DRN-4690174

The complaint

Mr T complains that the car supplied to him through a hire agreement with Motability Operations Limited trading as Motability Operations ('MO') wasn't of satisfactory quality as it wasn't fit for purpose. He said that adequate adaptions hadn't been made to the car meaning he was unable to drive it. Mr T said he wanted MO to pay him compensation of around £6,000 to reflect his financial losses on two vehicles and damages for emotional distress and inconvenience caused.

What happened

Mr T entered into a car hire agreement with MO in June 2023. The car had been adapted with an elevated foot support. Mr T said that when the leg elevation was being built, he requested that this be made higher. However, this wasn't possible due to the airbag under the steering column. He said he wasn't then able to test drive the car before taking delivery. Mr T said the car doesn't provide adequate leg support and that as adequate adjustments haven't been made the car isn't suitable. He said that appropriate steps weren't taken to ensure the car would meet his specific needs and he felt he had been discriminated against.

MO said that in July 2023, Mr T contacted it to say the leg support on the car wasn't high enough and he wasn't able to drive it and had to rely on other named drivers. Mr T said he had been told by the company that carried out the original adaption that the required adjustments might not be possible. MO said it would work with other installers and Mr T could get a second opinion regarding the adjustment. However, it said Mr T may need to pay for any additional costs incurred or apply to the charity for a grant. It said if the leg support couldn't be adjusted then MO could agree to the early termination of the hire agreement.

Mr T believed that the issue with the adaption should have been identified from the outset and that the manufacturer's failure to meet his specific needs was discriminatory. MO responded to Mr T in August 2023, noting the concerns he had raised with the manufacturer. It said while it worked with the manufacturer to obtain vehicles under the MO scheme, the customer chooses the car, and the manufacturer was in charge of the adaptations. It said test drives aren't possible where adaptations are required and in such circumstances a customer can contact the manufacturer directly. It arranged for Mr T to have a vehicle assessment to help find him the best driving solution for his needs.

In September 2023, Mr T complained again to MO about the manufacturer and again MO said he would need to resolve this directly with the manufacturer. However, it offered that Mr T could terminate his hire agreement early and it agreed to waive the £250 administrative fee as a gesture of goodwill.

Mr T wasn't satisfied with MO's offer, and he requested further compensation to be paid. He referred his complaint to this service.

Our investigator understood that the issue with Mr T's car was that the adapted leg support wasn't high enough meaning it caused Mr T pain to drive. This meant he hadn't been able to drive the car himself and had to rely on others. She noted MO's comment that it wasn't involved in the adaptation process or assessment as to whether adaptations were suitable

for customers. But she thought as the car provided through the hire agreement wasn't fit for purpose for Mr T, it therefore wasn't of satisfactory quality and so MO should take some responsibility for this.

Our investigator noted the timeline of events and that Mr T had cancelled an appointment in August 2023 (with the installer) to discuss how the leg support could be made more suitable for his needs. She thought that Mr T should have allowed MO the opportunity to carry out a repair and thought MO had acted reasonably when Mr T contacted it about this issue by advising him to contact the installer or an alternative provider to get a second opinion.

Mr T decided to terminate his hire agreement. Our investigator said this was Mr T's decision and so didn't hold MO responsible for any impact on Mr T after this point. She noted that the termination fee had been waived. However, our investigator noted the impaired use of the car Mr T experienced from 30 June to 24 October 2023. She thought that because of this he should be refunded 50% of the payments made during that period. She also thought MO should pay Mr T £150 compensation for the upset this situation had caused.

Mr T didn't agree with our investigator's view. He said that the need to raise the leg support was noted when the adaptation was being built but due to the airbag under the steering column this wasn't possible. Therefore, he cancelled the next appointment with the installer as there was no point to this as further alterations would have resulted in a dangerous situation with the airbag. He said that when this issue was identified MO should have intervened and the car should have been declared unsuitable at that point. Mr T also said that he should have been able to test drive the car once the adaptations were made and before he accepted the car.

MO didn't agree with our investigator's view. It reiterated that Mr T was responsible for ensuring the adaptations fitted to the car were suitable for his needs and said that these were agreed between Mr T and the installer. It said Mr T made it aware of the issue a month after the car was delivered and that it wasn't entirely unusual for adaptations to require some adjustments. It said it had offered for Mr T to contact an alternative installer and said it could refer him to the assessment centre at its cost. MO said that Mr T then decided to terminate his hire agreement which it agreed to. While Mr T could have returned the car at that time and have his mobility allowance reinstated, MO said that he chose to continue using the car while he applied for another vehicle. Mr T asked for the car to be collected around 25 September 2023 and after further communication this happened on 24 October 2023.

My provisional conclusions

I issued a provisional decision not upholding this complaint. The details are set out below.

