

In the London Arbitration Centre

LAC Case No. IC5020

The seat of Arbitration is in England & Wales

Under the ADR Procedure for the Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015

In accordance with the London Arbitration Centre Rules of Procedure

Date of Award; 22nd January 2021

Between;-



XXXXXX and XXXX XXXXX

The 'consumers'

And

XXXXX trading as Threads Auto Upholstery

The 'trader'

Final Decision

Introduction

The consumers bring a claim against the trader for failing to use reasonable skill and care in the work carried out by him in the re-upholstery of car seats. The claim amount is £2,905.00. The supply consists of both labour (services) and materials.

The background

The consumers are the owners of a vintage motor car, a 1939 Singer 9HP. I have not been told the value of the vehicle but I understand from my own research that the vehicle may be worth £30,000.00 or more. I also note the consumers have already spent over £60,000.00 on the vehicle prior to the work in question. The value of the vehicle although not immediately relevant is important background.

The claim was presented to the London Arbitration Centre Limited (LAC) on 4th October 2020. In support of the claim amount, I have been supplied with;-

1. A pro forma invoice from the trader dated 18th May 2020 in the sum of £720.00. The description reads labour £500.00 and materials of £220.00. *Make new set of side screens.*
2. An Invoice from the trader dated 1st July 2020 in the sum of £1400.00. The description reads labour £1400.00 for the *Retrim front seats £450 x 2* and *Retrim of rear seat £500.00*. The materials are priced at £335.00. The invoice shows an amount of £335.00 paid by the consumers in advance.
3. An invoice from the trader dated 30th July 2020 in the sum of £400.00. The description reads *Make new plywood trim panels Retrim door cards Retrim interior panels*. There is no price shown for materials but the invoice states '*Materials deposit payed in advance £30*'.

The invoices (and pro forma invoice) appear to show the sums paid by the consumer to the trader in the sum of £2885.00. It is not immediately clear where the additional £20.00 fits into the claim amount of £2905.00.

I have also been supplied with copies of the correspondence between the parties. The first is a letter dated 14th August 2020 from the consumers to the trader which appears as a *letter of claim*. The final correspondence appears to be a letter dated 29th September 2020 from the trader to the consumers in which the trader advised the consumers that the trader had joined the ADR scheme provided by the LAC.

The correspondence is useful in providing further background detail especially in relation to the following points;-

- The distance between the parties. The consumers are situated in Carlisle. The trader is based in Devon.
- The upholstery was carried out separate to the seat assembly which was not included in the work carried out by the trader.
- The seats, door cards and trim were delivered to the consumers on Thursday 30th July 2020.
- Final payment for work done was received by the trader on Friday 31st July 2020.
- Some modern materials were used.

In the *letter of claim*, the consumers complained they were not satisfied with the work. They stated in their *"opinion these seats are of a poor quality, having excess material, making the seats soft, and gathering/puckering to the back of the front seats, piping is also hidden due to excess material, the piping to the door cards is peeling away from the plywood..."*. The consumers asked the trader to do the work *"to a reasonable standard using correct materials, or the cost of the re-worked seats by a professional upholsterer of which we have contacted and shown the seats today both of which say they are wrong with the wrong material used, they are both sending a report to us in the near future"*.

By Letter dated 25th August 2020, the consumers were also complaining *"We are not just unhappy with the excess fabric to the front seats plus the foam used, and stitching the peeling door cards to our singer 9 Hp but also as said to you a few times the excess material and foam to the back seat plus the lack of padding to the underside to the springs which will in no time push through the fabric, due to no padding being in place, also the springs seam not to have been tied for support. Padding was in place to the original rear seat springs as shown in photos."*

The consumers further stated that they were unable to accept the *"10% reduction offered to the labour cost, as the seats are not able to be unpicked and resewn..."* By the date of this letter, it is clear that the consumers had already taken the seats to *"three independent car seat restorers/upholsterers, two of which are family businesses and have more than 50 years experience"*.

