

## **The complaint**

Mr M complains that Product Partnerships Limited (PPL) would not allow him to switch to a different car under his hire agreement with them.

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

## **What happened**

In October 2022 Mr M entered into a hire agreement with PPL for a car. There was a monthly subscription fee (inclusive of VAT) of around £460 per month. The duration of the agreement was 24 months from November 2022 to November 2024.

Mr M said that his PPL hire agreement was an all-inclusive car subscription service, with a single monthly payment that includes use of the car, insurance, maintenance, and servicing. He said, one of the key features of the service was the ability to swap cars every six months. Mr M said that he wanted to use this feature, however, since about December 2023, PPL have removed all cars from their website, meaning it is impossible to make a swap. Mr M said that as of June 2024, there were still no cars available on the website, so he was tied to his existing car. When he contacted PPL about this in April 2024, Mr M said they told him that currently they were undergoing some internal changes such as changing insurance provider and due to this they were not currently in a position to offer new subscription cars or offer swaps for pre-existing customers. Mr M feels this was unfair as they were trying to avoid fulfilling a key term of the contract he had with them, whilst at the same time holding him fully to his contractual obligations under the agreement.

Mr M wanted PPL to offer financial compensation to him for the failure to provide the stated service (car swap) and, if no cars were going to be made available for the car swap, then he felt that they should give him an option to terminate his contract with no financial liability at the time of his choosing.

In July 2024 PPL wrote to Mr M. In summary, they said they are in the process of implementing a series of changes to their program. They said this included a switch from individual retail insurance policies to a fleet-based policy for the programme as a whole. They said this switch has unfortunately proven more complex than was originally contemplated, resulting in them being unable to undertake car swaps until the insurance situation is resolved. But they said after a review, they have come to the conclusion that, since no car swap option can be offered, Mr M should be able to end his hire agreement with them without penalty by contacting them.

Mr M was not happy, so he referred his complaint to Financial Ombudsman Service (Financial Ombudsman).

Our investigator was of the opinion that the complaint should not be upheld. The investigator said the benefit of swapping cars was subject to availability, so the investigator did not think that there was a breach of contract. Also, PPL released Mr M from the contract in July 2024,

after he contacted them in April 2024 with his concerns, so the investigator thought his was fair as Mr M was free to find alternative options.

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

After reviewing the case, I issued a provisional decision on 3 March 2025. In the provisional decision I said:

***“What I’ve provisionally 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.*

*Mr M has very strong feelings about this complaint, and he provided detailed submissions in support of his view. I can confirm, I have read and considered the submissions in their entirety. But I have summarised this complaint very briefly, in less detail than has been provided, and largely in my own words. No discourtesy is intended by this. If there is something I have not mentioned, I have not ignored it. I have not commented on every individual detail. But I have focussed on those that are central to me reaching, what I think is, the right outcome. This reflects the informal nature of the Financial Ombudsman as a free alternative to the courts.*

*Mr M believes PPL is in breach of contract. He has quoted a variety of legislation among them he has made references to the Consumer Rights Act 2015 and quoted information from The Competition and Markets Authority, as he believes that PPL is seeking to rely on an unfair contract term. More specifically, Mr M feels that PPL relying on the words ‘subject to availability’ to avoid meeting its legal obligations is contrary to the unfair term provisions of the Consumer Rights Act 2015. Mr M also feels PPL have not acted in compliance with the Financial Conduct Authority (FCA) Consumer Duty in their behaviour towards him as a customer. He said that PPL’s car swap feature was a key part of their subscription as it featured prominently in their advertising and was a fundamental reason why he initially decided to enter into the hire agreement in question, knowing that he had the flexibility to swap the car four times (once every six months). In summary, Mr M has told us that he believes that PPL should be found in breach of contract, and that he should be entitled to financial compensation.*

*The term of the contract in question states:*

*“7.1 If your Subscription Plan is longer than 6 months, you may, after the initial period of 6 months, request to exchange your Subscription Vehicle for another one of our Subscription Vehicles ("Your Vehicle Swap"). Subject to availability of your requested vehicle, and the successful recompletion of the Verification Process described at Section 4 above, we will carry out Your Vehicle Swap.*

*7.2 If the length of your Subscription Duration allows it, you may request Your Vehicle Swap periodically, as long as each swap is separated by at least 6 months.*

*7.3 You may request Your Vehicle Swap by sending us an email to that effect.”*

*So, I have considered what the contract states and all of Mr M’s submissions, but I do not think I need to decide if the term of the hire agreement would be considered an unfair*

contract term under some of the legislation mentioned by Mr M. I also do not think I need to consider if PPL broke this term of the contract. I will explain why.

