

## The complaint

Ms S is unhappy because she couldn't buy the car she was hiring from Motability Operations Limited, trading as Motability Operations ('MOL'), at the end the hire agreement period.

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

## What happened

In March 2020 Ms S entered into a hire agreement with MOL for a car. Ms S made a total advance rental payment of £3,189. 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 follows *"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 – 08/19)(the "Conditions"), whichever is the earlier."*

Ms S says that in February 2022 she contacted MOL to ask about buying the car, but she thought the price to buy was high compared with the retail price of a similar car with the same specification. MOL told her the price was non-negotiable and the price level was partly due to a shortage of new cars caused by the war in Ukraine. MOL suggested she could wait and see if the prices reduced in the future, when the market had settled down again, at which point the car would also be older which might further reduce the price. Ms S decided not to buy the car at this point and extended the lease.

Ms S contacted MOL again in early October 2024 to request a purchase price, at which point MOL said their policy on the sale of hire cars had changed in November 2023 and they were no longer offering the option to buy the car.

Ms S wasn't happy about this and contacted the Financial Ombudsman Service (Financial Ombudsman). She said she had paid a significant advance payment to get a specific model with a number of optional extras, on the understanding that she would be able to buy the car at the end of the agreement. Ms S says she wouldn't have paid for a higher specification car or added extras and may not even have entered the agreement at all, if she knew she wouldn't have the option to buy the car at the end of the agreement.

A few weeks after Ms S referred her complaint to the Financial Ombudsman, MOL contacted her to say that they had reviewed her case and, as a gesture of goodwill, they were prepared to offer her the option to buy the car. However, she declined this offer because in the intervening period she had already made arrangements and incurred costs to buy a different car, and it was too late to cancel these.

Ms S told our investigator that she wants compensation for all the additional expenses she paid out when ordering a car above the standard specification, and with additional features, on the understanding that she was told she would be able to buy the car later.

Our investigator thought that the complaint should be partially upheld. They said the ex-gratia offer to sell the car to Ms S was reasonable, and they didn't think that MOL needed to compensate Ms S for the additional costs she had incurred in selecting a higher specification car with extras. However, they did think that MOL should pay Ms S £200 to reflect the distress and inconvenience caused to her arising from the loss of expectation she suffered because of MOL's change in policy relating to the sale of cars.

MOL responded to our investigator and said there was never a contractual right to buy cars hired under the scheme and any option to purchase was always at their discretion. They also said they were entitled to modify their policies and business practices and don't believe they acted unfairly in changing a policy that was never part of the hire agreement. They felt they had acted reasonably when they reconsidered their initial response to Ms S and offered her the opportunity to buy the car as a goodwill gesture, but she declined this. For this reason, and because they thought that Ms S hadn't incurred any losses as the hire agreement never included a purchase option, they disagreed that they should pay Ms S £200 compensation.

Ms S also responded to our investigator. She said that she doesn't think £200 is fair compensation for the changes imposed by MOL, or for their previous conduct, including their initial failure to allow her to buy the car, the sale price offered or as a reflection of additional costs she had incurred by having to continue to make payments for the car while waiting for her complaint to be resolved.

Because both MOL and Ms S disagreed with our investigator, the case has been passed to me to decide.

After reviewing the case I issued a provisional decision on 9 April 2025, where I explained that I didn't intend to uphold the complaint. In that 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. This includes what both parties have told us and the information they have provided, as well as what the hire agreement says.*

*If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome. 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.*

*Ms S complained because she couldn't buy the car she had been hiring from MOL, and also says she feels she was misled into purchasing so many extras on a car that she would never be able to own.*

*In reaching my decision I've considered whether MOL breached any of the terms and conditions of the hire agreement when they wouldn't sell the car to Ms S at the end of the hire period, and I've also considered whether the hire agreement was misrepresented to Ms S.*

