DRN-4557929

The complaint

Mr C has complained about the way Motability Operations Limited (MO) administered a hire agreement he'd taken out to acquire a car.

Mr C has been represented in bringing this complaint but, to keep things simple, I'll refer to Mr C throughout.

What happened

The circumstances of the complaint are well known to the parties so I'm not going to go over everything again in detail. But in summary, Mr C entered into a hire agreement with MO in June 2021 to acquire a new car. The agreement required 39 rental instalments payable at four-week intervals.

MO says the car was seized by the police in February 2023 due to criminal activity. It said this breached the terms and conditions Mr C accepted when he entered into the agreement. MO pointed out a clause in the agreement that said it could terminate the agreement if the car is seized, whether or not it's subsequently proved to be unlawful. MO said it issued a termination notice and terminated the agreement on 3 March 2023. It said it arranged for the allowance that was used to repay the agreement to be reinstated to Mr C. It also said that due to the seriousness of the breach it imposed a 5-year sanction on Mr C. It wouldn't accept him back as a customer during that time. I understand there's also an outstanding bill of £315 in relation to fees paid to release the car and for storage.

Mr C said he was in hospital at the time the car was seized. His son was driving the car at the time, and Mr C had no knowledge of what happened. Mr C said he needs a car for weekly physiotherapy, and he has regular hospital appointments. He said nobody has yet been charged for any criminal activity and he wanted to appeal MO's decision. He would be happy to remove his son as a named driver on the insurance policy. Mr C referred his complaint to our service.

Our investigator looked into things and didn't think MO acted unreasonably by terminating the agreement due to the car being seized for criminal activity. But she thought that the 5-year sanction was unreasonable in the circumstances. She highlighted Mr C was vulnerable and needed to be kept mobile and she didn't think he had any awareness of what happened leading to the car being seized.

MO didn't agree, but it agreed to reduce the sanction period to two years.

I decided to write to MO and said, in summary, that I could understand why MO relied on terms where it was concerned its car may be being used unlawfully. I said I thought (on a fair and reasonable basis) the termination terms it referred to are primarily intended, or most suitable, for where something has actually gone wrong – and where the car has been used unlawfully. Other than reviewing MO's contact notes I didn't know what happened in relation to the alleged crime. I didn't want to make any assumptions and wondered if there had been any update in relation to the alleged crime.

I also set out I was conscious Mr C's son was a named driver on the insurance that I think was arranged through MO, so it looked like he was allowed to use the car.

I set out I'd reviewed sanctions guidance MO provided the investigator. I noted the sanctions guidance for criminal activity for customers who are unaware/unpermitted could be between a warning and 2 years. I also noticed there are some possible conditions to re-joining the scheme in that sort of scenario including removing the offending driver or fitting a tracker. This would be based on any debt having been cleared.

I didn't think applying a 5-year sanction was in line with MO's internal guidance in the first place. Although this was later reduced to two years.

Given Mr C seemed unaware of what happened; I didn't have evidence criminal activity actually took place; his son was a named driver; and there's other MO guidance on sanctions that can be used; I wanted to know if MO would agree to do something different.

As a way to resolve things, I asked if Mr C's son could be removed from any future policies. I said I don't think Mr C would object to a tracker if necessary. And that it's fair that the costs from the seizure are paid too. I thought this would still be in line with MO's policy.

MO said it stood by its decision to terminate the agreement given the serious nature of the breach. MO said it spoke to the police and it said the car wasn't seized in error. MO accepted Mr C was in hospital when the car was seized but it was still his responsibility to make sure the car was being used within the terms and conditions. But because of his circumstances, it reduced the sanction to two years. It said it didn't reduce this further because of concerns the car was used at the time which was not for the benefit of the allowance recipient and its customer. It said it reinstated Mr C's mobility allowance to support his mobility needs. And that Mr C could reapply to the scheme in March 2025.

I issued a provisional decision that said:

I want to acknowledge I've summarised the events of the complaint. I don't intend any discourtesy by this – it just reflects the informal nature of our service. I'm required to decide matters quickly and with minimum formality. But I want to assure Mr C and MO that I've reviewed everything on file. And if I don't comment on something, it's not because I haven't considered it. It's because I've concentrated on what I think are the key issues. Our powers allow me to do this.

Mr C acquired the car under a regulated consumer hire agreement. Our service is able to consider complaints relating to these sorts of regulated consumer credit agreements.