I am sorry to hear of the difficulties Mr T has had while trying to source a suitably adapted vehicle for his use. I thank him for the background and evidence he has provided regarding his personal circumstances as I appreciate this won't have been easy and I can understand why it is important for him to try to regain elements of his independence. I have had this in mind when assessing this complaint.

This complaint is against MO. While I understand that there are other parties involved in the issues underlying this complaint, namely the manufacturer and the installer, my role is to consider whether MO has done anything wrong or treated Mr T unfairly.

Mr T has referred to the Equality Act 2010 and I note this was a key part of his complaint to the manufacturer but as it has been noted in his correspondence with MO I wanted to explain that while we take any allegation of discrimination seriously, we are an informal dispute resolution service, meaning we don't have the power to decide whether or not MO 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.

I also note that Mr T has raised new issues regarding his attempts to secure another vehicle. However, this decision relates to the issues regarding the car subject to his June 2023 hire agreement. Any new issues would need to be raised with MO to allow it an opportunity to respond to these before they are referred, if Mr T wishes, to this service.

Mr T entered into a hire agreement with MO in June 2023. The car was being hired through the MO scheme meaning that his mobility allowance would be used to cover the monthly rentals. Before the car was provided adaptations were required to meet Mr T's needs, specifically, a leg support. The adaptation is the underlying cause for complaint as Mr T has explained the leg support wasn't high enough meaning he was unable to safely drive the car without pain. MO has explained that Mr T will have chosen the car he wished to hire and that all adaptation installers are separate entities to MO, and it has no influence or control over the adaptations or service provided. Given this, I cannot say that any issues with the choice of car or the installation of the leg support were the responsibility of MO.

That said, MO can be held liable if the car provided to Mr T under the hire agreement wasn't fit for purpose. In this case, due to the leg support not being the correct height, Mr T wasn't able to drive the car and had to rely on other named drivers for his transport. I find this means the car wasn't fit for purpose and so I find it fair that MO would work with Mr T to remedy this.

Mr T has explained that he became aware that the height of the leg support was too low when it was being built and that at that time the issue of raising the height was discussed and he was told about the problem with the position of the airbag under the steering column. I appreciate that Mr T feels MO should have taken action at this time, but it wasn't until 26 July 2023 that Mr T contacted MO about the issue with the leg support. So, I have considered how MO responded to the issue when Mr T raised it.

I can see from the contact notes provided, that Mr T explained the leg support needed to be higher and that he had spoken with the installer and it had said it wasn't clear if the adaptation could be adjusted. Given this information I find that MO acted reasonably by saying it would rely on the expertise of the installer and saying that Mr T could contact another installer for a second opinion. I also find MO acted fairly at this time by explaining if the adaptation changes couldn't be made then early termination could be considered.

On 14 August 2023, Mr T contacted MO to say the required change to the adaptation couldn't be made. At this point the cancellation of the agreement was agreed in principle and Mr T was told there was a £250 cancellation fee. Following further contact, on 1 September, MO's contact notes show that it said Mr T could return his car so that his mobility allowance could be reinstated (rather than continuing to pay towards the car hire rentals) until such time as a more suitable vehicle could be identified. MO then, on 5 September, said that if Mr T chose to cancel his hire agreement, it would waive the £250 cancellation fee. Given I accept the car wasn't fit for purpose for Mr T and so wasn't of satisfactory quality, I think it fair that MO initially tried to assist Mr T with finding a solution for the adaptation to be adjusted to suit Mr T's needs and when this was found not to be possible, it said he could exit the hire agreement without incurring costs for this.

I note that Mr T was using his mobility allowance to pay the rentals for the car. I understand that by not being able to drive the car himself he was reliant on others and also didn't have his mobility allowance available to cover the costs of alternative transport.

The information provided shows that when Mr T raised his concerns on 26 July about the adaptations, he was told that if this wasn't possible to adjust these to meet his needs then early termination could be discussed. When Mr T called back on 14 August 2023 to say the adaptations weren't possible the termination was agreed in principle. Given this, I find that Mr T was provided with the option of terminating his hire agreement when the issue was raised with MO and had he done this it would have enabled him to have his mobility allowance reinstated sooner. However, Mr T chose to keep the car until his request for collection on 3 October 2024. The car was collected on 24 October 2023 and MO has said the car had been driven 1,800 miles.

Taking the above into account, I find that Mr T could have done more to mitigate the issues with his transport by requesting to terminate his hire agreement sooner. As the car was available for use by Mr T until October 2023, and it was his decision not to terminate the agreement sooner, I do not find that MO is required to refund his rentals for this period. Mr T has been caused distress and inconvenience by the issues he experienced. But taking into consideration that these were mainly due to issues with the adaptations which weren't the responsibility of MO, I have considered whether the actions taken by MO caused him any material upset. In this case, MO offered support to Mr T when he raised his concerns about the adaptations and then agreed to waive the cancellation fee on his hire agreement. While there does appear to be a slight delay in the car being collected (from request made on 3 October to agreed collection on 24 October) I find that the removal of the £250 cancellation fee is a reasonable remedy in response to these issues.

