

## **The complaint**

Mr B is unhappy that a car supplied to him under a hire agreement with Motability Operations Limited was of an unsatisfactory quality.

## **What happened**

In March 2020, Mr B was supplied with a new car through a three-year hire agreement with Motability. Shortly after being supplied with the car, Mr B says that he complained to the supplying dealership about the fuel consumption. In August 2020, Mr B let Motability know that the car was going back to the dealership due to issues with the brakes and acceleration.

In January 2021, Mr B advised Motability that he was having issues with the boot opening automatically, and the car rolling while parked. Motability asked him to take the car to the dealership for them to look into the issues. In February 2021, Mr B asked Motability for permission to add a towbar to the car, which was approved.

In September 2021, Mr B asked Motability if he could change the car, as it was underpowered, and he was struggling to tow his caravan. Motability explained this was possible, but it would mean cancelling the agreement and paying a £250 cancellation fee. Mr B didn't go ahead with this.

In October 2021, Mr B advised Motability that he was having mechanical issues with the car and that he was taking it back to the dealership for investigation and repair. During 2022, Mr B contacted Motability on several occasions to let them know the car was being returned to the dealership for investigation of other faults. In October 2022, a fault was found with the gearbox, and this was fixed.

Mr B complained to Motability in January 2023, as the car was back in for repair. He was unhappy with the amount of time the car had been in for repair, and that it still seemed to have faults. Motability gave Mr B the option to end the agreement early and return the car with nothing more to pay. They also waived their £250 cancellation fee and paid Mr B an additional £2,000 for the distress and inconvenience he'd been caused, as well as for the extra fuel costs he'd incurred.

Mr B wasn't happy with this, and he said he'd spent over £3,800 more in fuel than he normally would have, due to the problems with the car. So, he brought his complaint to the Financial Ombudsman Service for investigation.

Our investigator said Motability had accepted there was a fault with the car, and that Mr B wasn't able to use it as he expected. However, Mr B had been able to travel more than 27,000 miles while he was in possession of the car, and Motability kept him mobile (with courtesy cars and taxis) while the car was in for repair. So, he didn't think that Motability should refund any of the payments they'd received.

The investigator also said that Mr B hadn't provided any evidence of the additional fuel costs he'd said he'd incurred because of the faults with the car. Because of this, he thought Motability's offer to allow Mr B to return the car and end the agreement at no cost, and to

pay him £2,000 compensation, was reasonable in the circumstances. And he didn't think they needed to do anything more.

Mr B didn't agree with the investigator. He thought that Motability's offer was an admission of guilt, but they weren't *"saying they are guilty."* He said that he'd missed out on a family holiday because the courtesy car he was supplied with didn't have a tow bar, so he was unable to use his caravan.

With regards to the fuel costs, Mr B had said *"trading standards said the £2,000. Was not enough [sic]"* and, as far as he's concerned, he's out of pocket. He said he could provide bank statements to show what he'd spent on fuel, and he wanted someone to look at this and how much it really cost him.

Because Mr B didn't agree with the investigator, this matter has been passed to me to make a final 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.

Having done so, I've reached the same overall conclusions as the investigator, and for broadly the same reasons. 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.

In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and (if appropriate) what I consider was good industry practice at the time. Mr B was supplied with a car under a hire agreement. This is a regulated consumer credit agreement which means we're able to investigate complaints about it.

The Consumer Rights Act 2015 ('CRA') says, amongst other things, that the car should've been of a satisfactory quality when supplied. And if it wasn't, as the supplier of goods, Motability are responsible. What's satisfactory is determined by things such as what a reasonable person would consider satisfactory given the price, description, and other relevant circumstances. In a case like this, this would include things like the age and mileage at the time of sale, and the vehicle's history and its durability. Durability means that the components of the car must last a reasonable amount of time.

The CRA also implies that goods must conform to contract within the first six months. So, where a fault is identified within the first six months, it's assumed the fault was present when the car was supplied, unless Motability can show otherwise. But, where a fault is identified after the first six months, the CRA implies that it's for Mr B to show it was present when the car was supplied.

So, if I thought the car was faulty when Mr B took possession of it, or that the car wasn't sufficiently durable, and this made the car not of a satisfactory quality, it'd be fair and reasonable to ask Motability to put this right.

In this instance, it's not disputed there was a problem with the car, nor that there have been ongoing issues since the car was supplied to Mr B. As such, I'm satisfied that I don't need to consider the merits of this issue within my decision. Instead, I'll focus on what I think Motability should do to put things right.

Mr B has been able to use the car while it's been in his possession. And while it was being repaired, he was also provided with a courtesy car and/or offered the use of a taxi account to keep him mobile. Because of this, I think it's only fair that he pays for this usage. So, I won't be asking Motability to refund any of the payments he's made.

It's clear that Mr B has been inconvenienced by what has happened, and by the need to have to take the car back to the dealership for investigation and repair on multiple occasions. And Mr B has explained that he was a sole trader, so was unable to work when he had to make these multiple journeys. Mr B has also explained that he was unable to use his caravan when he had courtesy cars, as these weren't fitted with towbars.

Mr B has said that the car was using excessive fuel. However, I haven't seen anything, for example from the dealership who repaired the car, or from an independent engineer, that says the car was using excessive fuel due to an underlying fault. What I have seen is that Mr B complained to Motability that the car was underpowered when towing a caravan, and I think it's reasonable to conclude that an underpowered car towing a heavy load would use more fuel than normal.

In a phone call to the investigator on 22 June 2023, Mr B has also said that he was running two cars – the one supplied by Motability and one other. So, if Mr B were to provide his bank statements to show how much he'd spent on fuel, this wouldn't show me in which car the fuel was used. Given this, not only will the bank statements not show that Mr B was using excessive fuel, they also won't show how much fuel the car supplied by Motability was using.

As such, while I don't doubt Mr B's testimony that the car was using more fuel than he expected it to, I won't be asking Motability to pay him the £3,800 he says he paid for this excess fuel.

Notwithstanding this, I've seen that Motability have paid Mr B £2,000 for the distress and inconvenience he's suffered, as well as for the additional fuel he says he's used. Given the above, I think that this was more than reasonable in the circumstances, and more than I would've directed had no offer been made. As such, I won't be asking Motability to pay Mr B anything more.

### **My final decision**

For the reasons explained, I don't uphold Mr B's complaint about Motability Operations Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 1 November 2023.

Andrew Burford  
**Ombudsman**