

## **The complaint**

Mr R complains Motability Operations Limited (Motability) supplied him with a car that he believes wasn't of satisfactory quality. He also complains about Motability's decision to only communicate with him in writing or via an appointed representative.

## **What happened**

The background details of this case have been clearly set out by the investigator so I won't repeat them again. Instead I will focus on the reasons for my decision.

## **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'm aware Mr R has raised a separate complaint about the agreements and cars with Motability. An ombudsman has previously reached a final decision about those issues so I won't be commenting on them.

In this decision, I've considered the concerns about the car's faults from July 2022 onwards and Motability's decision about communicating with Mr R.

At this point, I wish to reassure both parties that I've carefully considered the information and evidence they've provided. Although I may not comment on every point raised or every submission made that doesn't mean I haven't considered it, I have. But in this decision I will focus on what I consider to be the crux of this complaint and the key aspects to reach a fair outcome. Having done so, I've decided not to uphold the complaint, I will explain why.

### **Was the car of satisfactory quality at supply?**

Mr R acquired a car under a regulated credit agreement. Motability was the supplier of the goods under this type of agreement meaning they are responsible for a complaint about the supply and the quality of the car.

The Consumer Rights Act 2015 (CRA) is relevant to this complaint. It says that, under a contract to supply goods, there is an implied term that "the quality of the goods is satisfactory". To be considered "satisfactory", the goods would need to meet the standard that a reasonable person would consider satisfactory – taking into account any description of the goods, the price and all the other relevant circumstances. In a case involving a car, the other relevant circumstances a court would take into account might include things like the age and mileage. The quality of goods includes other things like fitness for purpose, appearance, freedom from minor defects, safety and durability.

Mr R acquired a brand-new car so I think it's fair to say that a reasonable person would expect the level of quality to be higher than a second-hand, more road-worn car. And that it could be used – free from defects – for a considerable period of time.

Since Mr R acquired the car in 2021, he has reported a number of issues about the overall handling of the car. This includes but not limited to, an abnormal vibration through the steering wheel and pedals, the car isn't providing the expected miles per gallon, poor sound from the radio, etc. He also believes the car's system has been compromised and maliciously altered ('hacked') by third parties and that may be contributing to the car's poor performance.

Both parties have provided evidence to support their stance which I've reviewed. This includes job cards, diagnostic reports, pictures, inspection reports etc.

When Mr R initially raised his concerns around October 2022, the car was returned to the supplying dealership to inspect. In the months that followed, it has also been looked at by a number of other parties including manufacturer approved garages and an independent inspector. Based on the evidence I've seen from these parties, there's insufficient evidence of the reported faults. The parties were unable to replicate or identify the issues, they said the car was performing as expected. So I can understand why when responding to the complaint in June 2023, Motability said the car was fault-free.

Following Mr R's ongoing concerns about the car and a report he later obtained showing fault codes to the control module, the car was looked at by another third party around January 2024. The battery was replaced (found to be causing fault codes), key fob battery replaced, the air-conditioning system re-gassed and the windscreen wipers replaced. However no issues were found with the car's general performance or control module as confirmed by further inspections. I must make it clear just because something has gone wrong doesn't always mean the car wasn't of satisfactory quality at supply.

Here, by the time these issues were identified Mr R had covered in excess of 12,000 miles. Given his use of the car, it's fair to expect it will start to show some signs of wear and tear. On balance, I'm not persuaded the issues found in January 2024 were present or developing at supply or it meant the car wasn't reasonably durable.

In regards to the allegations of 'hacking' this isn't something our service can reasonably be expected to investigate. My role is to consider whether the car was of satisfactory quality at supply. Here, there's insufficient evidence to suggest the car or its system was compromised when it was acquired by Mr R. I can't fairly hold Motability responsible for the actions of any potential hackers and/or fraudsters. In any event, I can see Mr R's concerns were looked into by a couple of garages and they found no evidence the system had been hacked by an external party and it was impacting the car's performance.

When taking everything into account and the timeline of events, I'm satisfied the car was of satisfactory quality when it was supplied to Mr R.

Despite there being insufficient evidence of faults from various parties, I can see Motability has continued to support Mr R and listen to his concerns. They've arranged for the car to be looked at by different parties, paid for inspections, paid for unauthorised repairs (wheels rebalanced), paid for taxis (in excess of £800) and arranged courtesy and/or hire cars for the times he's been without the car. Given I've determined the car was of satisfactory quality at supply, I must stress Motability weren't obliged to do this. To my mind, it's clear they chose to do so in order to support Mr R especially in light of his vulnerabilities and overall concerns. In my opinion, their level of service has gone over and above what I would generally expect so I can't say they've acted unfairly.

