

The complaint

Mr M complains that Motability Operations Limited, trading as Motability Operations ('MOL'), will not allow him to buy the car that is the subject of his hire agreement with them.

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

What happened

In March 2021 Mr M entered into a hire agreement with MOL for a car. Mr M made an advance rental payment of £2,999. 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 M says that in October 2023 he contacted MOL to get a price for buying the car. He says he was told that a price couldn't be given at that time but that he should call back in December 2023. Mr M called back in December 2023 and was told that MOL had changed their rules and they were no longer selling cars to individuals, only to trade customers.

Mr M was not happy about this because he says it had previously been possible to buy the hired cars at the end of the hire period. He says that in 2021, when he picked the car under this agreement, he paid a large advance payment of £2,999 to get a 'top of the range' model and, knowing that he would have the right to buy the car at the end of his lease, as he says was previously the case, and as he had been able to do before with a previous car.

Mr M says he feels that he has been cheated by MOL because they removed the option for customers to buy their car in November 2023 and he wasn't notified of this. He doesn't think it's fair that MOL will be selling the car to the second-hand market when they could sell it to him as their Motability customer at the market value, as has been the case in the past.

Mr M says when he looked at MOL's website in February 2024 the information on there still indicated that cars could be bought at the end of the hire period by individuals, although this was later updated to say this was no longer an option.

Mr M complained to MOL about the lack of notification regarding the change in policy in relation to being able to buy the car. He asked MOL to honour what he says was the original agreement that he could buy the car at the end of the hire period. Alternatively, he would accept a refund of £2,999 to reflect the large advance payment he made to acquire

a top specification car, on the understanding that he would be able to buy it at the end of the hire period.

In January 2024, MOL wrote to Mr M to confirm they had withdrawn the option for existing customers to buy their hire car in November 2023. They added that the option to buy had never formed part of the hire contract and that historically, should a customer approach them with an interest in buying, any option to buy was always at MOL's discretion. MOL said they had decided to focus their resources on their core offering which is to provide a complete worry-free car leasing package and therefore had made the decision to remove the discretionary buy option for which, they said, uptake had been relatively low.

Mr M was unhappy with this response and referred his complaint to the Financial Ombudsman Service (Financial Ombudsman).

Our investigators thought that the complaint shouldn't be upheld. They said there was no contractual obligation in the hire agreement which obliged MOL sell the car to Mr M at the end of the hire period, and they didn't think that MOL or the dealership had misrepresented things to Mr M. They also said that it wasn't within the remit of our service to comment on MOL's internal business processes and decisions.

Mr M disagreed with our investigators, so the case has been passed to me to make a decision.

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.

This includes what both parties have told us and the information they have provided, what the hire agreement stipulates, and the information on MOL's website.

Where evidence is unclear or in dispute, I have reached my findings on the balance of probabilities - in other words, what I consider most likely to have happened based on the evidence available and the surrounding circumstances.

I have summarised this complaint in less detail than has been provided by the parties, and largely in my own words. No discourtesy is intended by this and if there's something I haven't mentioned it's not because I've ignored it, it's that rather than commenting on every individual detail I've focused on those issues which are central to reaching what I think is the right outcome. This reflects the informal nature of our service as a free alternative to the courts.

I need to decide whether MOL breached any of the terms and conditions of the hire agreement when they wouldn't sell the car to Mr M at the end of the hire period. And I also need to decide whether the hire agreement was misrepresented to Mr M.

Having considered all the evidence, I have reached the same conclusion as our investigators and for broadly the same reasons, and I will explain why.

I've reviewed the hire agreement. At the beginning of the agreement, it's clearly headed "Hire Agreement" and not, for example, "Hire Purchase Agreement". The agreement also makes it clear that at the end of the hire period the car had to be returned to MOL. There are no clauses within the agreement which oblige MOL to offer Mr M the right or option to buy the car. Also, I've considered that MOL offers predominantly hire agreements and not hire purchase agreements. I think, had Mr M wanted a purchase option, most likely he

would not have been able to use the scheme at the time he ordered the car.

I know that when Mr M was entering into the hire agreement, MOL and/or the dealership, might have told him that he 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 Mr M was entering into this hire agreement, and all the arguments made by both sides in this case.

I’ve considered that at the time Mr M entered into the hire agreement, he says that MOL’s website said that hirers could buy their car at the end of the hire period. Mr M sent us what he says are extracts from the MOL website from November 2023 and January 2024, which he says show that customers may buy their car from MOL at the end of the hire period. I’ve considered these, and one of these extracts actually appears to be from a third-party website, not MOL, and the source of the other extract isn’t sufficiently clear for me to determine that it comes from MOL’s website. However, in any case, I’ve been able to establish that in December 2022 the MOL website did include the following information: *“Can I buy the vehicle at the end of my lease? You might be able to buy your vehicle, but we can only talk to you about this in the final three months of your lease”*.

