

## **The complaint**

Mr J complains that a car supplied to him under a hire agreement by Motability Operations Limited ("MOL") was of an unsatisfactory quality.

## **What happened**

Mr J was supplied with a new car by MOL in April 2020. The car was modified by MOL to support Mr J's needs, including the addition of wheelchair access, from which Mr J could drive the car, and other adaptations to the driving controls. The hire agreement for the car was for a period of five years.

Shortly after being supplied with the car Mr J reported problems with the battery not maintaining its charge. Those problems continued, despite repeated investigations by the adaptation providers, and independent engineers, until December 2023. Around that time it seems a fault was found with the location of the switch to control the access ramp. Mr J says that since that repair was completed he has had no further problems with the car battery.

During the time the car was experiencing problems, Mr J suffered from a number of inconveniences. His car broke down on multiple occasions, requiring assistance from a roadside recovery firm. His car was taken in for repair, often with his wheelchair still in situ leaving him unable to leave his home. And although MOL sometimes provided Mr J with a courtesy car, it did not have any of the required adaptations, making it very difficult for Mr J to use it.

MOL looked at Mr J's complaint. It agreed that it was understandable that he had lost confidence in the reliability of his car. But it was pleased to note that it seemed the problems with the battery discharging had now been resolved. MOL offered Mr J £1,200 in compensation for the inconvenience he had been caused. Unhappy with that response Mr J brought his complaint to us.

Mr J's complaint has been assessed by one of our investigators. He thought that Mr J had demonstrated that the car that was supplied to him was not of a sufficient quality. But given it appeared that successful repairs had now been completed, the investigator didn't think it would be appropriate to allow the car to be rejected. Instead he asked MOL to refund 20% of the rental payments Mr J had made to reflect his impaired use of the car. And he asked MOL to pay Mr J £300 for the inconvenience he had been caused.

MOL didn't agree with that assessment. It thought the compensation recommended by the investigator was excessive. So, as the complaint hasn't been resolved informally, it has been passed to me, an ombudsman, to decide. This is the last stage of our process. If Mr J accepts my decision it is legally binding on both parties.

## **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.

In deciding this complaint I've taken into account the law, any relevant regulatory rules and good industry practice at the time. I have also carefully considered the submissions that have been made by Mr J and by MOL. Where the evidence is unclear, or there are conflicts, I have made my decision based on the balance of probabilities. In other words I have looked at what evidence we do have, and the surrounding circumstances, to help me decide what I think is more likely to, or should, have happened.

At the outset I think it is useful to reflect on the role of this service. This service isn't intended to regulate or punish businesses for their conduct – that is the role of the Financial Conduct Authority. Instead this service looks to resolve individual complaints between a consumer and a business. Should we decide that something has gone wrong we would ask the business to put things right by placing the consumer, as far as is possible, in the position they would have been if the problem hadn't occurred.

Mr J was supplied with a car under a hire agreement. This is a regulated consumer credit agreement which means we're able to look into complaints about it. The relevant law – the Consumer Rights Act 2015 (CRA) - says, amongst other things, that the car should've been of a satisfactory quality when supplied. And if it wasn't, as the supplier of finance used to hire the car, MOL is responsible. What's satisfactory is determined by what a reasonable person would consider satisfactory given the price, description, and other relevant circumstances.

I think it is clear that Mr J's car has suffered from fairly serious battery related problems since it was supplied to him. It has broken down on numerous occasions and needed repair or recovery by MOL's appointed roadside breakdown agent. The car battery appears to have been replaced several times. And Mr J's car has spent extended periods of time either being repaired or tested for fault diagnosis.

Many times over the period he has held the car, Mr J has been told that the problems are as a result of the relatively low mileage that he does. I accept that minimal use of a car will put a greater strain on a battery, given that it has less time to recharge following its use to start the engine. And in this case that battery drain will be greater given its use to power the wheelchair lift that was added to Mr J's car.

But I am not persuaded that Mr J's use of the car is a reasonable excuse for the problems he has faced. The problems appeared to start very soon after the car had been supplied to Mr J. And I think it might have been incumbent on MOL to ensure that the car it was supplying, together with the modifications it arranged, would be suitable for Mr J's needs and circumstances. But, and I think most importantly here, Mr J has reported that he had no further problems with the car or its battery since the repairs that were undertaken in December 2023. And since I'm not aware of any changes to the way Mr J used his car, that would suggest that he wasn't responsible for the problems – the problems were simply as a result of a fault with the car and its modifications.

The CRA implies that, where a fault is identified within the first six months, it's assumed the fault was present when the car was supplied. So given what I have said above I think that is clearly the case here. So that would suggest the car was not of a sufficient quality when it was supplied to Mr J. The CRA sets out some remedies that would be appropriate in circumstances such as these.

I am delighted to hear that Mr J is now enjoying trouble free use of his car. And I haven't seen anything that makes me think he would now want to reject it as would be an option under the CRA. Instead I think it more appropriate that MOL should have been expected to repair the car as it has now done.

Section 23 of the CRA requires any repairs to be completed within a reasonable period of time. Although the act is not specific on how long a reasonable period of time might be, I am entirely satisfied that time period has been exceeded by a significant margin here. Whilst I accept MOL was reliant on the professional expertise of those third parties examining and repairing Mr J's car, it remains its responsibility to ensure the repairs are completed in a timely and effective manner.

It is clear to me that Mr J's usage of the car has been impaired. He has experienced extended periods without the car, or a suitable replacement vehicle. He has suffered the inconvenience of a number of breakdowns, some when he was away from home and left at the roadside for periods of time. And he has had the upset of being unable to rely on the car that should be giving him a degree of independence. So I think it right that impaired use is reflected in a refund of part of the hire payments that Mr J has made.

The investigator thought that a refund of 20% of the hire payments Mr J had made would be reasonable in the circumstances here. I don't have an accurate assessment of the time that Mr J's car has been off the road. But even when the car was in his use, as I've explained above, he would have been concerned about its reliability. So I too think a refund of one fifth of the hire payments that Mr J has made between the time the car was first supplied to him, and its ultimate repair in December 2023, would be fair and reasonable here.

There is little doubt that Mr J has experienced distress and inconvenience due to the repeated breakdown of a car that I have found was not of a sufficient quality when it was supplied by MOL. So I am also directing that Mr J is paid a further £300 in that regard.

### **Putting things right**

Mr J was supplied with a car by MOL under a hire agreement that was not of a sufficient quality. To reflect his impaired use of that car MOL should;

- Refund to Mr J 20% of the hire charges he paid between the date the car was supplied and its final repair in December 2023. MOL should add interest of 8% simple a year on any refunded hire payments from the date they were paid (if they were) to the date of settlement. HM Revenue & Customs requires MOL to take off tax from this interest. MOL must give Mr J a certificate showing how much tax it's taken off if he asks for one.
- Pay £300 to Mr J for the distress and inconvenience he has been caused.

It isn't clear to me whether Mr J has already cashed the cheque for £1,200 that MOL sent to him as part of its final response. If that cheque has been cashed, MOL may deduct that compensation from the charges (after the addition of interest) that I am directing it to refund above.

### **My final decision**

My final decision is that I uphold Mr J's complaint and direct Motability Operations Limited to put things right as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 15 November 2024.

Paul Reilly  
**Ombudsman**