When referring this complaint to our service, Mr R said to resolve matters he wanted Motability to allow him to reject the car, have his Motability allowance re-instated so he can get another car or be paid a cash sum so he can buy one privately. Despite there being insufficient evidence of faults, from the outset Motability has confirmed they are willing to change or take back the car as Mr R is unhappy with it. They said they would re-instate the allowance so he could acquire another car. Motability aren't contractually obliged to do this, instead I find this is another example of them trying to support Mr R.

I must stress even if I was to agree with Mr R and determine the car wasn't of satisfactory quality due to the reported faults and rejection should be allowed, I would most likely say Motability would need to take back the car and restore the allowance to allow Mr R to acquire another one. However Motability have already offered this, so I can't say they've acted unfairly. Fundamentally, they've already offered to give Mr R what he wants as a resolution to this complaint.

If Mr R decides to accept their offer and give back the car, I don't find Motability are legally or contractually required to cover the cost of taxis or alternative travel while he looks for another one. So if they agree to do so, it will be at their discretion and as a gesture of goodwill to continue supporting Mr R.

### ***Other***

Mr R also complains about Motability's decision to no longer communicate with him by phone, they've said they will only communicate with him in writing or via a representative, and he's unhappy with that.

The relationship has deteriorated between the parties to the extent that Motability has decided the methods of communication has to be limited.

I can see Mr R has been a member of the Motability scheme for a while and he's entered into a number of hire agreements for cars. Throughout that time, he's been able to speak to them by phone and based on their contact notes, I can see he did so frequently.

Mr R has been open about his vulnerabilities with Motability and he's told them what he considers to be his reasonable adjustments when they communicate with him. I won't list them but they include using his first name and avoid using what he considers to be triggering words. He also said he was unhappy with the accents, tone and intonation of some staff member's voices. He has complained Motability has failed in their duty to make reasonable adjustments for him under the Equality Act 2010. I've taken this relevant law into account –

but I've ultimately decided this complaint based on what I consider to be fair and reasonable. If Mr R wants a decision that Motability has breached the Equality Act 2010, then he would need to go to court.

Here, I can see Motability agreed not to use the words Mr R provided and confirmed they would refer to him by his first name. However they've expressed concerns that they can't reasonably expect their staff members to alter their voice, accent or intonation of words when speaking to Mr R by phone. I can understand why they've said it wouldn't be reasonable to implement such measures across their staff members.

Motability has told our service their decision about limiting verbal communication wasn't made lightly and it was only made after years of talking to Mr R by phone. However in recent times, they've said interactions have become challenging and distressing for Mr R and their staff members.

I've carefully thought about Mr R's comments and why the ability to speak verbally to Motability will assist him to resolve matters more promptly and help to alleviate his health concerns. I've also thought about Motability's operations, internal policies and their staff members. They've provided a copy of their consumer behaviour policy which I've considered and having done so, I'm satisfied they've taken action in accordance to it.

I would expect Motability to ensure the welfare and well-being of both Mr R and their staff so I can understand why removing verbal contact and requiring written correspondence will help to achieve that. It will mean they can ensure Mr R's reasonable adjustments are met and limit any distress to the parties concerned. Therefore I find their decision to only communicate with Mr R via written communication or by an appointed representative is fair given the circumstances. I won't be saying Motability need to restore verbal contact with Mr R. Since the decision was made, I can see both parties have continued to communicate in this manner and without unreasonable delay.

## **Summary**

Taking everything into account, I'm satisfied the car was of satisfactory quality at supply. Although not obliged to do so, Motability is willing to take back the car, re-store the allowance and allow Mr R to acquire another car. I consider this to be a fair and reasonable resolution to the complaint.

I find Motability's decision to remove direct verbal contact with Mr R was fair in the circumstances. They will continue to communicate with him in writing or via his appointed representative.

Mr R has very strong feelings about this complaint. It's clear he has a lot going on in his personal life including his medical conditions so I recognise why having a car that he's happy with and he feels safe driving is important to him. Which is why I believe Motability's offer is a fair one and I strongly urge Mr R to carefully consider it. If he wants to accept this offer, he should contact Motability directly about it. I appreciate he may be disappointed by my decision but I hope he understands my reasons for doing so.

**My final decision**

For the reasons set out above, I've decided not to uphold Mr R's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 30 May 2024.

Simona Reese  
**Ombudsman**