

The complaint

Mr R complains that Alphabet (GB) Ltd hasn't treated him fairly when it issued a Default Notice with breach of contract charges for a personal contract hire agreement.

Mr R is represented in this complaint. However, for the sake of simplicity in this decision I have referred to all the submissions from Mr R's representative as being made by Mr R.

What happened

In January 2020 Mr R acquired a car financed through a personal contract hire agreement with Alphabet. The contract was due to end in March 2024. In March 2022 Mr R said he spoke to Alphabet about the potential loss of his driving licence and sought permission for a third party to drive the car. He said this was given. In April he said he confirmed the loss of his licence with Alphabet and requested a travel certificate in the third party's name in order to take the car abroad. Again he said this was given.

In May the car was involved in an accident and the driver was arrested. The car was seized and impounded by the police. On or about 25 May Mr R said he contacted Alphabet to inform them of the accident and the seizure of the car. Around the same time Mr R requested an early termination quote. He says he received it and made payments to end the agreement.

At the end of May Alphabet issued a Default Notice. It said Mr R was in breach of his agreement and if action wasn't taken with respect to the breach prior to 21 June 2022 further action would be taken to terminate the agreement. Mr R made the payments required as per the termination quote.

Mr R complained to Alphabet. He denied being in breach of contract. In its final response Alphabet continued to assert that Mr R was in breach of his agreement, specifically clause 9(m) and 9(d). It said the early termination quote Mr R had received didn't apply. It said: *"Any early termination is at our discretion, and in this case the breach of the contractual terms and conditions deemed this contract will be ineligible for voluntary early termination."* It went on to say that Mr R was liable for the full cost of the Default Notice (£5,556.60). It also charged Mr R for collection of the car, truck recovery, and storage costs/release fees. Alphabet also noted the vehicle had been returned damaged and there would be costs associated with this as per the agreement.

Mr R wasn't happy with this response and brought his complaint to our service. In his detailed view our investigator concluded that Alphabet hadn't done anything wrong when it issued a default and was entitled to recover losses arising out of the breaches of the agreement. Mr R did not agree and asked for a decision from an ombudsman. He made a number of comments in response to the investigator's view to which I have responded below where appropriate.

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 realise this will come as a disappointment to Mr R but having done so I agree with the investigator's findings, and I won't be asking Alphabet to do anything further. I've explained why below.

I trust Mr R won't take it as a discourtesy that I've condensed the complaint in the way that I have. Our service is designed to be an informal alternative to the courts. Given that, my role as an ombudsman is not to address every single point that has been made. Instead, it is to decide what is fair and reasonable given the circumstances of this complaint and the evidence available to me. Where evidence is missing or conflicting, I'll look at what's available and the surrounding circumstances, to decide what I think is most likely to have happened.

Alphabet has said Mr R breached his contract with it. Specifically the following terms:

"9. The events of default referred to in Clause 8 are:

(d) any step which affects our ownership or rights in respect of the Vehicle is attempted or taken (including selling, parting with possession or abandoning the Vehicle, or someone else acquiring any rights over it) or the vehicle is seized or arrested;

(m) any event occurs or circumstances arise which, in our reasonable opinion, is likely to materially and adversely affect your ability to perform all or any of your obligations under, or otherwise comply with, this agreement."

In clause 8 it says:

"8. Ending this agreement early In the event of any default referred to in Clause 9 below, you will be considered to have repudiated this agreement This means we may accept your repudiation and end this agreement after sending you any notice required by law and if (if the default can be remedied) you do not remedy the default by the date which we will notify to you, if we end this agreement, you must return the Vehicle to us in accordance with Clause 10 and pay the sums due in paragraph (e) under Default Charges in 'Key Information."

Breach of 9(m)

Alphabet has said Mr R breached 9(m) because he was disqualified from driving. Mr R has said that he notified Alphabet of his possible disqualification sometime in March 2022. He said he sought clarification on whether Alphabet would object to him giving the car to a third party for driving purposes if his licence were to be revoked. He said Alphabet confirmed that such an arrangement was permissible. Mr R said on or about 18 April he notified Alphabet that he'd given the car to a third party to drive and asked for a travel certificate to allow the third party to drive the car abroad.

In its final response Alphabet said it hadn't been able to locate a phone call prior to 23 May 2022 notifying it of Mr R's disqualification from driving (by which time the vehicle had already been impounded). Alphabet said during the call made regarding the foreign travel certificate for the third party there was no mention of Mr R's disqualification.

I'm satisfied that Mr R's disqualification is an event which would likely materially and adversely affect Mr R's ability to perform all or any of his obligations under, or otherwise

comply with, the agreement.

Alphabet said that in the event it permits a technical breach of the contract (such as Mr R's driving disqualification) it reserves the right to pursue a breach of contract under the same grounds in the future. It said in this case, if it originally permitted Mr R to keep the vehicle following his disqualification from driving (though it hadn't been able to find evidence that it knew of the Mr R's disqualification prior to the vehicle being impounded), subsequent events had led to it terminating the contract.

I've looked at the terms and conditions of Mr R's agreement. In section 12(a) it says:

"if you break this agreement and we decide not to enforce any of our rights against you, this will not prevent us from doing so later."