Mr M initially sent an email to PPL on 4 April 2024. In this email he said he would like to ask a couple of questions about his agreement, and he specifically said:

“- when I’ve been looking at the website over the last few months, there haven’t been any cars available. Have you stopped offering the service to new customers? And if so does that mean that existing subscribers can no longer change their car?  
- my current subscription ends in November. Are you able to tell me what will happen then, in particular will it be possible to choose a different car at that point, extend my current Tucson or if there would be any option to buy our current car?”

At that moment Mr M never requested a car swap and did not indicate a requirement for a smaller car than the one he had at the time. Also, from the text of that email I do not think, at that time, Mr M actually intended to swap his car. He was only asking general questions and was more concerned with what will happen at the end of his hire agreement. I think, had he wanted to swap his car or needed a smaller/cheaper option, he would have most likely made this clearer to PPL. So, I cannot say that at this stage he was actually intending on swapping his car and trying to exercise this contractual right provided to him under his hire agreement.

I can see that later when he writes to PPL on 21 April 2024, again, he did not directly request a car swap, but rather “a discount to the monthly subscription cost, or a one-off compensation payment.” So, I cannot say that, most likely, he was directly trying to exercise his contractual right of a car swap.

But even if I am wrong, which I do not think that I am, I do not think it would be fair or reasonable to ask PPL to pay Mr M compensation or ask them to refund a part of his hire payments. I say this because I have not seen enough evidence to say that most likely Mr M has suffered a direct loss, or distress or inconvenience, that would warrant a compensation payment to be made to him by PPL. And when thinking about this I have also taken into consideration that shortly after the email dated 21 April 2024, PPL allowed Mr M to exit his hire agreement without any penalties and he was free to look for alternative options. So overall, taking all the circumstances of this case, I cannot say that PPL have treated him unfairly.

When arriving at the fact that, most likely, PPL have not treated Mr M unfairly, I have also considered what PPL have provided us with. They have gone into great deal to explain how the car insurance costs have increased from October 2022, when Mr M entered into a hire agreement, to the time when he started corresponding with them about the availability of cars. And they explained that had there been a smaller car available for Mr M to chose from, it would not have been much cheaper than the model he had at the time. So, I have considered that, even if a car was available, most likely Mr M would not have swapped his car as he would have lesser of a car for almost the same monthly price. And it could have been that only bigger cars were available. Plus, I have also considered what PPL have told us about the fact that, had Mr M requested a smaller car or told them that he was in financial difficulties during his interactions with them or their agents, they would have tried to help him, including checking with the supply team to identify any potentially available cars. But, in fact, Mr M made no such direct request. I also considered that if Mr M was aiming to reduce his payment due to financial circumstances, he could have attempted to mitigate his losses by communicating this to PPL to see if they would release him from the hire agreement. And had he done this, I think most likely they would have released him from the hire agreement as they have in the middle of 2024.

*Mr M has talked about how PPL have not communicated with other customers to let them know about the fundamental change to their service. But in this decision I can only consider Mr M's circumstances. And while I appreciate Mr M's strength of feeling regarding his complaint, I do not think I've seen enough to say that PPL have treated him unfairly and/or not acted in compliance with the FCA Consumer Duty in their behaviour towards him as a customer. So, it is not fair or reasonable for me to require PPL to take any further action regarding Mr M's complaint.*

**My provisional decision**

*For the reasons given above, I intend not to uphold this complaint."*

I asked both parties to provide me with any additional comments or information they would like me to consider by 17 March 2025.

PPL accepted my provisional decision and they said they do not have any further comments to make.

Mr M disagreed with my provisional decision and provided further comments.

