

The complaint

Miss C is unhappy that a car supplied to her under a hire agreement with Motability Operations Limited was of an unsatisfactory quality.

What happened

On 22 February 2022, Miss C was supplied with a new car through a hire agreement with Motability. She paid an advance rental of £3,749 and an advance adaptation rental payment of £590. The agreement had a minimum hire term of 39 four-weekly payments, with each payment being equivalent to Miss C's four-weekly mobility allowance. Miss C handed the car back to Motability on 14 June 2023.

Miss C has said that, from shortly after being supplied with the car, there was an issue with the hoist that had been fitted not being suitable for her wheelchair, and the boot intermittently closing when she was operating the hoist. Not only did this cause her some injury, it also damaged her wheelchair.

The car was taken into repair on a number of occasions, with the hoist being adjusted and the electrics for the boot replaced. Miss C had complained to Motability about this in February 2023. They acknowledged the issues and offered Miss C the option to apply to be provided with a different car – something she didn't want. They also offered her £1,000 for the impact the problems had had on her, and for the repair costs to her wheelchair.

Miss C wasn't happy with Motability's response, and she brought her complaint to the Financial Ombudsman Service for investigation. In doing so, she explained that £2,500 worth of damage had been caused to her wheelchair, but she'd paid a friend to do these repairs at the cost of £2,000. Miss C also explained that she'd had no choice to change her wheelchair, replacing it with one she purchased from an online marketplace. So, she didn't think Motability's £1,000 offer was sufficient in the circumstances.

Our investigator said the issues with the car weren't disputed. However, the evidence she'd seen only showed £613 repair costs to the wheelchair. The investigator didn't think the money Miss C had transferred to her friend was sufficient to show the costs of repair, as Miss C had nothing to show what these payments related to. As such, the investigator thought Motability's offer was fair in the circumstances.

Miss C didn't agree with the investigator. She said Motability weren't being held accountable for what had happened, and that she had her wheelchair repaired on several occasions – the £613 costs only related to what she'd been quoted by a repair company on one of these. So, she didn't think the £1,000 covered the costs she'd incurred, and she asked for an ombudsman 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. Miss C 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 Miss C to show it was present when the car was supplied.

So, if I thought the car was faulty when Miss C 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 hoist or boot, nor that this fault was present from when the car was supplied to Miss C. 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.

Miss C has said that she's had to get her wheelchair repaired on a number of occasions, and these repairs were done by a friend. Miss C paid for these repairs by way of direct bank transfers to her friend's account. While Miss C has no evidence of the repairs that were done by her friend, I don't doubt that this was the case.

Miss C has provided some information showing that replacement parts for her wheelchair are between £29 and £80, She's provided bank statement extracts to show that, between August and November 2022, she transferred her friend a total of £990.51. This was in 23 transactions, eight of which were under £29, and a further three were above £80.

Miss C has provided evidence to show two more bank transfers - £1,000 on 21 April 2023 and £500 on 9 May 2023. The bank statements don't show who this money was transferred to, or why, and Miss C hasn't said. Given that the money she transferred to her friend clearly shows who it went to, I can't be satisfied these two transactions were to Miss C's friend.

Finally, the bank statements show that Miss C paid a mobility scooter supplier £4,500 on 2 June 2023 (presumably for a new wheelchair), and £3,185 to a vehicle adaptation company on 11 July 2023. As this payment was made after Miss C handed the car in question back to Motability, I'm satisfied this is most likely for fitting a hoist, or something similar, in Miss C's replacement car.

Miss C has also provided a text message exchange from January / early February 2023, which indicate she was having her wheelchair inspected for a battery charging issue.

In addition to this evidence, Miss C has provided photos and video showing damage to a wheelchair. The photos show surface scratches/damage to parts of the wheelchair, including the anti-tip bar and joystick; damage to one armrest; and the wheelchair fixed into the hoist, both in and out of the car, with no visible damage. She's also provided a video which shows the wheelchair being hoisted into the car, and needing manual assistance to get it in as the anti-tip bar catches on the boot lining.

Based on what I've seen, I'm satisfied that some damage was being caused to the wheelchair when it was hoisted into the car. However, what I can't say is that every action of putting the wheelchair into, or taking it out of, the car caused further damage, and I'm satisfied how the wheelchair sat in the hoist during each operation would have some effect on this.

What's more, I can't be satisfied that (i) every transfer from Miss C to her friend was for damage to the wheelchair (given the transaction amounts compared to the cost of replacement parts), and (ii) even if this was the case, that every incidence of damage to the wheelchair was caused by the car, and not through normal usage (Miss C has provided photos of her using the wheelchair in locations clearly outside of the UK, so it's possible that her wheelchair could've been damaged in transit).

Motability have offered Miss C £1,000 for repairs to her wheelchair, where damage was caused by the hoist/car, and for any distress, inconvenience, or upset she'd been caused by what had happened. Given the evidence I've seen, and while I appreciate this will come as a disappointment to Miss C, I think this offer was reasonable in the circumstances, and I won't be asking Motability to increase this. If this hasn't already been paid, it's now for Miss C to decide whether to accept this offer.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss C to accept or reject my decision before 6 March 2024.

Andrew Burford
Ombudsman