

Complaint

Ms S has complained about the quality of a car which Motability Operations Limited ("Motability") supplied to her through a regulated hire agreement.

Background

In July 2019, Motability hired a brand-new car to Ms S. The agreement was to last for a minimum of 36 months, Ms S paid an advance rental of £1,649.00 and the weekly rentals were paid by diversion of her Department for Work and Pensions allowance. As I understand it, in October 2022, Ms S extended the agreement for a further two years and she kept the car until the replacement vehicle she entered into a new hire agreement for was delivered to her in February 2024.

It's fair to say that there were a number of issues with the car from around August 2020 onwards. Ms S has said that the car broke down on at least 18 separate occasions and the information Motability has provided supports this being the case. In December 2023, Ms S complained to Motability about the problems she had experienced while she had the car. She told Motability that it should compensate her for the periods that she didn't have the car while it was being repaired.

Motability offered to pay Ms S £250 in compensation for any distress and inconvenience she experienced. I understand that this payment has already been credited to Ms S. Nonetheless, Ms S remained dissatisfied at Motability's response and referred her complaint to our service.

Subsequent to this, Motability wrote to Ms S and offered her a further £250 as a gesture of goodwill and a refund of the final payment it received for the car to recognise she wasn't using it at that stage. Ms S still remained dissatisfied and asked our investigator to consider matters.

One of our investigators reviewed everything provided and she concluded that the car Motability supplied to Ms S wasn't of satisfactory quality. As the car had already been returned, the investigator concluded that Motability should refund Ms S a further four months' worth of payments (in addition to the payment Motability had already agreed to refund) to reflect the fact that she'd been without the car for around 20 weeks in total.

Ms S accepted our investigator's view. However, Motability did not. Instead, it offered an additional £71.75 in compensation, based on its formula for loss of use.

As Motability disagreed with the investigator's assessment the case was passed to an ombudsman for a final decision.

My findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

The finance agreement in this case is a regulated hire agreement, which we are able to consider complaints about. Under the hire agreement, Motability was the legal owner of the vehicle and it hired the vehicle to Ms S and she paid a monthly amount in return.

This arrangement resulted in Motability being the supplier of Ms S' vehicle and so it is also responsible for answering a complaint about its quality.

Bearing in mind that none of Motability's correspondence has referred to it, I think it's worth me setting out that the applicable legislation here is The Consumer Rights Act 2015.

The Consumer Rights Act 2015 ("CRA")

The CRA covers hire agreements – such as Ms S' agreement with Motability. Under a hire agreement, there are implied conditions that the goods supplied will be of satisfactory quality.

The CRA says the aspects of the quality of the goods and whether they are satisfactory includes their general state and condition alongside other things such as their fitness for purpose, appearance and finish, freedom from minor defects, safety and durability.

Was the car of satisfactory quality?

Having carefully considered matters, as Motability has stayed silent on this, I do think that it's briefly worth me setting out my thoughts on the quality of the vehicle which it supplied to Ms S in July 2019.

Although the problems with the car began just over a year after she acquired it, Ms S was nonetheless provided with a car that was brand new. Therefore, I think that Ms S was reasonably entitled to expect to use the car for some time before experiencing any significant issues or faults. This is particularly as, I understand it, the vehicle would have cost close to £35,000.00 to purchase at the time it was hired to Ms S.

In my view, a reasonable person would not expect to have to take a brand-new car to a garage eighteen times for various repairs. I think that this is particularly the case where a number of the visits were to do with faults and repairs to the same issue.

As this is the case, I'm satisfied that the car Motability supplied to Ms S was not of satisfactory quality.

Is what Motability has agreed to do to put things right for Ms S fair and reasonable in all the circumstances?

Having considered the available evidence, I'm in agreement with our investigator that Motability needs to do a bit more to put things right for Ms S. I'll now proceed to explain why I think that this is the case in a bit more detail.

In reaching my conclusions, I'm mindful that section 8 of the terms and conditions of Ms S' Motability scheme vehicle agreement allow for a refund of some of the payments that Motability received for her rental of the car, in the event of loss of use. I'm assuming that it these terms and conditions which Motability has used to work out the refund part of the compensation it offered in response to our investigator's assessment.