The consumers state *"Payment was made to you when you requested it in instalments, we did comment on the seat photos you sent to us asking about what looked like excess fabric but your reply was that it was just shadow in the workshop."*

The points which strike me as a neutral observer reading the correspondence;-

- The apparent absence of alternative quotation(s);

- The apparent absence of any finish specifications;
- The photograph of the seats in the workshop (which I have not seen) which had already alerted the consumers to potential issues;
- Payment to the trader following delivery of the seats on the next day. At the moment, this is difficult to reconcile with the comment by the consumers in the letter dated 25th August 2020 that they “*inspected the seats the following day*”.

The Claim

The claim is supported by a number of reports. I have also been supplied by the consumers with five separate opinions in relation to the work carried out by the trader. Three of them are;-

1. Email dated 14th August 2020 from a Paula at paula@musterinteriors.co.uk . It is not clear if I have been supplied with a copy of the full content. I have a single page only.
2. Email dated 26th August 2020 from billohara1962@gmail.com . The sender has given his full details underneath his comments on the work carried out by the trader as Bill O Hara of Border Upholstery.
3. One page report dated 15th September 2020 from Richard Felton, Master Upholsterer, Automotive Leisure Specialist Upholstery.

Each are of the opinion that the work was not carried out properly. Each has a slightly different take on the work although there is a common theme. Although to be fair, this could be ‘two sides to the same coin’. The common theme appears to be excessive fabric or lack of padding. I don’t have anything about the cost of putting the work right. Mr Fenton passes comment about the experience of the trader from the work carried out and says the covers have been made “*to (sic) big to fit the seats and not fitted correctly and the wrong type of glues have been used..*”. He further states the seats would have to be remade.

4. Report of Mario’s Upholstery dated 11th September 2020. The report provides images and descriptions of the work which are stated to be below standards. Excessive fabric and insufficient foam are reoccurring comments.
5. Report of Transmission Classics dated 15th September 2020. This report is comprehensive in detail (approximately 40 pages) with images and descriptions. The author has not given his name although he has set out his experience and credentials. He appears to have 30 years experience in this type of work. I see the author has given his email address for any questions about the content of the report.

The contractual terms

I should add at this point in this final decision that by email dated 21st October 2020, I asked the consumers’;-

Before I ask the trader to Respond to the Claim form, I would be grateful if you could let me have further information about the claim;-

1. The contract formation

Please let me have details of what you allege were the terms upon which the trader was engaged and provide copies of all documents in support thereof leading up to the agreement with the trader; and

2. The expert reports

Please let me know if the fitted upholstery is still available for inspection, if the trader wanted to engage his own expert to provide a report.

There appears to have been a technical issue (perhaps the email being sent to the spam folder of the consumers email address) because the I next received a telephone call from the consumer, XXXX XXXXX, on 23rd November 2020 asking about the progress of the case. The email dated 21st October 2020 was sent again and this was the consumers reply;-

In reply to your email dated the 21st Oct 2020

The trader was recommended to us through his Mothers partner who we met at the Leyland Museum where he had a bus on display, having had a conversation he highly recommended his partner's son and showed us some of the seats that had been done by threads on his bus which was material, he gave us his card and said when you need an upholsterer please get in touch which we did. When Mr. XXXX came up to see his mother he came along with his mother's partner Mr. Giesty to look at the car and seats, he gave us a price at this time and took the seats and door panels away with him, while he was here he showed us photos of other work he had done on other vehicles, spending four to five hours here been entertained by us [eg food and drink]

The upholstery is still here in one of our room awaiting inspection by Mr xxxxxxxx s representative or yourselves as the seats have never been fitted into the car because they are of no use.

Thank you

Kind Regards Lord and Lady XXXXX

I don't consider this to be a satisfactory answer to the first question about the formation of the contract and the terms upon which the trader was engaged. I consider the question of contractual terms to be of crucial significance not least because the subject matter of the contract is a vintage motor vehicle. Clearly, the cost of the works can vary depending upon the craftsmanship and materials employed. I do not know whether the overall sums paid by the consumers to the trader represent a 'value' service or a top of the range service using the most expensive materials and resources available.

From the answer by the consumers, I must proceed on the basis that there was a contract for the trader to carry out the upholstery but that's about it. I don't know about the terms or the quality of materials or craftsmanship required. I can see the parties had a lot to talk about 'for four to five hours' but very little in terms of the contract under which the work was to be carried out.

