

The complaint

Mr G complains that Motability Operations Limited (MOL) will not allow him to purchase the car that is the subject of his hire agreement with them.

When I refer to what Mr G and MOL have said, it should also be taken to include things said on their behalf.

What happened

In September 2019 Mr G entered into a hire agreement with MOL for a car. There was an Advance Rental Payment of £749 which was payable on or before the commencement of the Hire Term. Regarding the rental payments, the agreement said that *“During the Minimum Hire Term there are 39 Rental Instalments of Total Allowance payable at four weekly intervals”* and the duration of hire was defined as *“The Hire Term is for a minimum period of three years starting on the date of delivery of the Vehicle (the “Minimum Hire Term”), but continuing thereafter until either the expiry of a period of twenty four months following the Minimum Hire Term (the “Maximum Hire Term”) or the date on which this Agreement is terminated in accordance with the terms set out in the Contract Hire Terms and Conditions (Ref T&Cs - 02/21)(the “Conditions”), whichever is the earlier.”*

Mr G said that his MOL hire agreement was due to end in September 2022, so in May 2022 he contacted MOL to discuss the possibility of purchasing his car. He said he was told that this would not be a problem, but there would be only one opportunity to do this and that only one price would be provided, so if for any reason he was unable to proceed based on that price he would not have a second chance. This is why, he said, he only decided to extend his agreement term because he was worried he might not be able to afford purchase of the car due to its age and very low mileage at the time. Mr G also said that he only opted to extend his hire agreement because he was assured that the option to purchase would be available to him at the end of that period. And in May 2024, when Mr G contacted MOL to discuss his desire to buy the car, MOL advised him that this was no longer an option they offered, so Mr G raised a complaint with them.

In May 2024, MOL wrote to Mr G and they said the option to purchase his car is not available. They explained that they focus on ensuring the sustainability and longevity of their scheme for their broad customer base, so, they said, following a review, the option of customer sales was removed from their scheme.

Unhappy with the above, Mr G referred his complaint to our Service.

Our investigator was of the opinion that the complaint should not be upheld. He did not think there was a contractual obligation for MOL to allow Mr G to buy the car, and he did not think that the hire agreement was misrepresented to Mr G.

Mr G disagreed with the investigator. So, the complaint has been passed to me to decide.

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.

Where evidence is unclear or in dispute, I reach my findings on the balance of probabilities – which is to say, what I consider most likely to have happened based on the evidence available and the surrounding circumstances.

In this case I considered whether Mr G was given incorrect information and assurances in May 2022, when he was discussing the option of purchasing the car. And I have also considered whether by not allowing Mr G an option to purchase the car, MOL have breached any of the terms and conditions of the hire agreement he entered into.

Mr G has not alluded to the fact that he was also told about the option to purchase the car when he was initially entering into the hire agreement with MOL in September 2019, but for completeness in this decision, I have also considered if the hire agreement was misrepresented to Mr G by MOL and/or their agents at that time of its inception.

Mr G said when he contacted MOL to discuss the possibility of purchasing his car in May 2022, he was assured that the option to purchase would be available to him at the end of the extended hire period. He said he was informed of this verbally during the calls he had with MOL when he was extending the hire agreement. So, I have taken this into consideration.

The call recording from May 2022 is no longer available, which is not unreasonable due to passage of time, but I can see from the contact notes provided by MOL, that there was a discussion between Mr G and MOL about the options available to him at the time. The call notes suggest that the agent discussed the purchase option, the extension of the hire agreement, and the option to place an order for a new car. The notes indicate that Mr G most likely will go with the extension of his hire agreement once the renewal window approaches, but the notes do not make any other detailed comments as to exactly what was said during that call.

Without a copy of the call, just relying on the contact notes, I cannot see how exactly the option to purchase was explained to Mr G, and if any guarantees or promises were made to him in May 2022. Whilst I appreciate that Mr G has given our Service his best recollections of what was said at the time, this happened many years ago and memories can fade over time. So, I have also considered other evidence that is available, including what MOL have told us, what the hire agreement stipulates, and what MOL's website said around the time when Mr G called them in May 2022.

MOL told our Service that they did previously offer the ability for their customers to be able to buy the hired car, but they explained that this was always as a discretionary gesture of goodwill, if requested. They explained the option to purchase is no longer available so that MOL can focus on the sustainability of their scheme, and that this was a business decision applied to all their customers. They also said that they had no contractual obligation to communicate this to customers, however, in order to ensure their communications are fair, clear, and not misleading, they took the decision to update their website in November 2023. They also told us that the contract between them and Mr G does not include a term for him to purchase the car at the end of the hire term, and therefore there has been no change to the contract or the terms which Mr G agreed to. They said they confirm that Mr G has been treated fairly and consistently as compared with any other customer in the same position. So, I have taken this into consideration.

Considering I cannot listen to the call Mr G had with MOL in May 2022, and I do not know what exactly was discussed at the time of the car acquisition, I have also reviewed the hire agreement. From this I can see that the top of the agreement document is clearly headed 'Hire Agreement' and not, for example, 'Hire Purchase Agreement'. And the terms of the agreement state that at the end of the hire period the car must be returned to MOL. So, I have considered that the hire agreement Mr G entered into did not give him an option to buy the car. Also, as the MOL scheme only offer hire agreements and not hire purchase agreements, I think, had Mr G wanted a purchase option, he would not have been able to use the scheme and the benefits they provide.

I know that when Mr G called MOL in May 2022, MOL, most likely, did give him the option to purchase the car but I think, most likely, this was always subject to their discretion. As such, they were not under an obligation to do so, and had the option to remove this goodwill option whenever they wanted to.

I think, at the time Mr G was entering into the hire agreement, or when he called in May 2022, had he been told definitely that he has an option to purchase the car and that this option will be available to him at a later date too – I think, most likely, he would have questioned why his hire agreement states something else. And if this was such an important option for him, I think most likely, he would not have entered into the hire agreement in question. In addition, for me to say that his agreement was misrepresented to him, I would need to be satisfied that Mr G was told a false statement of fact that caused him to enter into a contract he would not have entered into otherwise. And based on the available evidence, I do not have enough to be able to conclude that this is most likely what happened.

In addition, I considered that in May 2022, MOL's website said something along the following lines: *"It may be possible to buy your car at the end of the contract, but this can only be discussed in the final three months of your lease."* So from this statement I can see the website used words such as: *"may be possible"* so I think Mr G, in May 2022, may have been told that *"It may be possible to buy"* the car, but I have not seen enough to say that, most likely, he was told that he definitely will have the right to do so. Overall, I do not think MOL had a binding contractual obligation to sell the car to him or that the option to purchase was an automatic contractual right conferred on Mr G.

While I appreciate Mr G's strength of feeling regarding his complaint, I do not think I've seen enough to say that there has been a breach of contract, misrepresentation, or that he was given incorrect information in May 2022. So, it is not fair or reasonable for me to require MOL to take any further action regarding Mr G's complaint.

My final decision

My final decision is I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 20 November 2024.

Mike Kozbial
Ombudsman