

The complaint

Mr S complains that Motability Operations Limited didn't provide the service it should have. He says this meant he was unable to secure a vehicle through the Motability Operations scheme (the 'Scheme') for an extended period of time which had a major impact on his life.

What happened

Mr S visited a dealership in February 2021 to look for a car that was suitable for his needs. The dealership agreed a £200 discount on the advance payment reducing it to £3,799. Mr S paid a holding deposit to the dealership of £500.

Mr S has explained he has autism and became aware of his eligibility for the Scheme. Under the Scheme an eligible claimant can exchange their qualifying mobility allowance for a car (the mobility allowance also covers the costs of insurance, breakdown cover, tyres and servicing and MOTs). Mr S applied for the Scheme on 9 February 2021. Mr S also decided to apply for a grant from a charity after it was suggested as an option. There were issues with receiving the grant for the car Mr S had chosen and in regard to the extras he wanted to assist with his needs. Because of this an alternative car was suggested for Mr S and he agreed to this. In April 2021, Mr S's application for the car was approved and he received a letter from the charity saying he had been awarded a £3,999 grant.

Although the dealership had assessed the car as suitable for Mr S's needs, the charity required him to undertake an extended test drive in a demonstrator model. Mr S says he wasn't given any information about any liability that might arise from the test drive and instead was told it was being provided as a gesture of goodwill.

Mr S test drove the demonstrator model on 5 and 6 May 2021 and unfortunately had an accident. This accident was subsequently accepted to not be Mr S's fault. The charity contacted Mr S to say a block had been placed on his account while the insurers reviewed the situation. This remained in place until September 2021.

Motability Operations says it placed a block on Mr S's account at the request of the charity. It says this was to prevent the handover of the car happening before the issues with the charity had been resolved. Motability Operations accepts that there was a call from the charity to request the block be lifted in September 2021 and said at the time Mr S's application was still pending and he would have needed to cancel this first application before being able to place an order for a different vehicle. Following the identification that the block should have been lifted, this happened in August 2022 and the application was cancelled and Mr S's deposit refunded.

Our investigator upheld this complaint. He didn't think that Motability Operations did anything wrong when it was initially asked to place a block on Mr S's account. However, he thought it made a mistake by not lifting the block in September 2021. He considered how Mr S could be put back in the position he would have been had the mistake not happened. He noted the car Mr S had wanted was no longer available through the Scheme but given the circumstances he thought Motability Operations should still source this car through the Scheme for Mr S.

Our investigator also considered the impact the delay in the block being removed had on Mr S. He noted Mr S's autism and understood this meant the issue had an additional impact on him. Because of this he recommended that Motability Operations pay Mr S £900 compensation. He also noted the delay in Mr S's deposit being refunded and recommended that Mr S be paid 8% interest on the deposit amount from 10 September 2021 to 4 August 2022. Our investigator didn't think that Motability Operations was required to cover the cost of Mr S's hire costs or any costs associated with his delayed education.

Motability Operations agreed to the £900 compensation but said it shouldn't be required to pay interest on the deposit amount. It said that the car Mr S had previously wanted was manufactured by a company that was no longer part of the Scheme and so this car could no longer be provided. It said Mr S was welcome to apply for another car on the Scheme.

Our investigator responded to Motability Operations' comment about the interest on the deposit amount. He said it wasn't unreasonable that a deposit would remain in place while the application was still in the system but thought the extended period involved in this case meant the deposit was held for longer than was reasonable. He noted that the consumer was required to cancel the application but thought Motability Operations should have taken some responsibility in this case and should have informed Mr S that the car he applied for was no longer available. Because of this he agreed that Motability Operations wasn't required to pay interest on the deposit amount but instead said the compensation should be increased by £50.