As this information was included in the MOL website in December 2022, I think it’s more likely than not that it was also included in the website around the time Mr M entered the hire agreement in March 2021, because MOL have confirmed that they didn’t change their policy on selling cars until November 2023. However, the statement on the website clearly says *“You might be able to buy your vehicle”*, which doesn’t mean that an option to buy was an automatic contractual right conferred on Mr M, or a binding contractual obligation on MOL to sell the car to him.

Mr M says he would never have paid a large advance payment for a top specification model if he had known that he wouldn’t have the opportunity to buy the car at the end of the hire period. He says he believed he would be able to buy the car at the end of the hire period because he had previously bought a car he had hired under a similar arrangement with MOL, and also because the information on MOL’s website at the time he entered the agreement indicated that he would be able to buy the car at the end of the hire period. However, I think if Mr M thought the option to buy the car was guaranteed, most likely, he would have questioned why his agreement didn’t confirm this at the time he entered the hire agreement.

I accept that previously MOL may have given hirers the option to buy their cars at the end of the agreement term. This is not disputed by MOL, and Mr M says that he has previously bought a car from MOL under a similar arrangement. However, MOL say that this was always a discretionary option only, was never a contractual obligation and whether it was offered in practice was dependent on several different factors which determined if a customer was eligible for the option. MOL say they are free to review and amend such non-contractual options and policies, and, after a policy review, they made the decision to withdraw the purchase option in November 2023.

So I don't think there is anything in the hire agreement which says that Mr M would definitely be able to buy the car at the end of the hire period.

I also don't think the information on the MOL website amounts to misrepresentation of the hire agreement. I say this because, to make a finding of misrepresentation, I would need to be satisfied that Mr M was told a false statement of fact that caused him to enter into a contract he would not have entered into otherwise, and I haven't seen sufficient evidence of this.

Just because Mr M was able to buy a car hired under the scheme previously doesn't amount to a false statement of fact that he'll definitely be able to do this again in the future.

Also, the information on MOL's website, before MOL's policy was changed, clearly says *"Can I buy the vehicle at the end of my lease? You might be able to buy your vehicle, but we can only talk to you about this in the final three months of your lease"*.

I don't think this amounts to a false statement of fact, rather it reflects MOL's policy at the time, which was that buying the car at the end of the hire agreement might be a possibility but wasn't a definite option.

As I mentioned earlier, the other extract Mr M referred to appears to be from a third-party website, not MOL, and MOL can't be held responsible for the statements of a third-party organisation.

Considering everything, whilst I think Mr M may have been under the impression both from the information on the website and from his previous experience of buying a car under a similar arrangement with MOL, that he *"might be able to buy"* the car, I haven't seen enough to show that it was reasonable for him to conclude that he would definitely have the right to buy the car. In addition, there is nothing in the hire agreement which gives Mr M either the option or the right to buy the car.

It's perhaps unfortunate that when Mr M first enquired about buying the car in late 2023 he was told call back in December, by which time MOL's policy on selling hire cars had changed. However, it's more likely than not that the reason why MOL couldn't give Mr M a price to buy the car when he initially called was because the discretionary sell policy was already under review. Also, I've not seen enough evidence to say that most likely Mr M was told, during that initial call, that he would definitely be able to buy the car if he calls back in December 2023.

I've also considered that Mr M has recently said that there is no digital signature on the agreement, that he didn't sign the agreement and that the copy sent to him by our investigator has never been seen by him or shown or read to him. As Mr M isn't disputing that he entered into an agreement to hire a car from MOL in March 2021, and he previously sent us a copy of the agreement when he originally submitted his complaint to us, and he had use of the car under the agreement for the duration of the hire period, I think that if he was concerned that he had not seen the agreement and/or hadn't signed it, more likely than not he would have raised this with MOL before now.

Mr M also makes reference to MOL's internal business processes/decisions, including in relation to failing to notify him of the change in the sell policy and failure to update the

information on their website about this promptly. This isn't something I'm able to comment on or something I'm able to direct MOL to change. It's not within the remit of the Financial Ombudsman to tell MOL how it should structure its internal processes. Instead, I'm required to decide whether in the specific circumstances of Mr M's complaint MOL needs to do anything to put things right for him. In other words, has he suffered any financial loss or material distress and/or inconvenience as a result of anything MOL did wrong. And overall, I can't say that he has been treated unfairly or unreasonably. As I said above, one of the website extracts actually appears to be from a third-party website, not MOL, and the source of the other extract isn't sufficiently clear for me to determine that it comes from MOL's website. And, I've not seen enough evidence to say that MOL not notifying Mr M sooner has caused him a direct financial detriment.

While I appreciate Mr M's strength of feeling regarding his complaint, I don't think I've seen enough to say that there's been a breach of contract or misrepresentation in this instance.

Therefore, my conclusion is that it's not fair or reasonable for me to require MOL to take any further action regarding Mr M's complaint.

My final decision

For the reasons explained, I don't uphold Mr M's complaint about 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 3 April 2025.

Liz Feeney
Ombudsman