

## **The complaint**

Mr C has complained about the quality of a vehicle he acquired under a hire agreement with Motability Operations Limited (MO).

## **What happened**

The circumstances of the complaint are well known so I'm not going to go over everything again in detail. But in summary, Mr C acquired a new vehicle under a hire agreement with MO in August 2019. He made an advance payment of £19,203. And the agreement set out that during the minimum hire term there'd be 65 rental instalments of Total Allowance payable at four weekly intervals commencing on 14 August 2019. The vehicle was adapted so that it was wheelchair accessible. But there was no advance adaptation rental payment set out on the hire agreement.

Shortly after acquiring the vehicle there were issues with the wheelchair lift. From September 2019 onwards the lift repair company visited Mr C several times for repairs. An independent report was carried out in March 2021 that highlighted there was a fault with the lift. I understand the lift was replaced. MO sent a response to Mr C's complaint in September 2021 and gave him £800 compensation. MO's notes indicate Mr C was happy with this.

Mr C continued to have several issues with the lift on the vehicle and he agreed to further repairs. MO gave Mr C a further £475.30 by way of travel refunds (£375.30) and compensation (£100). It also paid for taxis for Mr C to be kept mobile. Mr C complained again to MO in March 2022, and he said he wanted to end the agreement. MO communicated with Mr C over the next few months and sent another final response in November 2022. MO agreed that Mr C could end the agreement due to the ongoing faults. MO highlighted it had supported Mr C through the repairs and kept him mobile through funding taxis in excess of £8,000.

Mr C referred his complaint to our service and our investigator looked into things. She said it doesn't seem to be in dispute there was a fault with the lift. And she highlighted the impact of the fault on Mr C. She said the faults with the vehicle caused Mr C serious disruption to his life over a sustained period. She thought he'd suffered prolonged distress and inconvenience. She recommended MO compensate Mr C a further £1,200. She also thought it should end the agreement; collect the vehicle; refund on a pro-rata basis the advance payment; and remove any adverse information from his credit file.

I can't see we received a response from Mr C. MO didn't agree with the proposal. In summary, it said:

- It gave Mr C the option to end the lease and apply for a new vehicle or cancel his agreement and leave the scheme with his allowance being reinstated so he could make alternative arrangements. It said this was offered from as early as March 2021.
- It had already provided Mr C with £900 compensation; £375.30 for loss of use; and by the point of its response to the assessment, a private taxi limit up to £12,370. It also said it had recently been told Mr C is a director of the taxi company that it had been reimbursing.
- Mr C hadn't interacted with it, leading to it to close cases.
- It accepted there had been major problems with the lift, but it's at every opportunity attempted to repair the fault and it arranged a full replacement on one occasion.
- There was still no new vehicle ordered by Mr C despite having ample time.
- Mr C covered over 40,000 miles in the vehicle which it felt demonstrated he was able to use it.

I issued a provisional decision that said:

*I want to acknowledge that whilst I've summarised the events of the complaint, I've reviewed everything on file. If I don't comment on something, it's not because I haven't thought about it. I'm focussing on what I consider are the key issues. I'm issuing a provisional decision so that I can set out my position and give the parties a chance to respond before I decide whether to issue a final decision.*

*I've not been supplied a copy of the September 2021 final response letter. MO hasn't objected to us considering events before this. And it hasn't said anything about whether or not our jurisdiction to consider the complaint up to that point has been impacted. But from what I can see, Mr C accepted the resolution offered in September 2021. So for the purposes of this complaint, I'm going to focus on what happened afterwards when deciding if MO needs to do anything to put things right for Mr C. But I think it's important to also note I'm only going to consider what happened up to the point MO issued its final response letter in November 2022, because this relates to the events it's had the chance to consider. If either party disagrees with this approach, they can let me know in response to this provisional decision.*

*Mr C acquired the vehicle under a regulated consumer hire agreement and our service is able to consider complaints relating to these sorts of agreements.*

*It's not in dispute there have been several issues with the lift since inception of the agreement. Those issues remained from September 2021 to November 2022 which, as I've said above, is the period I'm focussing on. Repairs and a replacement haven't resolved things. MO agreed to end the agreement and reimburse Mr C pro-rata. In all the circumstances, I think that's a fair offer. I don't think I need to go over that again.*

*It seems like the only thing left in dispute is whether MO needs to pay Mr C compensation and, if so, what a fair amount is.*

MO said to our investigator that throughout the agreement it regularly gave Mr C the option to end the lease early and apply for a new vehicle. I asked for evidence of where it had done that because it wasn't clear from MO's notes it had done that as far back as March 2021. MO responded to reiterate it gave Mr C the option to end the lease on several occasions and that specifically this was agreed in November 2022. I can see this was offered in its final response, so I agree with what MO has said. And to be fair to MO, from looking at the notes, it looks like the option was also discussed back in June 2022, and that MO reiterated it was available in September 2022 as well. But I can't see it was offered back in March 2021.