*Ms S says that it was always her intention to buy the car at the end of the hire period, and she made this clear to MOL from the very start of the process. She says she was told she would be able to buy the car and if she had known that the car wouldn't be offered for sale to her, she wouldn't have chosen such an expensive car with extras. She says she could have taken a smaller car, a less expensive car, or not entered the agreement with MOL at all.*

*I wasn't there at the time Ms S entered into the hire agreement, so I don't know how exactly*

*the hire agreement was explained to her, and if any guarantees or promises were made to her. As such, I've considered all evidence that's available, including what Ms S and MOL have told us, what the hire agreement says, and what MOL's website would most likely have said around the time Ms S was entering into the hire agreement.*

*MOL have told us that they did previously offer an option for their customers to be able to buy the hired car, but this was always a discretionary gesture of goodwill, if requested. They also said that they had no contractual obligation to communicate their change in policy to customers. However, to ensure their communications were 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 Ms S does not include a clause saying she can buy the car at the end of the hire term. Therefore, there has been no change to the contract or the terms which Ms S agreed to. So, I have taken this into consideration.*

*Considering I don't know what exactly was discussed at the time of the car acquisition, I've also reviewed the hire agreement. From this I can see that at the beginning of the agreement, it's clearly stated "Hire Agreement" and not, for example, "Hire Purchase Agreement" and the agreement also makes it clear that at the end of the hire period the car must be returned to MOL. There are no clauses within the agreement which oblige MOL to offer Ms S the right or option to buy the car, and there are also no clauses which require MOL to refund the cost of any extras paid for by Ms S, a point I'll return to later.*

*The hire agreement didn't give Ms S the right or option to buy the car, but it's possible that when Ms S 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 a credit agreement. But, considering all the circumstances of this case, I think this section doesn't apply. I say this because I haven't 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've considered all the circumstances from around the time Ms S was entering into this hire agreement, and all the arguments made by both sides in this case.*

*I considered that Ms S might have been told that she may have an option to purchase the car at the end of the hire term, but even if this did happen, this was always subject to MOL's discretion. As such, MOL weren't under any obligation to sell the car, and had the possibility to remove any such discretionary option whenever they wanted to. Had Ms S been told at the time she was entering into the hire agreement that she would have the definite option to purchase the car, I think, most likely, she would have questioned why the hire agreement doesn't include this. And, if this were such an important option for her, I think most likely, she wouldn't have entered into the hire agreement in question.*

*I've also considered that in September 2020 Ms S asked MOL if she would be able to buy the car if she moved abroad, and MOL said that in those circumstances they wouldn't be able to offer the option to buy the car. The notes MOL made at the time of that conversation also indicate that they explained that optional extras wouldn't be refundable if Ms S returned the car and moved abroad, and also that the purchase of the car is at their discretion and not an automatic right.*

*I've considered whether there has been any misrepresentation because Ms S says she was misled by MOL. For me to say that the agreement was misrepresented, I would need to be*

satisfied that Ms S was told a false statement of fact that caused her to enter a contract she wouldn't have entered otherwise. Based on the available evidence, I don't think I have seen enough to conclude that this is more likely than not what happened. If at the time Ms S was entering the hire agreement she was told that there was an option to purchase the car at the end of the hire term, this would not be making a false statement of fact. I say this because at that time there was an option to purchase, but this was always subject to MOL's discretion - it wasn't a contractual right, and I haven't seen any evidence to show that Ms S was told it was a contractual right.

In addition, I considered that in 2022, the year when Ms S first asked to buy the car, 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's more likely than not that this type of statement was also included on the website around the time Ms S entered the hire agreement, because MOL have confirmed that they didn't change their policy on selling their cars until November 2023. From this statement I can see the website used words such as: "may be possible". As such, I think Ms S may have been told that "It may be possible to buy" the car, but I've not seen enough to say that she was told that she would definitely have the right to do so.

Overall, I don't think that MOL had a binding contractual obligation to sell the car to Ms S, or that the option to purchase was an automatic contractual right conferred on Ms S. I also don't think that Ms S was told a false statement of fact which would have caused her to enter a contract she wouldn't have entered otherwise.

