

The complaint

Mr M complains that Motability Operations Limited (“MOL”) has acted unfairly in relation to an Advance Payment (“AP”) he needed to make before a car was supplied to him through a hire agreement.

What happened

In January 2024 Mr M was supplied with a new car by MOL via a hire agreement. Mr M ordered his new car in October 2023 and was given information about the terms of the hire agreement at that time. As part of that agreement Mr M agreed to make an AP of £3,749 on or before delivery of the car.

MOL reviews the APs that are required each quarter following negotiations with car manufacturers and updated information about servicing and insurance costs. But its agreements are such that any APs are fixed at the point an order is placed, and do not vary should there be a delay in the supply of the new car.

When Mr M’s car was supplied in January 2024 the AP schedule had been revised. So, if he had ordered his car at that time, the AP required would have been reduced to £3,100. Mr M complained to MOL that it was unfair it hadn’t made him aware that the AP might fall, and that it failed to reduce his AP to reflect the new rate.

MOL didn’t agree with Mr M’s complaint. It said the terms of his agreement were clear that the AP would be set at the time the car was ordered. So it thought it had acted fairly in maintaining the AP that Mr M had originally agreed to pay. Unhappy with that response Mr M brought his complaint to us.

Mr M’s complaint has been assessed by one of our investigators. He thought that MOL had fairly implemented the terms of its agreement with Mr M. And he noted that the price guarantee would have given some benefit to Mr M had the required AP increased after he had ordered the car. The investigator didn’t think the complaint should be upheld.

Mr M didn’t agree with that assessment. 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.

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 M 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 M 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 supply of a car to a consumer by MOL comes in two parts. Initially a consumer will place an order for a new car. As part of that process they will be provided with information about any AP that might need to be paid. Essentially an AP is a top up of the monthly allowance for a car, that is paid as a lump sum at the outset of the agreement. It might take some time for an order for a new car to be fulfilled – often the cars supplied by MOL need to be a factory order rather than coming from existing stock. So the hire agreement isn't completed until the new car is ready for collection. At that time the agreement is signed by the consumer, and any AP that was agreed becomes payable.

MOL has explained that it reviews the level of APs that are required every three months. It says that during that time it renegotiates purchase prices with car manufacturers and reviews the costs of insuring and servicing the cars. And it takes into consideration any changes in the likely future value of a car at the end of the hire period. I think that is a reasonable and necessary part of MOL's finance processes.

But MOL is aware that there can be a variable, and sometimes extended, period of time between an order being placed, and a car being supplied. So its agreement offers a guarantee to the AP amount. Specifically it says;

"If you have chosen a car with an Advance Payment, this will need to be paid in full to your dealer before you take delivery of your car. The price you agreed with your dealer when you placed your order is guaranteed. This is the price you will pay when you collect your car, however long it takes. If however, you choose another car, the original price guarantee will no longer be valid."

So what that guarantee means is that a consumer would not be expected to pay a higher AP than had been agreed, even if the rates had changed in the period between an order being placed, and a car being supplied. But of course the opposite of that is also true, as was the case here. The AP applicable to the car Mr M had chosen had fallen during the intervening period between order and supply. So Mr M didn't benefit from that fall in the AP required.

I don't think that is an unreasonable outcome. MOL had no way of knowing at the time Mr M placed his order what would happen to the AP just over two months later. It is unlikely that it would have had the data needed to assess any likely changes to things such as the future value of the car, the insurance costs over the three-year agreement, or any changes in servicing and maintenance costs.

Mr M's complaint is clearly being made with the benefit of hindsight. I doubt that he would be making similar arguments had the AP risen in the period between his order being placed and the car being supplied. I am satisfied that he found the AP required to be acceptable and affordable at the point he placed his order. So I don't agree that he has suffered any financial hardship as a result of the AP changing.

I appreciate that this decision will be disappointing for Mr M. It is always disappointing when the cost of an item being purchased falls after an order has been placed. But I am satisfied that MOL clearly set out the AP that Mr M was required to pay, and that he found that cost to be both acceptable and affordable. I don't think MOL was under any obligation to provide Mr M with advance notice, even if it had been aware of that change (which for the avoidance of doubt I don't think it was), that the AP another consumer might need to pay in the future might be different from the quotation he was given and accepted. So I don't think MOL has done anything wrong.

My final decision

For the reasons given above, I don't uphold the complaint or make any award against Motability Operations Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 19 November 2024.

Paul Reilly
Ombudsman