Mr S didn't think the redress offered was sufficient. He said that Motability Operations should be responsible for all the damages in this case which included his travel costs and loss of a year's education and costs of retaking exams. He said that all damages needed to be paid to put him back in the position he would have been but for the mistreatment he had received. Mr S said that he had contacted the dealership in October and November 2021 when his application manager still wasn't able to access his account due to the block. He then made contact in February 2022, 21 July 2022, and 25 July 2022, and his order still wasn't able to proceed. He said he couldn't be expected to do any more and that he should be refunded all costs incurred due to the extended period the block was applied.

My provisional conclusions

I issued a provisional decision on this complaint. My findings are set out below:

There are several parties involved in the issues that have led to Mr S's complaint. Mr S has raised concerns about the actions taken by the parties and the service they have provided. He has explained that he has autism which means the lack of a suitable vehicle and the anxiety caused by the ongoing complaint has had a material impact.

I am sorry to hear about the experience Mr S has had, the impact this has had on his studies and the anxiety he has been caused. However, I need to be clear that this complaint is about Motability Operations and so this decision only considers the actions Motability Operations is responsible for or can reasonably be held responsible for. I also want to explain that the Financial Ombudsman Service is not the regulator but an informal dispute resolution service. My role is to consider each case based on its individual merits. I will take relevant law, regulations, and guidance into account, but my decision is based on what I consider fair and reasonable given the unique circumstances of the complaint.

Mr S's grant was approved by the charity in April 2021 and a hire agreement was set up with Motability Operations. Mr S had an extended test drive in the car and unfortunately had an accident while on the test drive. Because of this the charity contacted Motability Operations to place a block on Mr S's application. I note Mr S's comments about the test drive being a

gesture of goodwill, the grant already having been agreed and that the accident wasn't his fault. If he has concerns about how the charity acted in response to this issue these should be raised separately with it, and I note a complaint has been dealt with separately in regard to the insurer. So, coming back to the actions of Motability Operations, given the contact from the charity asking for a block to be applied to the application and the reasons provided for this, I do not find that Motability Operations did anything wrong at this stage by applying the block.

There was then a period when the charity was investigating the situation to decide its position regarding any grant. To be clear, the charitable grant and the hire agreement while linked in regard to Mr S's initial application, weren't interdependent. By this I mean that Mr S could have made an application for a car through the Scheme without a charitable grant.

The charity has said that it contacted Motability Operations in September 2021 to say the block should be lifted. Unfortunately, there isn't a copy of the call available of when this request was made but, it has been accepted that this happened and so I find it reasonable to accept that action should have been taken at that time to remove the block. Unfortunately, this didn't happen, and Mr S's account remained blocked until August 2022. At this time Mr S was contacted to say he could continue with his application. I find this was a mistake made by Motability Operations and it meant that Mr S was prevented from getting a car under the Scheme for 11 months longer than he should have been.

Compensation

Motability Operations has said that Mr S wasn't financially disadvantaged because of the delay as he was still receiving his mobility allowance. While I accept this point, the delay in the block being removed meant that Mr S was unable to access the Scheme for around 11 months longer than should have been the case. The Scheme offers a package including the use of the car, servicing, insurance and MOTs and this will have been particularly beneficial to Mr S given his needs. So, while Mr S was still getting his mobility benefits and so could pay for alternative transport, this would have resulted in incremental bookings / costs, involved extra work and planning and not provided the flexibility or benefits having a car through the Scheme would provide.

Additional to this, Mr S had spent a considerable amount of time on his original application, including identifying a vehicle that was suitable for him. He'll no longer be able to get the vehicle under the Motability Scheme as it's a vehicle that's no longer offered. He will, in other words, have to start a fresh application if he wants to apply now the block has been lifted. The delay for this is a large part due to Motability Operations.

Taking the above factors into account, I think that Motability Operations should pay Mr S compensation of £1,000. While I understand Mr S is likely to consider this not enough, I think it is reasonable taking into account the mistake Motability Operations made and the direct impact of this on Mr S.

