

## **The complaint**

Mr S and Mrs S complain about their vehicle leasing provider, Motability Operations Limited (Motability). Specifically, they complain about items they say were missing from their vehicle after its recovery and storage following an accident.

References to Motability in this decision include their agents.

This decision covers Mr S and Mrs S's complaint to this Service. Our investigator considered the complaint and issued his view of the complaint in August 2024. The complaint was set up against the insurer (R) of the motor insurance policy covering Mr S and Mrs S's vehicle.

However, Mrs S and Mrs S made their initial complaint about what happened to Motability, who issued their final response in March 2024. That response included referral rights for Mr S and Mrs S to bring a complaint to this Service, which they did in April 2024.

Having considered the circumstances in this case, I've concluded the complaint should be properly recorded against Motability, as Mr S and Mrs S say their possessions went missing while in storage with Motability's agent (A) – not with R or their agent(s).

## **What happened**

In August 2023 Mr S and Mrs S had an accident. As the accident took place on a road undergoing roadworks, the Highways Agency attended and arranged for the vehicle to be initially recovered for free to their agent (E). Motability were then asked by R to collect the vehicle from E and store it until such time as R could arrange for the vehicle to be booked into a repairer. Motability instructed their agent (A) to collect the vehicle, which they did in September 2023.

Mr S and Mrs S were unaware of the vehicle's location following the accident, only becoming aware of its location at A some weeks later. They contacted A to ask if they could arrange for personal possessions to be sent to them but were told they would have to collect them, and they were bagged up ready for collection. However, they had difficulty arranging a time to collect the belongings but were eventually told the items had been sent to them through the post (which Motability agreed to pay for). However the items didn't arrive, so they contacted Motability to find out what was happening, who told them the items hadn't been posted.

Two weeks later they received some of the possessions in January 2024 (folding chairs and some golf clubs), but not the other possessions in the vehicle at the time of the accident. They included an e-scooter and a blue disability badge. Unhappy at what happened, Mr S and Mrs S complained to Motability.

In their final response (March 2024), Motability said A took photographs of the vehicle when collected, but they didn't show the e-scooter. So, they didn't believe it was in the vehicle when collected by A, so Mr S and Mrs S should contact E about this. A removed the personal possessions, unaware the vehicle was only to be stored with them temporarily. Motability told A to put the possessions back in the vehicle, but they failed to do so. A subsequently returned some of the possessions but said they'd disposed of the others as their service agreement with Motability meant they could dispose of items after 30 days. A

also said the items were damp as a result of water exposure. But this wasn't communicated to Mr S and Mrs S. Motability apologised to Mr S and Mrs S and awarded £300 for their failings and the stress and worry concerned.

Mr S and Mrs S then complained to this Service. They were unhappy at what had happened and the loss of their possessions. They didn't feel the £300 awarded by Motability sufficient to compensate for the missing possessions and the stress and upset they'd suffered. They wanted a reasonable payment so they could replace the missing possessions, which they estimated would be £1,200.

Our investigator didn't uphold the complaint, concluding Motability didn't need to take any action. He noted the accident occurred in roadworks, so Mr S and Mrs S's vehicle was recovered by E, who weren't acting for Motability. He noted some possessions were returned by A to Mr S and Mrs S, but others had become water damaged, so were disposed of by A. While Motability offered £300 compensation for the inconvenience caused to Mr S and Mrs S, they wouldn't reimburse or compensate them for the missing e-scooter as there wasn't evidence it was in the vehicle when it arrived at A.

Motability had liaised with A about the missing items but were unable to determine a comprehensive list. But as personal possessions weren't covered under the hire agreement for the vehicle or the motor insurance policy, it wouldn't be fair to ask Motability to compensate Mr S and Mrs S for the missing items. Nor was it possible to establish the missing e-scooter hadn't been lost while in E's possession. The investigator thought £300 compensation for distress and inconvenience was fair and reasonable.

Mr S and Mrs S disagreed with the investigator's view and asked that an ombudsman review the complaint. They said they believed the missing possessions were removed by A and they'd also had to make several calls about the collection of their vehicle from A (to the approved repairer) who wouldn't release it until authorised by Motability.

### **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.

My role here is to decide whether Motability have acted fairly towards Mr S and Mrs S.

