

The complaint

Mr A complains about a decision taken by Motability Operations Limited (“MOL”) to terminate his hire agreement, to impose a four year sanction period and to seek recovery of £539 from him.

Mr A is the hirer under the agreement and Miss B is noted under it as being the “*disabled person*”.

What happened

On 29 March 2022 Mr A entered into a hire agreement with MOL for a car. Under the terms of the agreement, everything else being equal, Mr A undertook to pay an advance rental of £3,149 followed by a number of four weekly rentals.

On 20 November 2020 the police advised MOL that they had seized the car and impounded it as the person driving it (at the relevant time) wasn’t insured.

On the same day MOL advised Mr A that it would now be terminating his agreement.

On 21 November 2023 Mr A asked MOL to reconsider its decision. However, because Mr A wasn’t prepared to report to the police the taking of the car without consent and to support a prosecution of the person who had taken it MOL confirmed it had no choice but to proceed with termination of the agreement and the imposition of a four year sanction period.

On 23 November 2023 MOL issued Mr A with a final response letter (“FRL”). Under cover of this FRL MOL said it was satisfied that it was entitled to terminate the agreement and it hadn’t treated Mr A unfairly or unreasonably.

On 29 November 2023 MOL issued Mr A with a notice served under section 76(1) and 98(1) of the Consumer Credit Act 1974 . Under this notice MOL said, amongst other things, that on 14 December 2023 it would be terminating the agreement and taking possession of the car.

On 20 December 2023, after the agreement had been terminated and the car recovered, MOL advised Mr A that he would shortly receive a partial refund of the advance rental he had paid in March 2022.

On 21 December 2023 MOL issued Mr A with an invoice for £539 for recovering the car from the police.

On 2 January 2024 Mr A contacted MOL disputing his liability for the sum of £539 invoiced on 21 December 2023.

On the same day Mr A contacted our service to complain that he was unhappy with how MOL had treated him.

Mr A’s complaint was considered by one of our investigators who came to the view that MOL had done nothing wrong.

Mr A didn't agree with the investigator's view so his complaint has been passed to me for review and 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.

I've read the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point or particular piece of evidence, it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome. And our rules allow me to do this, this reflects our informal, free service as an alternative to the courts.

The circumstances leading up to MOL's decision to terminate the agreement, to impose a four year sanction period and to seek recovery of the sum of £539 from Mr A aren't in dispute. So all I'm required to decide in this case is whether in doing the above MOL acted fairly and reasonably.

termination of the agreement

Mr A accepts that on signing the agreement he agreed to the following terms and conditions:

Your use of the Vehicle

3.1) You must ensure that the Vehicle or Replacement Vehicle is used properly and only for the purpose for which it was designed. You must ensure that the Vehicle or Replacement Vehicle is not used for any unlawful or immoral purpose or in contravention of any legal requirement. The Vehicle or Replacement Vehicle may only be driven by Drivers and may only be used by or for the benefit of the Disabled Person. It is your responsibility to ensure that any Driver is aware of the restrictions around the use of the Vehicle ...

3.2) You must keep the vehicle or Replacement Vehicle under your control and not part with possession of the Vehicle or Replacement Vehicle other than in the ordinary course of its intended use, nor sell, lease or lend the Vehicle or Replacement Vehicle or allow any other right to be created over the Vehicle or Replacement Vehicle ...

3.7) You must not use, or permit anyone else to use, the Vehicle or Replacement Vehicle ... that would contravene or invalidate any term or condition of this Agreement or the insurance policy in respect of the Vehicle or Replacement Vehicle.

Your obligations under the Loss and Damage Protection

7.2) If there has been a theft, attempted theft, or taking without your consent of the vehicle, you must also tell the police within 24 hours and obtain a crime reference number which relates to that theft, attempted theft or taking without consent.

When we may end this Agreement

15.1) We may terminate this agreement by providing you with notice if at any time:

15.1.5) the Vehicle or Replacement Vehicle or any goods of yours are seized or threatened to be seized or made subject to a court order, whether or not it subsequently proves to have been unlawful ...

With the above terms in mind I'm satisfied that in the particular circumstances of this case MOL was entitled to terminate Mr A's agreement. I'm also satisfied, given the very specific market in which MOL operates, that its decision to terminate the agreement was both fair and reasonable.

the imposition of a four year sanction period

I can understand Mr A's frustration in being advised by MOL that it won't consider entering into a new hire agreement with him for four years. But like the investigator pointed out this is a commercial decision for MOL. And for the avoidance of doubt I can confirm that having considered MOL's policy in this respect I'm satisfied that the imposition of a four year sanction period is in line with that policy and Mr A hasn't been treated any differently to other consumers, or treated improperly, unfairly or unreasonably.

recovery costs of £539 invoiced to Mr A

Mr A accepts that on signing the agreement he agreed to the following terms and conditions:

When we may end this agreement

15.5) if we terminate this Agreement because you are in breach of any of your main obligations, then:

15.5.5) you will also be responsible for any reasonable costs and expenses incurred by us in relation to recovery and, pending any sale of the Vehicle, storage of the Vehicle, including, but not limited to, solicitor's fees, agent's fees and towing and storage costs.

With the above terms in mind I'm satisfied that in the particular circumstances of this case MOL was entitled to charge Mr A for the recovery of the car from the police.

I note that Mr A says that when he made enquiries of the police he was advised to recover the car would cost £140 plus £25 a day storage. Now I can't say for certain whether Mr A is correct in his submission in this respect but I'm satisfied that MOL didn't unduly delay its recovery of the car and it had to pay an agent to collect it. So taking everything into account I'm satisfied that the sum of £539 MOL is seeking the recovery of (from Mr A) is fair and reasonable.

I appreciate Mr A will be disappointed by my decision but given what I say above I'm not persuaded that in the particular circumstances of this case MOL has done anything wrong.

My final decision

My final decision is I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A and Miss B to accept or reject my decision before 29 July 2024.

Peter Cook
Ombudsman