Based on the evidence we've received to date I do not consider that Motability Operations is liable for the costs Mr S has noted in terms of his ongoing education and exam retakes. While I understand the impact this issue has had on Mr S and that it has distracted him from other parts of his life, having considered the contact he had with the dealer and the limited contact with Motability Operations I don't think this supports the claim that this issue took such time that Mr S was unable to continue with his studies or that this was the sole reason for any exam retakes. Also, the limited contact meant that Motability Operations was unaware of the issue and so didn't have any opportunity to mitigate it. That said, the overall impact of this issue has been considered and reflected in the compensation award of £1,000.

But, if evidence is provided to show that the mistake made by Motability Operations is the only reason why Mr S needed to retake exams and that this resulted in a lost year of education (the timing of this and the amounts involved) this can be considered further.

New car

While Mr S was able to access the Scheme in August 2022, by this time the car he had initially chosen which included premium plus and it had been agreed sensory lighting could be added (subject to certain requirements) was no longer available. I agree that Motability Operations should only be required to offer cars from within the Scheme and if Mr S no longer wishes to use the Scheme then that is his choice.

In the event Mr S wishes to lease a car through the Scheme, Motability Operations should prioritise his application and work with him (directly or through the dealership) to identify a car that best suits his needs (including the features of the premium plus package and sensory lighting that was previously agreed unless these are superfluous given the car he has chosen).

Discrimination

Mr S says that he feels Motability Operations has discriminated against him. While we take any allegation of discrimination seriously, I should first explain that we are an informal dispute resolution service, meaning we don't have the power to decide whether or not Motability Operations is in breach of the Equality Act 2010, as only a court has the power to do this. What we can do is take relevant law and regulation into account when deciding what's fair and reasonable in the circumstances of a complaint.

Mr S feels that Motability Operations didn't take into consideration his needs and how the correspondence and treatment of his complaint has affected him. I can understand why Mr S feels this way. However, I can also see that once Mr S explained his needs to Motability Operations it responded in a positive way. So, in this case, I agree that there are lessons for Motability Operations to learn in terms of how best to deal with customers with autism or other complex needs. But, overall, I think the compensation award of £1,000 is enough to reflect the issues that Mr S has raised.

Mr S responded to my provisional decision. He said that he wanted Motability Operations to provide him with the same car that was originally agreed. He said that this should happen outside of the Scheme. He believed Motability Operations had done this before for other customers and by not providing this option to him he was being discriminated against. Mr S reiterated that his education had been disrupted by him having to deal with this issue and sent information about this. Mr S raised other concerns including a threatening letter he had been sent not being referenced in the provisional decision and that the initial block on his account (placed by the charity) was for too long. He also didn't think the amount of compensation was sufficient.

Motability Operations responded to the provisional decision. It agreed to pay £1,000 compensation for the distress and inconvenience caused to Mr S. It noted that as Mr S had requested his personal details be removed it would need assistance from this service in facilitating this payment.

Motability Operations said that if Mr S wished to re-join the Scheme it would invite him to work with the dealerships to ascertain which vehicle would be most suitable for his needs. It said that it would ensure his application was processed as quickly as possible but noted that if Mr S applied for a new vehicle this would be subject to the manufacturer's lead times.

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 have listened to the calls between Mr S and our investigator made in response to my provisional decision and the additional call Mr S has provided. I have also looked again at the information Mr S has sent and considered the comments provided by Motability Operations. Having done so the conclusions I set out in my provisional decision haven't changed.

I appreciate that Mr S doesn't consider compensation of £1,000 to be sufficient. But having taken into account the mistake made by Motability Operations, the impact this has had and what I can reasonably hold Motability Operations responsible for I find that £1,000 compensation is reasonable.

I understand that Mr S thinks he should receive redress to reflect hire car costs while he was locked out of the Scheme. I considered this and in my provisional decision noted that Mr S *was still getting his mobility benefits and so could pay for alternative transport. So I do not find that hire car costs need to be refunded. However I also noted that using alternative transport would have resulted in incremental bookings / costs, involved extra work and planning and not provided the flexibility or benefits having a car through the Scheme would provide* and the inconvenience and upset this caused has been reflected in my assessment of compensation.