It's not in dispute the car was seized, and that there are terms in the hire agreement that allow MO to terminate the agreement for that reason. It sounds like things haven't played out with the police involvement yet, so I can't definitively know whether the seizure was fair or not. But MO's terms do highlight it can terminate the agreement whether or not the seizure was found to be unlawful. I think MO had contractual grounds to terminate the agreement. If it was clearly an unlawful seizure or a mistake, I might've found the decision to terminate unfair, but I've not seen enough to make conclusions on that. In all the circumstances, I don't think MO's decision to terminate was unfair. I also don't think that MO is acting unfairly by seeking to recover the costs associated with the seizure.

I set out why I didn't think a 5-year sanction was fair, based on MO's own internal policy. But MO has agreed to reduce this to two years.

I of course can understand why MO might be worried the car was being used unlawfully or not for Mr C's benefit when it was seized. But I'm mindful that there's no suggestion Mr C was aware, present, or had any involvement in the car being seized. From what he's said, he was told not to have personal belongings in the hospital, including his car keys, which is why his son took the car in the first place. This is a plausible explanation.

Moreover, I'm also conscious that MO has an alternative process that could have been followed for this sort of scenario. I set out that it could decide to give Mr C a warning instead of a sanction; remove the (alleged) offending driver; and fit a tracker. This would be on the basis of Mr C clearing the costs that arose due to the seizure. To my mind, MO hasn't sufficiently explained why this isn't a fair solution. The car couldn't then be used by the person who was allegedly involved in a crime. The outstanding debt is cleared. MO has the option to fit a tracker if it wants to. And the innocent party here, Mr C, will be able to re-join the scheme.

In all the circumstances, I'm minded to say that this option is fair and reasonable for Mr C. I take on board MO's point that he's responsible for the car and what happens to it. But this does seem to be an unusual situation in that he was in hospital at the time. I still don't know whether a crime has been committed. But even if it had, MO says that if its customer was unaware there's another option available by applying conditions to re-joining the scheme. I've not seen enough to say that MO is acting fairly by applying the most severe penalty for this situation by applying a two-year sanction. Moreover, Mr C has already been unable to use the scheme for nearly 10 months.

I find a fair and reasonable outcome for all the parties is for MO to now remove the sanction. But I also consider it would be fair for it to apply conditions if it wishes. Mr C would also need to clear the costs associated with the seizure.

To resolve things, I'm intending to say MO should remove the sanction if Mr C clears the costs associated with the seizure. MO can apply conditions including removing Mr C's son as a named driver and fitting a tracker if it wishes.

Mr C accepted the decision. MO however, felt that the two-year sanction remained reasonable. It said there were risks and concerns given the alleged seriousness of the matters involved that led to the car being seized. MO said it has an obligation to protect the scheme, its customers, and the general public. It was also worried the situation may happen again because the offending driver was known to Mr C and was a nominated driver.

MO said it had noticed that Mr C and a new representative had recently applied for a new vehicle on the scheme despite remaining in the sanction period and not repaying the outstanding debt. But during a call between MO and Mr C he confirmed he wasn't present for the application and that he didn't choose the vehicle.
MO said it had arranged for Mr C's mobility allowance to be reinstated to support his needs. And it said it was entitled to make a decision whether or not to enter into an agreement with that individual.

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 do understand the concerns raised by MO. Mr C has effectively been in a sanction period for almost a year. MO wants that period extended for another year. But as I said in my provisional decision, there's no suggestion Mr C was aware or had anything to do with the car being seized. I'm conscious the police

action still hasn't reached a conclusion yet. I think the conditions MO is able to apply to any new application will mitigate the potential risks it has referred to. And removing the sanction but applying conditions is in line with MO's own internal policies from what I've seen.

However, I should make it clear that I'm not making any directions in relation to any subsequent applications. I appreciate MO has referred to its commercial discretion. And of course, MO is able to consider applications before deciding whether to agree to them. But this decision isn't focussing on future applications or telling MO it must grant an agreement. I've focussed on what happened up to when MO issued its final response letter. There could be a number of reasons why MO may decide not to offer another agreement to Mr C. But this decision isn't dealing with that. For the reasons I gave in my provisional decision, I think the sanction period should be reduced. But MO is able to apply conditions in the future if it wishes. And I've also set out that Mr C would need to clear any outstanding debt as well.

Putting things right

To resolve things, Motability Operations Limited should remove the sanction if Mr C clears the costs associated with the seizure. MO can apply conditions for future applications including removing Mr C's son as a named driver and fitting a tracker if it wishes.

My final decision

My final decision is that I uphold the 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 12 February 2024.

Simon Wingfield
Ombudsman