Mr R has argued that Alphabet cannot rely on 12(a). Citing *Tele2International Card Company SA and others v Post Office Limited [2009] EWCA Civ 9* he said Alphabet is relying on this as a "no waiver" clause. In plain terms he is saying that Alphabet continued performing the agreement without protest after Mr R had informed it he had been disqualified from driving and so it had in effect abandoned the right to terminate the contract for the breach. I do understand the point Mr R is making. We take into account relevant law but we decide cases by considering what is fair and reasonable as statute requires us to do. So what I'm looking at here is whether Alphabet has dealt with Mr R's complaint fairly and reasonably. In this case Alphabet is not relying on this breach solely to terminate the contract.

Alphabet said subsequent events had led it to terminate the contract. It said one of the grounds for this termination is the breach of contract regarding Mr R's disqualification, but, it said, this is not the sole grounds for breach of contract.

It appears that Alphabet gave Mr R the benefit of the doubt initially as it said it couldn't locate a call prior to 23 May regarding Mr R's disqualification. As I've noted above I can't make any findings on any legal principles. I'm satisfied that within the terms and conditions it can pursue a breach of contract again.

Mr R has also argued that it would be grossly unfair to him if Alphabet was allowed to go back on a clear and unambiguous representation based on a "no waiver" clause like 12(a) of the agreement. I'm not disputing Mr R when he says he informed Alphabet in April that he was disqualified but Alphabet is unable to find any record that he did, so I don't agree that there is a clear and unambiguous representation.

Breach of 9(d)

On or about 20 May 2022 Mr R's car was involved in an accident leading to its seizure and impounding by the police. The car had been driven by the third party.

Mr R informed Alphabet about this event on or around 23 May. Irrespective of whether Alphabet knew that Mr R's licence had been suspended I'm satisfied the police seizure of the vehicle means Mr R have breached 9(d). And Mr R accepts that he did.

Default Notice

Mr R has argued that the Default Notice contradicts the requirements set forth in the Consumer Credit Act 1974 Section 88, contents and effect of Default Notice. Mr R has said alphabet *"failed to provide a clear specification of the nature of the alleged breach, neglecting to identify the specific factual allegations that form the basis of the breach of*

contract claim.”

I can see that the Default Notice included reference to the specific terms of the agreement that Mr R has breached including 9 (d) and 9 (m).

Mr R said that he applied for an early termination quote which he received dated 30 May and paid the required amount on 20 June. Alphabet said Mr R applied for an early termination quote online. I've looked at the Alphabet website concerning ending the contract early. It says clearly at the top of the website page before the application form that all early termination quotes are valid for up to 28 days. Although I can't say for certain I think it likely that 28 days applied to Mr R's quote. On the early termination letter the expiry date for Mr R's quote is 27 June 2022. This means Mr R would likely have applied for an early termination quote on 30 May 2022, 28 days before, which is confirmed by the date of the letter. So it appears Mr R applied for an early termination quote after the car was involved in an accident.

Alphabet wrote to Mr R on 27 June. It said

“As per the Default Notice issued to you on 31st May 2022, we outlined the breaches in agreement.

You advised Alphabet (GB) Ltd that you were disqualified from driving. We have addressed this breach under Clause 9 (m).

Furthermore, we received notification from the police that the vehicle was removed from X on 21 May 2022 and this is a breach of Clause 9 (d) of the agreement as the vehicle was seized and recovered to Y Police Pound.”

Mr R signed his agreement in January 2020 and in doing so agreed to be bound by its terms. I think that when he applied for an early termination quote online on 30 May 2022, after he knew the business was aware the car had been impounded by the police, he was likely aware, or ought reasonably to have been aware, that he had breached the terms of his agreement. The Default Notice was issued only one day after the early termination quote was requested. Mr R made his payment for the early termination nearly three weeks later. So he would have been aware when paying that the notice had been issued.

I believe the specific terms were itemised on the Default Notice and I'm satisfied that Alphabet provided a further detailed explanation of the breaches to Mr R. So I don't believe Alphabet acted unfairly when it issued the Default Notice and I won't be asking it to do anything further.

Mr R has disputed his financial liability with respect to the Default Notice. On his agreement under Key Information it says:

“(e) If we end this agreement early due to you breaking this agreement (see Clause 8), you must pay on demand:

- (i) All unpaid Rentals, Maintenance Charges and other sums which were due before this agreement ending*
- (ii) Any Excess Milage Charges payable...*
- (iii) To compensate us for this agreement ending early, all the Rentals which (but for the termination) would have been payable from the date this agreement ends to the end of the Hiring Period less...”*

As I'm persuaded that Alphabet hasn't done anything wrong by issuing the Default Notice I'm satisfied that it is able to calculate the Default Notice charges based on its terms and

conditions. It is also able to charge for amounts it has reasonably incurred for locating, recovering and storing the vehicle based on these terms.

Mr R has said that he made payments against the early termination quote but Alphabet noted missed payments by sending Notice of Sums in Arrears and recording them on his credit file. As I'm persuaded that Alphabet hasn't done anything wrong by issuing the Default Notice and Mr R didn't pay the sums owed by the deadline I also don't think Alphabet has done anything wrong by pursuing the payments and recording any missed payments with credit reference agencies.

Mr R has also questioned the sale price of the car after it was collected and the impact of the sale price on the fairness and accuracy of the financial settlement. This complaint point wasn't brought to Alphabet at the time Mr R raised his initial complaint. If he remains unhappy with how the final charges relating to the value of the car were calculated he can bring a further complaint to Alphabet so that it has the opportunity to investigate.

I understand Mr R will be disappointed with my conclusions. Nothing in this decision prevents him from pursuing the complaint through the courts. Although of course this would come with other costs and risks.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 2 January 2024.

Maxine Sutton
Ombudsman