The Consumers Reply to the Response

I am taking the unusual step of considering the consumers' Reply to the trader's Response first out of the procedural process rather than setting out the Response by the trader. I have done this because of the significance of the contractual terms to the process of the dispute resolution. For present purposes, I am assuming the consumers do not know that their work detail specification amount to contractual terms under which the supply was made by the trader. I find that after the

trader having set out the significant contractual details in his Response, these have not been countered in any meaningful way by the consumers. I am told by the consumers;-

“We have never changed our minds in the style of the seats they have to be in the original style of the car, as the 82yr old seats were available to Mr XXXXX to copy yet not to look 82 yr old they are meant to look like new seats before they were used in 1939 when the car was first bought, with support yet the seats supplied by Mr. XXXX have no support what so ever because of the excess fabric and poor padding as said in our response to you before....”

It seems like these comments have been written in a hurry. The meaning is unclear. My understanding is that the car seats were to look in a 1939 style but they were to be new car seats made 82 years later. If I am wrong about this it is because of the consumers have not made this clear and it would therefore be equally wrong to hold the trader to definitive terms for the same reason. I don't believe this answers crucial questions with which I am concerned as to the quality of finish required for the price paid.

The case turns further against the consumers when I am told by the consumers in their Reply;-

Mr. XXXXX says that he told us of the foam padding and quality of the like but we are not upholsterers so took him at his word.

This tells me that the trader was left to his own judgement. It is my view that any reasonable consumer undertaking the same work would have set out basic requirements such as;-

- type of fabric
- colour of fabric
- type of fillings (foam or original fillings)
- density of fillings (hard or soft)
- type of finish (old or new)

I think these basic requirements would apply across the board to any refurbishment work undertaken including sofas and chairs not just in a vintage car. A typical saloon car has half a dozen different models. Do I take the work at a high end or low end model ? The fact that this case concerns a vintage car, worth a substantial amount of money, makes the apparent lack of contribution on the consumers case, quite astounding. Some quick research on the internet has provided a price range of £515.00 - £2,600.00 to refurbish seats on a Ford Focus.

https://www.theseat surgeons.co.uk/shop/?swoof=1&product_cat=leather-interiors&product_car_type=focus&brand=ford

I find as a fact that the consumers were quite happy to be led by the trader in what might otherwise be very important features of the finished product. I also find the £1735.00 paid by the consumers for re-upholstery of the seats to 1939 Singer 9HP very modest indeed when compared to the cost of doing the same work to a Ford Focus. The £60,000.00 already paid by the consumers on the 1939 Singer 9HP is of no surprise.

I am further informed by the consumers that;-

Mr. XXXXX is quite right that the amount we are claiming from him is for the poor work that he has been paid for which is the seats £1,735 And door cards £430 a total of £2,165 which we would be happy to receive back as the work on the car has been delayed due to this dispute and having spent a lot of time getting reports etc.

In other words, the claim amount presented to LAC in the sum of £2905.00 is incorrect and the actual claim amount is £2165.00. I had already picked up a calculation error in the sum of £20.00 (see above). Unfortunately for the consumers, this tells me that the proper care and consideration required in relation to very serious matters is lacking to say the least.

Other matters contained in the Reply

The consumers have supplied a further expert report. This report is from Andrew Smith of Smiffy's Auto Upholstery in Devon. The report is undated. It states;-

I was recently sent some photographs from XXXX XXXXX regarding a recent re-trim on their classic car seats, and what my opinion was of the work undertaken. Looking at the pictures it became quite apparent that the quality of workmanship was very poor. The seams were not straight, uneven piping laying incorrectly. The seat covers were very loose indicating that the panels were too big, causing a baggy effect. Incorrect fitting on the corners and not following the lines of the seat. Obviously I am not sure if they were made using the original covers as patterns, if so they should be a perfect fit! Looking at the pictures of the original covers it would have been easy to get the correct pattern from these. If they were patterned, then this has been done very poorly.

These are all very basic errors that any trimmer should easily overcome, and are one of the first things we teach our students. There is no attention to detail and you would not want to showcase these seats in your portfolio.

Overall these seats are not fit for purpose, and should never have been returned to the customer in this condition. I would certainly not want to see these seats in a restoration project.

This being a sixth report from the consumers on the quality of work carried out by the trader.