I've also considered that a few weeks after Ms S was initially told in October 2024 that the option to buy the car wasn't available, MOL reviewed the complaint and said, as a gesture of goodwill, that they could offer a price to sell the car to Ms S. Unfortunately, although only a few weeks had passed, Ms S says she had already made alternative arrangements and incurred costs to buy another car, and these plans were too far advanced to be cancelled, so she couldn't accept MOL's offer.

Having thought about this, I don't think that MOL acted unreasonably by reviewing their initial decision so soon after their original letter which had said the option to buy the car wasn't available. However, I can also understand why Ms S felt she had to make alternative arrangements promptly after receiving that letter from MOL in early October 2024. This understandable promptness led to the offer from MOL to sell the car coming too late for Ms S to feel she could consider it. Despite there being a delay of only a few weeks Ms S had committed to alternative arrangements and incurred costs related to these. However, whilst I'm sympathetic to the frustration Ms S feels about MOL's change in stance just a few weeks apart, I don't think MOL have acted unreasonably because they weren't obliged to reconsider their initial stance, but they did so as a gesture of goodwill.

I appreciate that it's now too late for Ms S to buy the car because it has been returned to MOL. Ms S says that to resolve her complaint she would like compensation as a reflection of the additional costs she incurred by having to continue to make payments for the car while waiting for her complaint to be resolved, and she also wants a refund of all or a portion of the money she paid to get a higher specification car with extra features.

However, as I've already said, there's nothing in the agreement which obliges MOL to offer an option for Ms S to buy the car, or to refund any portion of the costs incurred by her to secure the car and features she selected. I've also not seen anything to show that Ms S was misled over either of these issues. And MOL have provided evidence from 2020 which shows that they had a conversation with Ms S during which they explained that optional extras wouldn't be refundable if Ms S returned the car. Therefore, I don't think it's reasonable to ask MOL to refund Ms S for any additional costs she incurred in upgrading the car to a

*specific model and adding extra features. Regarding having to maintain monthly payments while the complaint is being resolved, it's a requirement of the agreement that these payments be made while the agreement is in force.*

*Ms S is also unhappy about the price she was given to buy the car in October 2022 which she says was too high when compared to the retail purchase price of a similar car. She wasn't happy with MOL's explanation of why the price was high at that time and also felt that the price was being inflated by the presence of the additional features which she had already paid extra for, and which she says she had previously been told wouldn't be included in any valuation. She declined to buy the car at that time for these reasons and extended the agreement before approaching MOL again in October 2024 for a current price to buy the car.*

*I'm sympathetic to Ms S's feelings about the fact that between these dates she didn't receive any notification about MOL's change in policy regarding buying the car. However, MOL's policies and processes, including those relating to the sale of cars and how those cars were valued, aren'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 Ms S's complaint, MOL needs to do anything to put things right for her. In other words, has she suffered any financial loss or material distress and/or inconvenience as a result of anything MOL did wrong. And considering all the circumstances of this specific case, I don't think it is fair or reasonable for me to require MOL to take any further action regarding Ms S's complaint.*

*While I can understand how strongly Ms S feels about this complaint, and I do sympathise with her position, I haven't seen enough to say that there's been a breach of contract or misrepresentation in this instance. And I don't think it would be fair or reasonable to ask MOL to take any further action regarding Ms S's complaint."*

I asked both parties to provide me with any additional comments or information they would like me to consider by 23 April 2025. Neither party responded.

### **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.

Having done so and considering neither Ms S or MOL provided any further information or comments, I see no reason to reach a different conclusion to the one I reached in my provisional decision (copied above).

### **My final decision**

For the reasons explained above and in my provisional decision, I don't uphold Ms S's complaint about Motability Operations Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms S to accept or reject my decision before 22 May 2025.

Liz Feeney  
**Ombudsman**