I understand that dealing with this issue meant Mr S was distracted from other parts of his life and I do not underestimate the stress and upset he has been caused. But I do not find that I have evidence to support him losing a year's education solely due to this issue and I do not find that the contact he made with Motability Operations during the period when his account was wrongly on hold was such that it would have suggested Mr S wasn't able to focus on anything else, or that it gave Motability Operations reasonable opportunity to mitigate any issues. While I do not find that Mr S's claim for costs of education should be upheld, I have factored the overall impact his issue has had on him into my assessment of compensation.

Mr S said that no mention was made in my provisional decision of the threatening letter he received. I note his comment and while I didn't make specific mention of this I did consider how Mr S had been treated and took into account the impact this had when assessing the amount of reasonable compensation.

As I set out in my provisional decision we take any allegation of discrimination seriously, but we don't have the power to decide whether or not Motability Operations is in breach of the Equality Act 2010, as only a court has the power to do this. Mr S asked that I specifically reference that he feels Motability Operations has violated the Equality Act 2010. I understand his strength of feeling in regard to this and it will be his decision as to whether he takes this further. As I previously noted I think that there are lessons for Motability Operations to learn in terms of how best to deal with customers with autism or other complex needs. But, overall, I think that the compensation of £1,000 that I set out in my provisional decision is reasonable in regard to the issues raised.

I understand that Mr S wants Motability Operations to provide him with the same car that was agreed in his first application. Unfortunately, Motability Operations has explained that the manufacturer is no longer part of the Scheme. Motability Operations runs a Scheme that provides many advantages for the user and there are different cars available. While I expect Motability Operations to work with Mr S if he wishes, I do not require it to provide a car

outside of the Scheme. I say this because I find it reasonable that Motability Operations is required to provide a remedy that is within its usual business operations as this is something it can reasonably control and deliver.

Mr S has said the additional features he had agreed as part of the negotiation for his initial vehicle mean that he needs to have a vehicle by the same manufacturer. I appreciate that due to Mr S's autism it is particularly important that he has a car with an operating system he is familiar with. The information provided from his autism expert further explains that people with autism often experience elevated anxiety and can experience sensory processing difficulties which impact on what they need in their environment. It also notes Mr S's chronic back pain. I note this comment and I set out in my provisional decision that we would expect Mr S to receive the features he had previously agreed, to the extent this is possible. However, I do not find that this means Mr S has to have a vehicle from the same manufacturer, rather that the dealership should work with him to identify the best fit to suit his needs, taking into account the previous additional requirements he has raised and had agreed.

Motability Operations has said that if Mr S wished to re-join the Scheme it would invite him to work with the dealerships to ascertain which vehicle would be most suitable for his needs. It said that it would ensure his application was processed as quickly as possible but noted that if Mr S applied for a new vehicle this would be subject to manufacturer lead times. I find this reasonable, and I would expect Motability Operations to provide Mr S with any assistance it can to ensure the application process is both smooth and completed in a timely way.

Putting things right

Motability Operations should take the actions set out below:

1. Pay Mr S £1,000 for the distress and inconvenience caused to him by losing out on the benefits of the Motability Operations scheme. This amount is based on a consideration of the specific nature of Mr S's needs and the subsequent impact this loss of benefit will have had.
2. In the event Mr S wishes to lease a car through the Motability Operations scheme, Motability Operations should ensure his application is processed quickly and support Mr S working with the dealerships to identify a car that best suits his needs. It should also ensure that the car includes the features that had previously been part of his vehicle choice or equivalent features to deliver the same outcome unless these are superfluous given the car he has chosen.
3. If Mr S chooses not to use the Scheme that is his choice, and part 2 of the redress becomes redundant, but Motability Operations is still required to pay the compensation noted above in part 1.

My final decision

My final decision is that I uphold this complaint. Motability Operations Limited should take the actions set out above in resolution of this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 14 September 2023.

Jane Archer
Ombudsman