 2023.

Mr F brought this complaint to our service in December 2022. He said that the arrears reported on his credit file had resulted in his mortgage application being declined.

Two of our investigators have considered it and given their opinions, but since the second's opinion supersedes the first's, I will only mention the second one. She said that the dealership had inspected the tears in May 2022 and had concluded that they were potentially due to a manufacturing defect. She said that Alphabet's own inspection agent had described them as a cut and had not elaborated any further, and so she found his evidence to be unpersuasive. On that basis, she concluded that it would not be fair to charge Mr F for the tears, nor to report the arrears on his credit file since November 2022, as they related solely to the charge for the tears. But she thought that Alphabet had been obliged to report the arrears in October, as the £400 had been paid late, and had been charged for damage for which Mr F was liable. She did not agree that Alphabet was responsible for Mr F's mortgage application being declined.

Neither party accepted that opinion. Mr F said it was unfair to expect him to pay any of the charges in September, while they were still in dispute. And Alphabet said that even if the tears were the result of a manufacturing defect (which it did not concede), Mr F was still liable to pay for them, because he could have had them repaired for free under warranty, but had not done so. It rejected his excuse that this had only been because of the covid-19 pandemic, because garages had been deemed to be an essential service and had remained open. And it said that it had been obliged to report his arrears to the credit reference agencies until they had been paid off in March 2023.

This complaint was therefore referred for an ombudsman's 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.

Having done so, I uphold it in part. My reasons are broadly similar to the second investigator's, but I will elaborate a little.

Firstly, I have to acknowledge that the dealership's evidence is inconclusive. It is an email dated May 2022, which says (so far as relevant):

"I can confirm that the damage is consistent with clear pressure points suggesting a potential defect in the manufacturing process."

I bear in mind that under section 19 of the Consumer Rights Act 2015, the burden of proof is on the consumer to establish that any damage is the result of a defect which was present when the goods were hired.

Nevertheless, I think that Mr F has discharged that burden of proof in this case. His evidence is not only that email, but also a video of the damage, showing how the two almost symmetrical tears expand when he rests his hand in the middle of the seat to apply some pressure. I think this demonstrates that the tears are probably the result of him sitting in the driver's seat over time. It is not in dispute that these tears are not ordinary wear and tear, but I would not expect them to appear after only four years; I think that a driver's seat should be more durable than that. Since the 2015 Act says that durability is one of the things to be considered when assessing the quality of goods, I am satisfied on the balance of probabilities that the car was most likely defective when it was supplied to Mr F in July 2018.

Since Alphabet is liable for that defect, I do not think it would be fair for it to charge Mr F for it. I have considered Alphabet's argument that he should have had the tears repaired under warranty while he could, and I think there is some force in it. The terms and conditions of the hire agreement made it clear that Mr F was supposed to keep the vehicle in good repair and have it maintained and repaired; he was also meant to tell Alphabet about any defect as soon as he became aware of it. I think that Mr F failed to comply with those terms, and so I have thought about whether I should reject this complaint for that reason. (I certainly would have done so if I thought that the damage had got worse over time because he didn't repair it, but the tears are still quite small.) So since Alphabet was supposed to provide him with a car of satisfactory quality and free of defects, and it didn't do that, I think that the tears are primarily Alphabet's responsibility, and that it would be fair to let the loss fall where it now lies.

Since Mr F would not have been charged for the damage to the driver's seat but for Alphabet having supplied him with a defective car, I think it is fair to require Alphabet to remove from his credit file any adverse information pertaining to the arrears that were still outstanding after he paid £400 in October 2022. But the £400 was paid late, and Alphabet is not responsible for that, so I'm satisfied that the arrears in September and October 2022 are an accurate record of what happened, and that they have been correctly reported. (It doesn't matter if they were reported retrospectively in 2023 while this complaint was with our service, because they should have been reported contemporaneously.)

Putting things right

I therefore agree with the second investigator's proposed redress, and so I will adopt her recommendation.

My final decision

My decision is that I uphold this complaint in part. I order Alphabet (GB) Ltd to:

- Refund £368.97 to Mr F, and pay him simple interest on that refund at the rate of eight per cent a year from 17 March 2023 to the date of settlement;
- Remove the late payment markers or any other negative information about the hire agreement from Mr F's credit file from November 2022 to March 2023 inclusive.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 5 December 2023.

Richard Wood
Ombudsman