The traders case

The trader responded to the claim by email dated 13th December 2020. It had seemed to me prior to requesting a Response that the trader should be given an opportunity to appoint an expert to respond to the claim and respond to the expert evidence presented by the consumers. I therefore asked the trader by email dated 25th November 2020 if he wanted to take up the opportunity offered to appoint his own expert. The trader did not do so but stated with the Response that;-

I have decided not to appoint an expert to inspect the seats for the following reasons.

The seats were delivered, trialled, and accepted by the customer over 4 months ago. In this time, the seats have:

- *not been fitted in the car as originally intended*
- *been improperly transported in the customer's car boot*
- *been picked and pulled at by the customers and other third parties*

In light of the current pandemic, I also believe it would be irresponsible to instruct my expert to travel the 670-mile return journey.

The trader is under no obligation to appoint an expert and I do not regard the absence of an expert opinion fatal to his case. I do not accept, however, the trader's reasoning behind his decision not to rely on expert opinion evidence. I believe it is a matter for the expert to qualify his/her report with any of the factors set out by the trader. Further, I do not see why an expert was not able to comment upon the report and photographs relied upon by the consumers. A return journey of 670 miles was not required by the expert. This pre-supposes the expert is situated in Devon or somewhere of equal distance to the consumers.

Notwithstanding, the trader is entitled to have his comments on the expert opinion taken into consideration. Before looking at the trader's case in detail, I make the observation that the 670 miles return journey appears to have taken on much significance in this dispute. I believe unnecessarily so. This is because the trader has not thought through the mechanics of this commercial transaction otherwise the journey would ordinarily be covered within his overheads and should have been included within properly drafted and considered terms of trading.

The trader is supplying what might be described as a bespoke service. It seems inconceivable that such work can be carried out from a distance with only photographs or images being used to convey the progress. It seems to me that the trader ought to have required as part of his service, terms and conditions which provided, for example, that the consumers have an opportunity to inspect the seats at his workshop and if such opportunity is not taken, then there would be a call out charge, in the event remedial work are identified after delivery. This is a business suggestion only. It might not be suitable for the trader's own business model.

Furthermore, in view, it would be much more beneficial to the trader and the customer, if the car seats could not be fitted as part of the same service. I might expect an extra charge for fitting the car seats but otherwise the next tradesman might have his own views where the seats are not fitted as part of the original contract to re-upholster the car seats. Certainly, this might have eliminated some aspects of the dispute in this case. It just seems odd that upholstery of car seats can be assumed to have been completed before the seats have been fitted. If there is a problem with the fitted car seats, who does the customer blame, the seat upholsterer or the seat fitter? These can be really difficult questions.

I do not believe the comments set out in the trader's letter to the consumers dated 17th August 2020 in which he states that he included "*Free collection/delivery to customers address – 670 mile round trip*" is anything to his credit. If delivery and collection are included in his service, then these overheads need to be covered somewhere in his operations, otherwise he cannot have a viable business. Without a viable business, the trader will have inevitably have a lot of dissatisfied customers.

I am led to the conclusion that the offer of a 10% refund of the total labour charge was made by the trader in his letter dated 17th August 2020 precisely because of the sheer distance between himself and the consumers and that the cost would not be covered within his overheads. In the letter of claim, the consumers were still asking for *repeat performance* in the alternative to compensation. I should make clear 'repeat performance' is one of the remedies available to consumers under Section 55 of the Consumer Rights Act 2015 ('the Act') assuming the trader did in fact fail to use reasonable skill and care.

The documents relied upon by the trader in the Response.

- A detailed Response

- Copy correspondence and messages exchanged between the parties both before and after delivery of the seats (including a 1939 magazine review of the vehicle).
- Copies of invoices to the consumers.
- A full copy of all the invoices and receipts for materials including a foam specification sheet.
- Detailed photographs of the work carried out against photographs of the replaced seats.
- Copies of his qualifications

The traders Response

I propose to extract and comment upon those points made by the trader which I consider relevant to the resolution of the dispute;-

All materials used were agreed with the customer beforehand Including the use of vinyl rather than the more expensive original leather.

I reupholstered the Singer seats using traditional methods to maintain the originality of this vintage car. The customers appear to have changed their desired outcome, now wanting instead the retrimmed look of a modern car. This was not agreed as part of the original contract formation.

