

## The complaint

Ms M is unhappy that Motability Operations Limited have terminated a hire agreement and have taken back the car supplied under that agreement.

## What happened

In November 2022, Motability supplied a new car through a hire agreement with a minimum term of 39 months. There was an advance rental payment of £1,099, and the variable monthly payments were to equal the mobility allowance received. The eligible person for a car under this scheme was Ms M's daughter, Miss H. However, as Miss H couldn't drive, Ms M was both the hirer under the agreement and the specified driver of the car.

The agreement was clear that the car was to be used for Miss H's benefit and was not a vehicle for Ms M to use as she saw fit. The terms of the agreement stated:

*3.1 The Vehicle ... may only be driven by Drivers and may only be used by or for the benefit of the Disabled Person ... we reserve the right to install a Telematics Device in the Vehicle to track the location of the Vehicle and to monitor Driver behaviour.*

*15.1 We may terminate this Agreement by providing you with notice if at any time –  
15.1.1 you do not comply with any of your main obligations under this Agreement.*

In signing the agreement on 17 November 2022, Ms M agreed that she accepted and was legally bound by the terms of the agreement. For the purposes of this agreement, Ms M was the Driver and Miss H the Disabled Person. To ensure the car was used for the sole benefit of Miss H, and in line with the terms of the agreement, a telematics device, sometimes known as a black box or tracker, was fitted to the car.

After a number of discussions with Ms M about the use of the car, and about why they didn't think it was being used solely for Miss H's benefit, Motability terminated the agreement. And the car was returned to them in January 2024. Ms M complained to Motability as she was unhappy the agreement was terminated and that she hadn't been given clear guidelines for the use of the car.

Motability explained to Ms M that the agreement was terminated because the car wasn't being used for the sole benefit of Miss H. Unhappy with this response, Ms M brought her complaint to the Financial Ombudsman Service for investigation.

Our investigator said that Motability made the terms of the agreement clear, and the telematics data had shown the car wasn't being used for the sole benefit of Miss H. While Ms M had explained to the investigator that she sometimes used the car for her own purposes, she didn't think it was as often as Motability had said. However, she was unable to provide any evidence of this. As such, the investigator thought Motability had acted within the terms of the agreement when they terminated it. And they didn't think Motability needed to do anything more.

Ms M didn't agree with the investigator's opinion. She provided medical evidence as to why a car was needed for Miss H's transportation needs and explained the impact the lack of transportation has had on both her and her daughter's health. Because Ms M didn't agree, the 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. Where evidence has been incomplete or contradictory, I've reached my view on the balance of probabilities – what I think is most likely to have happened given the available evidence and wider circumstances.

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. Ms M 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 key terms and conditions applicable to Ms M's complaint are detailed above. Having reviewed the documentation, I'm satisfied these terms were clearly stated and were not in such a small print, or so buried within the documents, that they weren't easily found.

The medical evidence I've seen shows that Miss H was at a residential school from Monday to Friday and returned home to Ms M on weekends and during holidays and other absences. As such, it's clear that Ms M required the use of a car to take Miss H to school on a Monday, collect her on a Friday, and for Miss H's other needs, for example medical appointments, trips etc., during weekends and school holidays.

Term 3.1 of the agreement Ms M signed is clear that the car is to only be used for the benefit of Miss H. I've also seen the leaflet Motability supplied explaining the telematics device, which said *"if we have any concerns that the car may not be being used for the disabled customer's benefit, for example if the car is rarely visiting the disabled customer's address, we will contact you ... to discuss how the car is being used. If we find the car is consistently being used with no benefit to the disabled customer, the lease is at risk of being terminated which will mean the car will have to be returned. This may also prevent you from applying for a Motability Scheme car in the future."*

Based on this, I'm satisfied that, when agreeing to be bound by the terms, Ms M ought reasonably to have known how and when the car should be used, and that it should not be used for her personal use, apart from on an exceptional basis.

Because Miss H had a different residential address to Ms M, and because Ms M was the sole driver of the car, a discussion about the usage of the car took place on 1 November 2022. Following this, Motability installed the telematics device in the car, prior to supply, to ensure it was only used for the purpose it was supplied i.e., solely for Miss H's benefit.

Motability reviewed the telematics data on 11 April 2023, which showed that almost 90% of the 697 journeys in the car did not involve a journey to or from Miss H's residential school. So, they discussed this in a telephone conversation with Ms M on 18 April 2023.

Motability's case notes for this discussion show that Ms M explained there were a lot of journeys to support Miss H (medical appointments, shopping etc.). However, the data didn't reflect this, showing *"lots more driver benefit than customer benefit ... car averages 4 journeys per day and 27 miles."* While Ms M explained that she needed the car for personal journeys, Motability explained this wasn't how the scheme worked and that, unless there was an improvement, the car would need to be returned.

In a follow up letter dated 20 April 2023, Motability wrote to Ms M to explain they weren't satisfied the car was being used for the sole benefit of Miss H, reminding her that she wasn't able to gain personal benefit from the car. Within this letter they enclosed the leaflet about the telematics device and explained that, on the next review, if there was no significant improvement in the usage, they would consider taking formal action.

Motability undertook a further review of the telematics data on 2 August 2023, which showed the car had done 1,000 journeys, almost 90% of which didn't include a journey to or from Miss H's residential school. They spoke to Ms M about this on 3 August 2023. Motability's case notes show the car was doing an average of 6 journeys and 21 miles a day, and the car wasn't travelling to Miss H's residential school on a weekly basis. Ms M explained that she didn't always drop off or collect Miss H from the residential school, instead relying on public transport. She also explained that, while Miss H was at home the car was used to support her i.e., shopping and medical appointments, but that she used the car for personal journeys while Miss H was at school.

Motability again explained the scheme, and that the car was to only be used for the benefit of Miss H – *"we cannot allow the car to be used for personal use for the driver."* They gave Ms M a final warning that, unless the usage of the car changed, it would be taken back.

Motability conducted their next review of the telematics data on 3 November 2023. This showed the car had now done 1,239 journeys, with over 90% not involving a visit to Miss H's residential school. A further conversation with Ms M took place on 6 November 2023, where they explained that the majority of the use of the car was during the week, during term times, when Miss H was at residential school. Ms M also explained that she found the journey to drop off or collect Miss H to be *"too long"*, so the car wasn't used for this, and Miss H took public transport instead. As a result of this conversation, Motability decided to terminate the agreement and take back the car.

Based on what I've seen, I'm satisfied that Ms M wasn't using the car in line with the terms of the agreement, i.e., it wasn't being used for the sole benefit of Miss H and, despite a number of warnings, Ms M continued to use the car for personal journeys. I'm also satisfied that Ms M was made aware, again on a number of occasions, how the car should be used, and the potential outcome (termination) if regular personal use continued.

I appreciate that Ms M needs use of a car when Miss H is not at residential school, and the impact not having a car is having. However, this need doesn't mean that Ms M is allowed to use the car supplied by Motability for the sole use of Miss H as if it were her personal car. And by continuing to do so, after receiving warnings not to, I think Motability have acted reasonably by terminating the agreement. As such, I won't be asking them to restore the agreement, return the car, and remove the telematics device as Ms M wants.

### **My final decision**

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms M to accept or

reject my decision before 23 May 2024.

Andrew Burford  
**Ombudsman**