However, while I appreciate that section 8 of the terms and conditions does contain a formula for working out a customer's loss of use, it does not necessarily mean that following it will always produce a fair and reasonable outcome. Indeed, these terms and conditions

won't necessarily account for instances where Motability supplied a car that wasn't of satisfactory quality in the way that it did here.

I've also noted that the terms and conditions include a provision that Motability will not make a refund for the first week following a breakdown. This is likely to prove particularly problematic in circumstances where there are multiple breakdowns – such as here – as each breakdown would have to last at least a week before any sort of refund is due.

I understand that Ms S did not have use of the vehicle for up to around 20 weeks in total. I accept that there might have been a taxi service that Ms S might have been able to use. However, I don't think that this provides a like for like replacement. And while there were some periods where a hire car was provided, Ms S did not have access to one for a vast majority of the period.

I'm also mindful that the terms and conditions appear to indicate that a refund will be proactively provided. Yet Motability did not apply the formula until our investigator issued her assessment, or even try to make any sort of payment for loss of use until after Ms S referred her complaint here. Indeed, Motability's notes appear to indicate that it attempted to get Ms S to direct her concerns to the supplying dealer.

Furthermore, Motability's offer also doesn't take into account the fact that given the number of repairs to the same fault, it ought to have accepted a rejection of the car (and offered a pro-rata refund of the advance payment). I don't think that permitting Ms S the opportunity to simply walk away from the agreement in April 2021 was the same as allowing her to reject the vehicle, given Ms S would have lost all of her advance payment.

Equally, I don't think that Ms S renewing the lease in October 2022, because she didn't have the funds to make an advance payment on another car at this stage, should be taken as any sort of indication of what she would have done had a formal option to reject the car (with a pro-rata return of the advance payment) been made earlier.

In considering matters, I've thought about what Ms S has said about the fact that she should be reimbursed the advance payment that she made for the vehicle Motability supplied to her in February 2024. But this is a completely separate transaction. And it is not immediately clear to me how refunding this payment would address Ms S' loss of use of the car while it was undergoing repairs either. So I'm not persuaded that a refund of the advance payment Ms S made to the vehicle she was supplied in February 2024 is warranted here.

Bearing in mind all of this, I'm satisfied that a refund of 20 weeks payments as recommended by our investigator, plus interest at 8% a year simple, is a fair and reasonable way of reimbursing Ms S for her loss of use of the car in this instance. I'm therefore directing Motability to make this refund.

I now turn to any distress and inconvenience Ms S may have experienced. It's clear that Ms S had to deal with the stress of arranging and getting to and from garages for a significant number of repairs to take place over an extended period. Ms S has also mentioned not being able to get to attend to her duties as a volunteer as a result of not having adequate transportation.

Having considered all of this, I'm persuaded that Ms S was caused a significant amount of distress and inconvenience as a result of Motability supplying her with a car that was not of satisfactory quality. I say this particularly bearing in mind Motability will have been aware of Ms S' disability and the likely impact that being without a car is likely to have had on her.

That said, I note that Motability has already paid Ms S £250 and it has offered her a further £250 in compensation for any distress and inconvenience caused. I'm also mindful that my direction on what Motability should refund Ms S to account for her loss of use of the car, could also be viewed as being on the higher side of what's fair and reasonable in all the circumstances too.

As this is the case and taking everything in the round, I'm satisfied that the £250 in compensation that Motability has agreed to pay (in addition to the £250 it has already paid), is fair and reasonable in all the circumstances and I'm not requiring it to do anything more.

Fair compensation – what Motability needs to do to put things right for Ms S

Overall and having considered everything, I think it is fair and reasonable for Motability to put things right for Ms S by:

- refunding her 20 weekly payments to cover her loss of use of the car, with interest at 8% a year simple† from the date the payment was made to the date this complaint is settled;
- paying her £250 in compensation (in addition to the £250 that has already been paid) for the distress and inconvenience that was caused by Ms S being supplied with a vehicle that wasn't of satisfactory quality.

† HM Revenue & Customs requires Motability to take off tax from this interest. Motability must give Ms S a certificate showing how much tax it has taken off if she asks for one.

My final decision

For the reasons I've explained, I'm upholding Ms S' complaint and Motability Operations Limited to put things right in the way I've directed it to do so above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms S to accept or reject my decision before 3 January 2025.

Jeshen Narayanan
Ombudsman