The key issue in Mr S and Mrs S's complaint is the loss of their personal possessions from their vehicle after its recovery following the accident, first to E and then to A. Mr S and Mrs S say there were several items in the vehicle that were subsequently lost (two folding chairs and some golf clubs were eventually returned to them). The possessions included an e-scooter in addition to other items, including a disability badge. They don't think the compensation offered by Motability (£300) is sufficient given what happened. They also complain of having to find out where their vehicle was located after the accident and try to recover the possessions.

Looking at what happened, from what Motability and Mr S and Mrs S have said, it seems the vehicle was initially recovered by E following the accident in August 2023. A collected the vehicle from E in September 2023. Motability say personal possessions – excepting the e-scooter, which they say there was no evidence it was in the vehicle when collected – were removed from the vehicle by A, as they weren't aware the vehicle was only being stored with them temporarily pending its collection (or recovery) to the approved repairers who were due to repair the vehicle. Motability told A to put the possessions back in the vehicle, but they didn't do so.

Motability say possessions (with the possible exception of the e-scooter) were lost while the vehicle was with A. It's clear Mr S and Mrs S were given different versions of events by A, but ultimately it seems the possessions were disposed of by A, as they were water damaged and under their service agreement with Motability, A could dispose of possessions after 30 days. It's also clear Mr S and Mrs S were given misleading information about the items being posted to them, when it seems clear they weren't and that they had in fact been disposed of.

On the specific issue of the e-scooter, A say it wasn't with the vehicle when it arrived from E, and it's not visible in the photographs of the vehicle. As the vehicle was initially at E for a month following the accident, then it's possible the e-scooter went missing during this time. Motability provided Mr S and Mrs S with a contact at E for Mr S and Mrs S to follow up directly. I don't think that's unreasonable as E weren't acting as agents for Motability when they recovered the vehicle immediately following the accident (they were acting as agents of the Highways Agency, providing free recovery in a section of roadworks).

Motability also say the hire agreement under which they provide the vehicle to Mr S and Mrs S doesn't cover personal possessions within the vehicle – and nor does the motor insurance policy covering the vehicle provided by the insurer, R. Looking at the hire agreement between Motability and Mr S and Mrs S, *Section 5 Loss and Damage Protection – Our responsibility and what we will cover* states Motability are responsible (Section 5.1) for repairing any loss of or damage to the vehicle, any adaptations, in-car entertainment, windscreen, windows or glass sunroof. Replacement locks, lock mechanisms or keys.

*Section 6. Loss and Damage Protection – What we will not be responsible for (exclusions)* states:

*“6.1 We will not be responsible for the following:*

*6.1.9 loss or damage to any property which does not belong to us...”*

I think the exclusion makes it clear Motability do not cover any loss of personal possessions ('any property that does not belong to us').

While I haven't seen a copy of the full motor insurance policy terms provided by R (the insurance policy is currently provided by a different insurer), looking at the Motability website<sup>1</sup> the following statement appears under a section headed *Cars and WAVs accidents and insurance* and a sub-heading *What's not covered by your insurance*:

*“Personal belongings*

*You'll need to arrange your own contents insurance for personal items like wheelchairs, coats and mobile phones. You could extend your household contents insurance to cover these.”*

There's no indication this exclusion didn't apply to the policy provided by R – in fact the Insurance Product Information Document (IPID) provided as part of the welcome pack for Mr S and Mrs S's vehicle states (under a heading *What is not insured*) that personal possessions aren't covered.

Taking these terms together, then I can't reasonably hold Motability (or R) responsible for the loss of personal possessions. But I can consider the distress and inconvenience suffered by Mr S and Mrs S from what happened in this case.

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<sup>1</sup> <https://www.motability.co.uk/get-support/if-something-happens/cars-wavs/accidents-and-insurance/#insurance>

Looking at the sequence of events, it seems clear they were misled by A about their possessions, initially being told they had been sent by post, only to then be told (by a different member of staff) that they hadn't and – except for two folding chairs and some golf clubs – had been water damaged and then disposed of.

Considering the circumstances of the case and the published guidance from this Service about awards for distress and inconvenience, I think Mr S and Mrs S have suffered distress and inconvenience for what happened, and it took some time for the true position about their possessions to be established with any certainty. Motability accept this and have awarded £300 for distress and inconvenience. I've concluded this was fair and reasonable, so I won't be asking them to make a further award.

### **My final decision**

For the reasons set out above, it's my final decision not to uphold Mr S and Mrs S's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S and Mrs S to accept or reject my decision before 17 December 2024.

Paul King  
**Ombudsman**