

The complaint

Mrs R is unhappy that Motability Operations Limited ('Motability') changed the insurer on a car they had supplied to her under a hire agreement.

What happened

In October 2020, Mrs R was supplied with a car through a hire agreement with Motability. She paid an advance rental payment of £99, and the agreement was for a minimum term of 39 four-weekly periods. As part of the agreement, Motability also arranged for the insurance on the car on an Open Policy basis. This meant a single insurer provided standard cover for all drivers of all cars provided under the Motability Scheme, and that Mrs R didn't need to (and couldn't) arrange or pay for her own insurance.

In September 2023, the company providing the insurance policy to Motability changed. This meant that the *"Permitted Drivers of the vehicle"* was now specified as *"anyone driving the vehicle will hold a full UK or European Union driving licence and will not have incurred any at fault accidents in the last three years."*

Mrs R was unhappy with this change and complained to Motability. She said that her father, who doesn't hold a UK or EU driving licence, travels to visit her *"once a year or every second year [and] this is the only time I get to go on holiday ... as he takes over my care needs."* However, with the changes to the insurance, this will no longer be possible. She said that the change took place without her knowledge or consent, and she was given no choice in the matter. Motability responded and explained this was an inclusive leasing package, so it was not possible for them to agree to an alternative insurer for Mrs R.

Unhappy with Motability's response, Mrs R brought her complaint to the Financial Ombudsman Service for investigation. Our investigator said the terms of the agreement allowed Motability to change insurer, so they hadn't done anything wrong. Mrs R didn't agree with the investigator's opinion and asked for an ombudsman to decide.

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. Mrs R 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.

I've seen a copy of the agreement Mrs R signed with Motability in October 2020. Under the heading "*Insurance*" the agreement states:

"[Motability] will maintain insurance against third party risks, legal expenses cover and certain other risks under a policy of insurance with a third party provider on your behalf. We will, at our discretion, determine the risks, restrictions, terms and conditions of such insurance and provide details to you. You will be provided with a Certificate of Motor Insurance as proof of cover. You have no right to enforce the policy directly, but we will enforce the policy for your benefit as far as practicable. Your statutory rights of enforcement are unaffected."

Based on this, I'm satisfied that Motability had the right to insure the car, and to change insurers, without requiring Mrs R's consent. And I'm satisfied that, by not having to insure the car herself between October 2020 (when the car was supplied) and August 2023 (when Motability advised Mrs R the insurer was changing), Mrs R was reasonably aware of this.

As such, I'm satisfied that Motability acted in line with the terms of the agreement when they changed insurer in 2023. However, for completeness, I've also considered whether Motability choosing an insurer who imposed restrictive conditions is fair. And, for the reasons stated below, I think it was.

All insurance policies impose restrictive conditions and, as a policy designed to cover all users of the Motability Scheme, I would expect these conditions to be broadly suitable for all users of the Scheme. The Motability Scheme provides cars that would be primarily used in the UK, so it's reasonable that the insurance policy put in place allows people with a UK driver's licence to drive the car – which it does. It also extends that to allow for drivers holding a license issued by any of the European Union countries to drive the car. Which I also think is fair.

I appreciate that there will always be some circumstances where some users of the Scheme find the conditions imposed by the insurer to be too restrictive, as Mrs R finds them now. But this doesn't mean it's unfair for those restrictions to be put in place. While I haven't been provided with a full copy of the insurance schedule for the original insurer, what I have seen refers to "*Limitations for Use*." One of these limitations is that "*only drivers approved by [insurer] and named as permitted drivers on your Certificate of Motor Insurance may drive the vehicle*."

Given this, it's clear that, like the new insurer, the old insurer limited who was able to drive the car provided to Mrs R. In fact, Mrs R has said that the policy provided by the old insurer "*stated that their cover is for UK and EU drivers licence holders only*" but they would allow holders of licences from other countries to drive the car, and this allowed her father to drive the car. As such, I don't think that Motability choosing an insurer with very similar (and on paper, the same) driver restrictions as the old insurer was unfair.

So, taking everything into consideration, and while I appreciate this will come as a disappointment to Mrs R, I'm satisfied that Motability have acted fairly in this instance, and I won't be asking them to do anything more.

My final decision

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

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

reject my decision before 24 December 2024.

Andrew Burford
Ombudsman