I find as a fact that these submissions by the trader are correct on the basis of the admissions by the consumers.

The trader has broken down the charge to the consumers;-

The description of claim states a full refund for the upholstery and material of the Singer seats alone not the door cards and interior trim.

Charge for seats alone:

(Please refer to final invoice #007 Singer seats dated 01.07.20)

Labour for seat retrim = £1400

Seat materials deposit paid in advance = £335

Total cost for seats = £1735

The customer appears to have added the cost for door cards and interior trim in their claim as well (£430)

*Charge for door cards and interior trim *For information only – Not included in XXXXX's claim*:*

(Please refer to final invoice #008 Singer door cards and trim dated 30.07.20)

Labour = £400

Materials deposit paid in advance =£30

Total charge for door cards and interior trim = £430

I accept as correct the trader's submission that the amount claimed (£2905.00) is excessive and inaccurate. I am not sure if the trader's submission that the door cards and trim are not included within the claim by the consumers. In the *letter of claim* the consumers complained "...the piping to

the door cards is peeling away from the plywood...". If they are intended to be included then I find that the door cards and trim appear to be a minor issue in the dispute on the basis of the report by Bill O'Hara of Border Upholstery dated 26th August 2020 states; "...the only thing that would be salvageable would be the door cards." If they can be reused, I do not consider them to be a total loss.

Documents relied upon by the trader

I am impressed with some of the documentary evidence supplied by the trader in support of his case. I want to draw out the *Certificate of Competence* dated 10th April 2019 in *Classic Seat Course*.

I am not impressed at all by the email evidence supplied by the consumers dated 29th December 2020 from the email address smiffysupholstery@gmail.com about the authenticity of this certificate;-

Yes John did attend a course with us, but it was only a 2 day classic seat course, which is more of a taster course – usually if a student enjoys this course and would like to learn all aspects of auto upholstery then they usually book a 10 day master class. John was booked through Upholstery Courses UK via Sam Gibbs/Jacque Lawson who would have made all the necessary arrangements.

I find it incredible and difficult to believe that a Certificate of Competence can be issued from having attended a taster course. Far from disparaging the trader, I find that the training course provider, if what they say is correct, have a lot of explaining in terms of the skills that they have verified. I cannot believe it proper for any competent training provider to issue a Certificate of Competence simply by attending a taster course.

I am also impressed with the detailed record keeping the trader has been able to rely upon. This is in terms of the pre contract discussions, receipts for materials, manuals and specification sheets consulted by him and photographs of the work as it progressed against the photographs of the seats removed.

I do not find compelling, however, the argument by the trader that the consumers were satisfied with the upholstery when it was delivered. The right to reject under Section 20 of Act is 30 days. Granted payment followed the next day but I am unable to read any meaning other than the observations made above earlier.

The trader's comments on the expert report relied upon by the consumers

Muster Interiors

The trader does not comment upon vinyl allegedly not being secured enough other than state it was secured using traditional upholstery tacks. He says the excess fabric would not be visible once fitted. He says there was *one minor water mark was visible on delivery*.

O'Hara Upholstery and Car Trimmings

The allegation is that the fabric is puckered in places and there is a lot of fullness due to lack of padding. I don't believe the trader has dealt with this allegation in his comments.

The Specialist Upholstery Company

I note the trader's comments about this expert seeing only photographs. I also believe it is not possible for the expert to pass judgement on the experience of the trader just by looking at the photographs. This is because skill and care has no relationship with experience. An experienced

trades person might fail to use skill and care and vice versa an inexperienced trades person might use skill and care.

Mario's Upholstery

I make no observations either way.

Transmission Classics

I note what the trader tells me in relation to the original front seat base;-

It appears that the 'Transmission Classics' report has tried to pass off an old front seat base (see photo in their report) as the front seat base from XXXX's car. The Singer front seats supplied to me by the customer were red leather (not the blue/green leather as shown in photo) and did not have steel coil springs fitted. Instead, the front seats were fitted with a combination of foam and straw. Please refer to photos showing front seat base construction

If this is correct then it would be difficult to properly consider the remaining contents of the report.