**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.

I've also considered again my provisional findings. Having done so I see no reason to reach a different conclusion to what I reached in my provisional decision (copied above).

Following my provisional decision, Mr M said that because I referred to him as having 'very strong feelings about this complaint' and later again to his 'strength of feeling' he said this was patronising and incorrect. Mr M said he has not used any emotive language or hyperbole, or indeed given any cause to conclude that he had 'very strong feelings'. So first, I would like to say that I'm sorry that Mr M feels that my use of those words came out as patronising and incorrect. I would like to assure him that this was not my intention. I did not try to say that Mr M was using emotive language or hyperbole when talking about his complaint. All I was trying to get across is that I am aware that his complaint was important to him and to confirm that I have read and considered all his submissions in their entirety.

I know Mr M still feels that car swap was widely advertised as a key feature, and after my provisional decision, he has replied and said that due to our compulsory jurisdiction I have to properly consider his reasoned complaint about a failure to provide a service in relation to a regulated activity. In summary, he said that he still feels that PPL is in breach of contract and owes him compensation for their failure to offer the advertised service. Mr M said that he referred to clear provisions of consumer law and financial services regulation, and he feels that I have not engaged with these in sufficient detail. So, he said he urges me to do so, and to reach a conclusion that PPL has breached their contractual obligations and that his complaint should be upheld.

Having reconsidered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint, I still do not think it is fair or reasonable for me to require PPL to take any further action regarding Mr M's complaint.

As I explained in my provisional decision, I do not think that I need to decide if the term of the hire agreement would be considered an unfair contract term under some of the legislation mentioned by Mr M, and I do not think I need to consider if PPL broke this term of the contract. When looking at the correspondence Mr M had with PPL, I can see that Mr M

never requested a car swap and did not indicate a requirement for a smaller car than the one he had at the time. And I know, following my provisional decision, he said there were no cars available since December 2023, so he said how could he request a car swap when there were no cars to choose from. But based on the text of his email to PPL I do not think, at that time, Mr M intended to swap his car. This is because all he was doing is asking general questions, and seemingly being more concerned with what will happen at the end of his hire agreement. So, I still think, had he wanted to swap his car or needed a smaller/cheaper option, he would have most likely made this clearer to PPL. And in his later correspondence, when he wrote to PPL on 21 April 2024, again, he did not directly request a car swap, but rather “a discount to the monthly subscription cost, or a one-off compensation payment”. So, again I cannot say that, most likely, he was directly trying to exercise his contractual right of a car swap.

Also, as I explained in my provisional decision, I have not seen enough evidence to say that most likely Mr M has suffered a direct loss, or distress or inconvenience, that would warrant me to direct PPL, on a fair and reasonable basis, to pay a compensation payment to him. Shortly after the email dated 21 April 2024, PPL allowed Mr M to exit his hire agreement without any penalties and he was free to look for alternative options, so I still cannot say that PPL have treated Mr M unfairly.

Mr M has questioned how PPL could have speculated about how much a theoretical non-existent car would have cost since none were available. But, as I already explained, PPL have explained how the car insurance costs have increased from October 2022 as they were examining their insurance options at the time. So, based on the available evidence, I still feel that, most likely, even if another car was available, most likely Mr M would not have swapped his car as he would have lesser of a car for almost the same monthly price. And it is also possible that only bigger cars might have been available. Furthermore, had Mr M requested a smaller car, or told PPL that he was in financial difficulties during his interactions with them or their agents, I think most likely they would have tried to help him, including checking with the supply team to identify any potentially available cars. But, I have not seen enough evidence to say that Mr M, most likely, had expressed any such direct request to PPL.

When replying to my provisional decision, Mr M also said that he still thinks PPL should clearly communicate to their customers what has happened. But I can only consider Mr M's circumstances in this decision. And I do not think I've seen enough to say that PPL have treated him unfairly and/or not acted in compliance with the FCA Consumer Duty towards him as a customer. Considering all the circumstances of this specific complaint, I still feel that it is not fair or reasonable for me to require PPL to take any further action regarding Mr M's complaint.

### **My final decision**

For the reasons given above, and in my provisional decision, I do not to uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 25 April 2025.

Mike Kozbial  
**Ombudsman**