

The complaint

Mr O complains that Alphabet (GB) Ltd is treating him unfairly in its response to his claim in relation to faults with a car it has supplied to him under a consumer hire agreement.

What happened

In late 2020, Alphabet supplied Mr O with a new car under a personal contract hire agreement. The hire term is four years. After he'd had the car a couple of years, Mr O was concerned that the leather on the driver's seat bolster had developed unsightly cracks. At the time the car had covered around 10,500 miles. He says he took the car to the main dealer who told him that the cracking was due to wear and tear, and wasn't covered by the warranty he held.

Mr O contacted Alphabet, who told him that the problems with the seat had most likely been caused by the clothing Mr O had worn. Alphabet said that this was not a manufacturing defect, and that it wouldn't be classed as wear and tear due to the age and mileage of the car. As such, at the end of the lease period Mr O would be required to cover the cost of replacing the seat.

Unhappy with Alphabet's stance, Mr O referred matters to us. He obtained, at a cost of £120, a report from an independent inspector "J" who reviewed photographs Mr O had taken. J's report confirmed the leather was cracking, which was inconsistent with adjacent panels, and considered that this was a result of inferior manufacture.

Noting Alphabet had questioned whether the dispute fell within our jurisdiction, our investigator set out in his assessment why he was satisfied we had the power to deal with the dispute. The investigator went on to say that he considered the evidence indicated Alphabet was not treating Mr O fairly in supplying him with a vehicle that wasn't of satisfactory quality – specifically, that the car seat leather wasn't sufficiently durable.

The investigator proposed that Alphabet reimburse the £120 Mr O paid for the inspection – with interest – along with £250 to reflect the level of distress and inconvenience Mr O had experienced. And he recommended that Alphabet arrange for the seat to be repaired at its own expense.

Alphabet didn't accept the investigator's recommendations. It said J's report had been based on photographs rather than an in-person inspection. It maintained that the dealer opinions it had obtained had said that the seat wear was not a manufacturing defect, noting that the garages in question would have no reason to decline a repair as they would have received payment for any labour in carrying out rectification work. Alphabet added that if it were to pay the cost of repairing the seat, further repairs might be required in future due to its belief that the leather was being worn by external influences such as friction from clothing such as studs, buttons, belts, keys or denim.

Our investigator wasn't persuaded by Alphabet's response to change his conclusions. Alphabet has asked for this review, as it is entitled to under our rules.

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 conscious Alphabet did originally raise a point about whether the dispute was subject to our jurisdiction, as it considered the complaint was about the damage not being covered by the car warranty. Our investigator's assessment found that the dispute was about the quality of the vehicle Alphabet supplied to Mr O under a regulated credit agreement, and that this was a matter we can deal with.

Although Alphabet doesn't appear to have challenged that position, for the avoidance of any doubt I take the same view as the investigator in that I'm satisfied the complaint is one I can deal with, for the reasons previously explained.

Because Alphabet supplied the car to Mr O, a consumer, under a hire agreement, it has certain obligations under the Consumer Rights Act 2015 ("CRA"). The CRA provides that when goods are supplied to a consumer, they have to be of satisfactory quality taking account of the price and other relevant circumstances. The quality of goods includes their state and condition, and aspects including freedom from minor defects, durability and safety.

In considering whether the car supplied to Mr O was of satisfactory quality I've taken into account that the car was brand new, and that by the point Mr O raised his concern it was only two years old and had covered a relatively low mileage. I consider it fair to say that, notwithstanding the clothing a person might wear, there is a reasonable expectation of durability with a car seat, given the amount of day to day use for such an item. If the material used is unable to withstand, for example, the driver wearing denim, that raises a further question over whether the seat covering is fit for purpose.

While Alphabet has provided the opinion of the car dealers as to the possible cause of the cracked leather, this is simply speculation that doesn't appear to have been substantiated by evidence – for example, that Mr O was in the habit of wearing studded clothing while driving. Indeed I've seen no persuasive evidence – only the suggestion – that the cracking on the seats has been caused by any external influence.

I have, however, seen a report from an independent source (J), a consulting engineer and vehicle assessor. That report is based on clear photographs supplied to J by Mr O and notes that while cracking is present on the outside bolster panel, there is no similar damage on the inside bolster panel. J's considered opinion is that this inconsistency points to inferior material being used on the cracked panel.

I see no reason to discount J's report merely because it is based on photographs rather than an in-person inspection of the vehicle. It is a perfectly reasonable way to assess the condition of the seat material. While Alphabet has provided comments from the dealer garages, I'm satisfied that it is reasonable for me both to accept and to place reliance on the independent report compiled by J.

It follows that I find that the car Alphabet supplied to Mr O is not of satisfactory quality as required under the CRA. The evidence provided to me indicates that the section of upholstery where the leather has cracked is insufficiently durable.

That fault is capable of remedy. Although our investigator referred to repair, under the CRA repair means making the goods conform to the contract. It strikes me that replacing the seat in question (at no cost to Mr O) is the appropriate way to make the car conform to the satisfactory quality requirement of the contract.

I've noted Alphabet's concern about its position should it effect a repair. If, after the seat is replaced, the new upholstery sustains damage, and Alphabet is able to demonstrate that this is due to more than ordinary wear caused by Mr O's everyday use of the car, there is nothing to prevent it from seeking to hold Mr O liable for that subsequent damage. But to be clear, I don't consider it fair for Alphabet to seek to hold Mr O liable for the existing cracking.

I fully realise Alphabet didn't have the benefit of J's report at the time it issued its response to his complaint. In addition, I think it was incumbent on Mr O to obtain such a report in order to substantiate his claim. However, now that he has done so, Mr O shouldn't be out of pocket for the cost of demonstrating Alphabet's breach of contract. So I share the investigator's view that Alphabet should reimburse with interest the £120 Mr O paid for this report.

Similarly, I consider it appropriate for Alphabet to compensate Mr O for his distress and inconvenience. He's been caused frustration and difficulty and I think the £250 our investigator proposed is a reasonable sum in recognition of that.

My final decision

For the reasons I've set out here, my final decision is that to settle this complaint, I require Alphabet (GB) Ltd to take the following steps:

1. Within a reasonable timescale – I suggest no more than 28 days after Mr O accepts this decision, though I leave it to the parties to reach mutual agreement – arrange for the driver's seat to be replaced at no cost and minimal inconvenience to Mr O;
2. Pay Mr O £120 in respect of the cost of J's assessment and report, with interest on this amount calculated at 8% simple annually from 6 October 2023 (being the date Mr O paid for the report) until the date Alphabet pays this settlement.

If Alphabet deducts tax from the interest element of my award, it should confirm to Mr O that it has done so and provide him with the relevant tax deduction certificate; and

3. Pay Mr O £250 in recognition of his distress and inconvenience

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 30 April 2024.

Niall Taylor
Ombudsman