Summary of findings

I am not told by any of the experts consulted by the consumers whether the price paid by the consumers is reasonable for the work carried out. I am not told by the experts what might be a reasonable charge for the upholstery of the car seats. I don't have any detail about the range of material or craftsmanship which can be used on this type of contract.

Six traders might do the same job in six different ways. I am not convinced one trader's preferred method is better than the next. I do say, however, whatever method is employed by a tradesman, this is very much dictated by requirements of the contract. In this case, I find there was simply no such requirement or direction from the consumers. They now have a finished product with which they are not happy.

I am placing greater emphasis on the matters set out in the letter of claim because it is at this point that the consumers have decided that they are not happy with the finished product. This was not a case of the finished product being examined by an expert and the consumers making a complaint on the basis of the findings of the expert. What has happened is that the consumers have decided they do not want the finished product and have then consulted six other tradesman afterwards to tell them as much.

On the other side, the trader has presented a well organised and convincing Response to the claim. I also want to reiterate that some of the opinions passed against the trader are unfair and out of place. One is the experience attributed to the trader just by looking at photographs. Another is undermining a Certificate of Competence.

Like I say, I am placing my emphasis on the matters set out in the letter of claim. In that letter the consumers asked for repeat performance. I propose to grant relief to the consumers on that basis in accordance with the relevant provisions of the Act. Under the provisions of the Act, I must find that the trader failed to use reasonable skill and care contrary to Section 49 of the Act. I do so on the basis that the foam used by the trader did not provide the support as warranted by the GB Foam specification sheet. This is no fault of the trader but by reason thereof he is liable in law to the consumers.

Likewise, the excessive fabric might not have been visible once the seats are fitted but I can only make this assumption because the seats were not fitted. I therefore accept what the consumers

say in the letter of claim. Like I say, I don't find a big issue on the door cards which could not have been resolved by repeat performance. I believe, overall and on the balance of probability, that the trader has failed to use reasonable skill and care.

I must accept as correct the overall theme which has come out of the reports of excess fabric and insufficient padding. Even the trader's concession that there was one watermark on delivery pushes the quality of work into a legal zone which brings the Act into play.

It is unfortunate that the trader did not or was not able to carry out repeat performance which *may* have satisfied the consumers. I say *may* because I find that the consumers have changed their mind about the finished product after leaving the choice of materials entirely to the trader.

Section 58 of the Act -Powers of the court

(1) In any proceedings in which a remedy is sought by virtue of section 19(3) or (4), 42(2) or 54(3), the court, in addition to any other power it has, may act under this section.

.....

(3) Subsection (4) applies if—

(a) the consumer claims to exercise a right under the relevant remedies provisions, but

(b) the court decides that those provisions have the effect that exercise of another right is appropriate.

(4) The court may proceed as if the consumer had exercised that other right.

Section 54(3) states;-

(3) If the service does not conform to the contract, the consumer's rights (and the provisions about them and when they are available) are—

(a) the right to require repeat performance (see section 55);

(b) the right to a price reduction (see section 56).

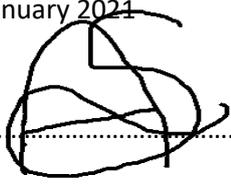
On the basis of the above provisions, I find that that the service provided by the trader did not conform to the contract and therefore the consumers are entitled to the repeat performance requested by them pursuant to Section 54 of the Act and this has not been made available to them and in accordance with the powers set out in Section 58, I am ordering a price reduction.

The next question is to determine the amount of the price reduction which is fair and reasonable. I am not going to order the trader to repay the amount of the claim or the amount of the claim as varied by the consumers after considering the Response from the trader. This would be unjust. I have focused my mind on the £1400.00 labour charge and £335.00 for materials and the £400.00 labour and £35.00 for the door cards.

The order which I believe is just and equitable in the circumstances of the case is that of a price reduction in the sum of £500.00. In my view, this is just and equitable in the circumstances of the case. No reduction is made for the materials purchased by the trader. The reduction of £500.00 is against the labour charged to the consumers.

I HEREBY ORDER the trader to pay the consumer £500.00 within 28 days of the date of this final decision.

Dated 22nd January 2021

Signed..........

Ayub Sadiq

ADR Official appointed by the London Arbitration Centre Limited