I think MO has done a lot to try to help Mr C. Ultimately MO isn't a vehicle repairer so it's to a large extent reliant on others. It's arranged several repairs for Mr C. But as the supplier of the goods under the hire agreement it's responsible for dealing with a complaint about the vehicle's quality. Mr C has explained how embarrassing it was for him for the lift to not work while he was out and about. He said it caused him a significant amount of distress and inconvenience. I'm very sorry to hear about the impact the matter had on Mr C. I can't imagine how he must have felt having so many issues with the lift, over such a long period. Particularly when he needed to get somewhere or was stuck while he was away from home. MO offered Mr C £800 for two years' worth of problems he had with the vehicle when it issued its September 2021 final response letter. From what I've seen, Mr C agreed with this.

For the purposes of this complaint, I'm mindful there was broadly another 13 or 14 months' worth of intermittent issues with the vehicle up to the point MO issued its final response letter in November 2022. It looks like Mr C may have had the opportunity to discuss exiting the agreement around June 2022. So there's an argument he could have mitigated the issue, and avoided further problems down the line had he taken up this option. It looks like he wanted to come out of the agreement, and I don't know why he didn't. Or indeed, while he still hadn't off the back of the November 2022 final response letter. I don't have all the details of what was offered, and whether it was presented as a fair offer. I'm mindful the offers could have been made clearer. For example, the final response letter doesn't say anything about the pro-rata refund of the advance payment. It's therefore hard to reach firm conclusions on this point.

In all the circumstances, I think a further £500 compensation seems like a fair amount for MO to pay in relation to the issues Mr C experienced for the period I'm focussing on in this decision along with the lack of clarity he was given to resolve things. MO paid Mr C £100 at the beginning of 2022, so I'm therefore proposing it pays another £400 to resolve the complaint. I've not seen enough to say MO needs to pay Mr C for any further loss of use of the vehicle. I think it's previous awards have fairly taken care of that. It's only fair that I take on board MO kept Mr C mobile when asked, and it's paid him a significant sum for him to be able to do that.

MO has already offered to allow Mr C to end the agreement. But for the avoidance of doubt, it should honour that offer. Therefore, to resolve the complaint, I'm going to propose MO:

- End the agreement with nothing further to pay.
- Collect the vehicle at no cost to Mr C.
- Refund Mr C's advance payment on a pro-rata basis.
- Remove any adverse information from Mr C's credit file.
- Pay 8% simple annual interest on the refunded amounts from the date of payment to the date of settlement.
- Pay Mr C £400 compensation.

If MO considers it is required to deduct tax from my interest award it should provide Mr C a certificate of tax deduction so he may claim a refund from HMRC, if appropriate.

MO responded to say it accepted the provisional decision. Our investigator spoke to Mr C and I understand he told her the lift had broken down again, the vehicle went in for repair and he was without use of it for around two months. I understand he was told the issue might be with the vehicle's battery. I understand there might've been other issues with the car, and he had to pay for taxis that weren't reimbursed by MO. Mr C said the issue had impacted his mental health and he wanted to reiterate the vehicle had broken down constantly over the last few years and it's never been fixed. He says he's been let down several times and it's caused a huge impact.

### **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'd like to thank the parties for their responses. I'm genuinely very sorry to hear about the issues Mr C has faced over the last few years. But as I explained in my provisional decision, there's some important aspects I need to consider. I set my reasonings for having the main focus of the decision in relation to the period from when it looked like Mr C accepted a reasonable offer to resolve things in 2021 up to the point MO issued a final response letter in November 2022. And I gave the parties the chance to respond to this by issuing a provisional decision.

Moreover, I also felt it was relevant to consider when MO had set out Mr C could come out of the agreement. There's some debate about this, but I found that there were discussions that took place midway through 2022. I think it's important to note Mr C could have taken steps to mitigate the ongoing issues by taking up MO on the offer to come out of the agreement but decided not to. It wouldn't be fair to direct MO to keep paying significant compensation for a period where Mr C had the option to have exited the agreement. Particularly given the nature of the faults, and that they were reoccurring. It's likely there's an underlying issue that's never been resolved.

I primarily need to consider the events to the point MO issued its final response letter because that relates to the events that it's had the chance to consider. In all the circumstances, I felt that making sure that the offer to end the agreement and allow Mr C to return the vehicle was fair. And, for the reasons I explained in my provisional decision, I felt the compensation award of £500 on top of this, for the period of time I was focussing on, also felt broadly fair. I've not been supplied anything new that leads me to change my mind on that. I hope the parties are now able to draw a line under things.

### **Putting things right**

To resolve the complaint, Motability Operations Limited should:

- End the agreement with nothing further to pay.
- Collect the vehicle at no cost to Mr C.
- Refund Mr C's advance payment on a pro-rata basis.
- Remove any adverse information from Mr C's credit file.
- Pay 8% simple annual interest on the refunded amounts from the date of payment to the date of settlement.
- Pay Mr C £400 compensation.

If MO considers it is required to deduct tax from my interest award it should provide Mr C a certificate of tax deduction so he may claim a refund from HMRC, if appropriate.

**My final decision**

My final decision is that I uphold this complaint and direct Motability Operations Limited to put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 8 February 2024.

Simon Wingfield  
**Ombudsman**