I note Mr T has asked to be compensated around £6,000 for loss, distress and inconvenience and damages but when considering the issues MO is responsible for, I find the actions taken by MO in response to the issues raised, specifically the cancellation of the agreement without penalty, is a fair outcome. Therefore, I do not require MO to do anything further in response to this complaint.

Mr T responded to my provisional decision. He said that under the Consumer Rights Act 2015, goods provided must be of satisfactory quality. He said the adaptations to the car were an integral feature and these rendered the car unfit for its intended use. He said he had made it clear when entering the hire agreement that he would need a leg support of a specific height and that the failure to provide this constituted a breach. He believed that MO as the supplier, had a duty to ensure the car was fit for his stated purpose and that MO had failed to exercise reasonable care while overseeing the adaptation process.

Mr T also referred to the Equality Act 2010 saying that MO had failed to make reasonable adjustments by providing a vehicle with adaptations that were unsuitable for him and this, combined with the lack of a pre-delivery test drive resulted in discrimination. He felt that MO's comment that the customer was responsible for assessing the suitability of adaptations placed an undue burden on disabled customers and thought this was an unfair term.

Mr T also thought that the provisional decision failed to mitigate the financial and emotional harm he had suffered. He wanted a full refund of all his hire costs along with compensation for the distress and inconvenience he had been caused (£2,000) and reimbursement of the additional costs he had incurred for alternative transport.

Mr T also said the prolonged period in getting a resolution to his complaint had placed him at a significant disadvantage. He said he had initially declined an offer of £2,000 but later accepted this but MO was then able to initiate a further review. He said this had allowed MO to revisit a decision that were seemingly resolved.

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 understand that Mr T didn't agree with my provisional decision, and I note the arguments he has made. When assessing a decision, I take all relevant rules, regulations and guidance into consideration, but my decision is based on what I consider fair and reasonable given the unique circumstances of the complaint.

This complaint is against MO and while there are other parties involved in the issues that have been raised, my decision only covers the issues that I can hold MO reasonably responsible for.

In my provisional decision, I said that MO had explained that Mr T chose the car he wished to hire and that all adaptation installers are separate entities to MO, and it had no influence or control over the adaptations or service provided. Given this, I couldn't say that any issues with the choice of car or the installation of the leg support were the responsibility of MO. Mr T said that this placed an undue burden on disabled customers and thought this was an unfair term. While I note Mr T's comment, MO is responsible for the scheme and works with other parties that will deliver the vehicles and make the adaptations. As this is how the scheme operates, I cannot say that MO has treated Mr T unfairly through this process. The scheme allows the consumer to choose the car from the manufacturer and then work with the installer on the required adaptation, and I do not find I can hold MO responsible for the service the other parties provided.

Mr T has referred to the Consumer Rights Act 2015 and the need for the car provided under the hire agreement to be of satisfactory quality. I agree with this. In my provisional decision I said that due to the leg support not being the correct height, Mr T wasn't able to drive the car and had to rely on other named drivers for his transport which I found meant the car wasn't fit for purpose. Given this I said that MO needed to work with Mr T to remedy this. I note Mr T's comments about him making his specification clear but, as has been explained, the adaptation process is separate to MO. When Mr T contacted MO with the issue he was experiencing it said that Mr T could contact another installer for a second opinion, and if the adaptation changes couldn't be made then early termination could be considered. It also offered to cover the cost of having a vehicle assessment to help find the best driving solution for Mr T's needs. Based on this, I find that MO did try to work with Mr T when the adaptations didn't meet his needs.

Mr T has also referred to the Equality Act 2010. As I have previously explained we are an informal dispute resolution service, meaning we don't have the power to decide whether or not MO is in breach of the Equality Act 2010, but do take relevant law and regulation into account when deciding what's fair and reasonable in the circumstances of a complaint. I have taken into consideration Mr T's comments, but in this case, I find that the action MO took in response to the issues Mr T experienced were reasonable. It tried to work with him to see if the issue with the adaptation could be resolved and when it was found this wasn't possible, it allowed him to terminate his agreement without cost.

I appreciate that Mr T feels the financial and emotional distress he has been caused hasn't been taken into account, but I have considered all evidence provided in this case and for the reasons I have already explained I do not find that MO is required to take any further action. I note Mr T's comment about the time taken for his complaint to be resolved and MO having a chance to revisit the decision. But Mr T raised this complaint with MO and then referred it to this service at which point we have considered all of the information provided. So, while I

understand that Mr T doesn't accept the outcome, in this case, for the reasons set out above, I do not find I can uphold this complaint.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 25 February 2025.

Jane Archer
Ombudsman