

The complaint

Mrs H complains that Motability Operations Limited (MOL) will not allow her to purchase the car that is the subject of a hire agreement with them.

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

What happened

In March 2020 Mrs H entered into a hire agreement with MOL for a car. There was an Advance Rental Payment of £1,999 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.”* Later Mrs H extended the hire agreement until February 2025.

Mrs H said that when she was ordering a car in 2019, MOL allowed cars to be purchased by drivers once the contract had expired. So, she said, it was practical to pick a certain model for which she paid an additional advance payment. She said she did this because MOL offered to sell the car to her at the end of her hire period. But Mrs H said that in December 2023, MOL changed their position, stating they would not sell car to their loyal customers. Mrs H said that, whilst she understands that policies can change, she feels this should not have been executed retrospectively and should have only affected new contracts post December 2023. So, Mrs H raised a complaint with MOL.

In February 2024 MOL wrote to Mrs H, and they said the option to purchase her car is not available. They explained that they focus on ensuring 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, Mrs H referred her complaint the Financial Ombudsman (Financial Ombudsman).

Our investigator was of the opinion that the complaint should not be upheld. The investigator felt there was no contractual obligation for MOL to allow Mrs H to buy the car, and did not think the hire agreement was misrepresented to Mrs H.

Mrs H 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 by not allowing Mrs H an option to purchase the car, MOL have breached any of the terms and conditions of the hire agreement she entered into. I have also considered if the hire agreement was misrepresented to Mrs H by MOL and/or the dealership before its inception.

Mrs H said that when she was ordering the car in 2019, MOL allowed cars to be purchased by drivers once the contract had expired. So, she said, that it was practical to pick a certain model for which she paid an additional advance payment. So, I have taken this into consideration.

It is not clear whether Mrs H is saying she was advised by MOL or the dealership before entering into the hire agreement that at the end of it she would be allowed to purchase the car, or whether she just assumed this would be the case. And, as I cannot see how exactly the hire agreement was explained to Mrs H, and if any guarantees or promises were made to her, I have considered all evidence that is available. I have considered what Mrs H and MOL have told us, what the hire agreement stipulates, and what MOL's website would have most likely contained around the time when Mrs H was entering into the hire agreement.

MOL told our Service that they did previously offer the ability for their customers to be able to buy the hired car, but that this was always a discretionary gesture of goodwill, if requested. They explained the option to purchase is no longer available so 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, 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 Mrs H does not include a term for her to purchase the car at the end of the hire term. Therefore, there has been no change to the contract or the terms which Mrs H agreed to. They said they confirm that Mrs H 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 do not know what was discussed exactly 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 Mrs H entered into did not give her an option to buy the car. Also, as MOL's scheme offers predominantly hire agreements and not hire purchase agreements, I think, had Mrs H wanted a purchase option, she would not have been able to use the scheme at the time she ordered the car, and the benefits they provide.

I know that when Mrs H was entering into the hire agreement, MOL and/or the dealership, might have told her that she may have an option to purchase the car at the end of the hire term. So, when considering if the hire agreement was misrepresented, among other aspects, I did think about whether Section 56 of the Consumer Credit Act 1974 would apply here. Section 56 deals with "antecedent negotiations" and it explains that finance providers are liable for what they say and for what is said by a credit broker or a supplier (in certain circumstances) before the consumer takes out the credit agreement. But considering all the circumstances of this case, I think most likely, this section does not apply. I say this because

I have not seen enough evidence to be able to say that MOL was acting as the negotiator in respect of the antecedent negotiations. But even if I am wrong about this, I have considered all the circumstances from around the time Mrs H was entering into this hire agreement, and all the arguments made by both sides in this case.

I considered that Mrs H might have been told that she may have an option to purchase the car at the end of the hire term, but I think, most likely, this was always subject to MOL's discretion. As such, they were not under any obligation to do so, and had the possibility to remove this goodwill option whenever they wanted to.

Had Mrs H been told at the time she was entering into the hire agreement that she will have the definite option to purchase the car – I think, most likely, she would have questioned why her hire agreement states something else. And, if this was such an important option for her, I think most likely, she would not have entered into the hire agreement in question.

Also, for me to say that her agreement was misrepresented to her, I would need to be satisfied that Mrs H was told a false statement of fact that caused her to enter into a contract she would not have entered into otherwise. And, based on the available evidence, I do not have enough to conclude that this is most likely what happened. Especially as at the time, she was entering the hire agreement, there was an option to purchase the car at the end of the hire term, so MOL or the dealership communicating to her that she may have an option to purchase the car would not be making a false statement of fact.

In addition, I considered that in July 2021 the 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."* I think it is more likely than not that this type of statement was also included on the website around the time Mrs H entered the hire agreement, because MOL have confirmed that they did not change their policy on selling their cars until November 2023. So, from this statement I can see the website used words such as: *"may be possible"*. As such, I think Mrs H may have been told that *"It may be possible to buy"* the car, but I have not seen enough to say that, most likely, she was told that definitely she will have the right to do so.

Overall, I do not think MOL had a binding contractual obligation to sell the car to her, or that the option to purchase was an automatic contractual right conferred on Mrs H. I also do not think that most likely Mrs H was told a false statement of fact which would have caused her to enter into a contract she would not have entered into otherwise.

Mrs H has mentioned that because MOL were able to change their policy, she worries what will happen if they change any of their other policies and apply these changes retrospectively. So, I understand that she worries how this may affect her in the future, but I cannot comment and take into consideration what may happen in the future, as we consider each complaint on its own merits and based on its own specific set of circumstances at the time.

Also, I know Mrs H has mentioned that she is unhappy with MOL's policies regarding current options on offer, such as: car types, mileage allowances, and certain features of their hire agreements. But MOL's offering are an internal matter for them to decide. It is not within my remit to tell MOL how they should structure their offering or their processes, as I can only consider whether MOL's actions/inactions have caused Mrs H to have been treated unfairly or unreasonably. And in this decision, I can only consider the direct impact on Mrs H and not others. Considering all the circumstances of this specific case, I do not think it is fair or reasonable for me to require MOL to take any further action regarding Mrs H's complaint.

And while I appreciate Mrs H's strength of feeling regarding her complaint, I do not think I've seen enough to say that there has been a breach of contract, or misrepresentation.

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 Mrs H to accept or reject my decision before 7 April 2025.

Mike Kozbial
Ombudsman