

The complaint

Miss L complains about the management and administration of her hire agreement by Arval UK Limited.

What happened

On 19 June 2020 Miss L entered into a hire agreement with Arval for a car. Under the terms of the agreement, everything else being equal, Miss L undertook to pay 48 monthly rentals of £413.54.

On 7 July 2020 Miss L took delivery of the car.

On 1 December 2021 Miss L had work undertaken on the car (under warranty) when the car had travelled 11,360 miles.

On 5 July 2022 Arval issued Miss L with a default notice.

On 26 July 2022 Arval issued Miss L, in error, with a notice of intention to repossess the car on hire to her on the grounds she hadn't contacted it following the issue of its 5 July 2022 default notice.

On 2 September 2022 Arval issued Miss L with a notice of sums in arrears.

On 14 June 2023 Miss L had the car undergo an MOT test.

On 24 July 2023 Miss L had a 21,000 mile service carried out when the car had travelled 26,218 miles. The servicing garage advised Miss L that it would investigate problems reported with the car later under warranty.

On 5 September 2023 Miss L had the car undergo an inspection in respect of problems she says she was experiencing with it. The inspecting garage was unable to fault the car.

On 18 October 2023 the car broke down.

On 10 November 2023 Miss L had the car undergo an inspection in respect of problems she says she was experiencing with it. The inspecting garage identified a fault with the clutch that would cost in the region of £2,000 to replace/repair. An appointment to undertake the work was scheduled to take place on 27 November 2023. The car's mileage was noted as being 28,027.

On 13 November 2023 Miss L broke down and called her roadside assistance company. The roadside assistance company diagnosed an issue with the engine which couldn't be repaired roadside and recovery of the car was required.

On 15 November 2023 Arval issued Miss L with a notice of intention to repossess the car on hire to her on the grounds of a material breach of the agreement that in its view wasn't capable of remedy.

On receipt of the above notice Miss L complained to our service.

Following the issue of the 15 November 2023 notice of intention to repossess the car the car was repossessed by Arval and sold on by it.

On 19 December 2023 Arval issued Miss L with its final decision on her complaint.

Miss L's complaint was considered by one of our investigators who came to the view that Arval need do nothing further to compensate her.

Miss L didn't agree with the investigator's view so her 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 would first like to start with some general observations.

I've read and considered the whole file and listened to a total of 50 recordings of calls between Miss L and Arval and Miss L and our service (totalling over 12 hours). Having done all of this I'm satisfied that I can fairly and reasonably decide this case without the need to engage with Miss L or Arval further, including over the phone.

I'll keep my comments to what I think is relevant. If I don't comment on any specific point it's not because I've failed to consider it but because I don't think I need to comment on it in order to reach what I think is the right outcome in the wider context. My remit is to take an overview and decide what's fair 'in the round'.

If the available evidence is incomplete and/or contradictory (or simply disputed) we reach our findings on what we consider is most likely to have happened, on the balance of probabilities. That's broadly the same test that the courts use in civil cases.

It's for us to assess the reliability of evidence, from both sides, and decide how much weight should be attached to it. When doing that, we don't just consider individual aspects of a complaint in isolation. We consider everything together to form a broader opinion on the whole picture.

We're impartial, and we don't take either side's instructions on how we investigate a complaint. We conduct our investigations and reach our conclusions without interference from anyone else. That means I don't have to address every individual question or issue that's been raised if I don't think it affects the outcome.

We have no regulatory function; that's the role of the Financial Conduct Authority (FCA); nor are we a consumer protection body. We're an alternative dispute resolution body; an informal alternative to the courts for financial businesses and their customer to resolve their differences. We deal with individual disputes – when we're able to – subject to rules laid down by the FCA (which are known as the DISP Rules).

As I've said I've considered everything that the parties have said and provided. And having done so I can confirm that I've come to the same overall outcome as the investigator and for broadly the same reasons.

Miss L has raised a number of complaint points which like the investigator I will address in turn.

suitability of the car and whether it was mis-sold

Miss L says that the car supplied to her by Arval wasn't suitable for her for a number of reasons including, but not restricted to, its size, the costs in maintaining it, the fact that it was a diesel model rather than a petrol one and the number of miles she envisaged she would travel each year and the number of miles allowed for under the agreement (5,000).

As pointed out by the investigator we weren't present when the suitability of the car was discussed with Miss L by the supplying dealership. But taking into account what Miss L and Arval have said were Miss L's circumstances at the relevant time and the number of miles she went on to add to the car's odometer whilst it was in her possession I'm simply not persuaded that I can reasonably conclude that the car was unsuitable for her.

Furthermore, I've seen nothing that would lead me to conclude that Miss L was prevented from declining the car she was offered or prevented from searching the marketplace for an alternative car and/or finance agreement/provider.

Therefore I don't uphold this aspect of Miss L's complaint.

failure to offer and provide a maintenance package

Miss L says that she wasn't advised of the option (open to her) to take a maintenance package with the car, financed by way of further monthly rentals under the agreement.

Now I accept I can't say for certain Miss L is wrong in her submission in this respect but it isn't supported by the various documentation she signed, documentation which in my view clearly references a maintenance package being available to Miss L and which wasn't selected or purchased by her.

Therefore I don't uphold this aspect of Miss L's complaint.

suitability of the agreement and whether it was mis-sold

Miss L says the agreement wasn't suitable for her and was mis-sold to her. But given what appears to have been a clear desire on the part of Miss L for a new car and a need to finance it (rather than purchase it outright) and what I go on to say below in respect of the agreement being affordable, I'm not persuaded I can reasonably conclude the agreement was either unsuitable or mis-sold.

Therefore I don't uphold this aspect of Miss L's complaint.

affordability of the agreement

Miss L says the agreement was unaffordable from the outset and had Arval undertaken proportionate checks into her personal and financial circumstances at the relevant time this 'fact' would have been obvious and apparent to it.

Given that, at the relevant time, Miss L was an existing customer, that a credit check was undertaken and what Miss L declared about her personal and financial circumstances I'm not necessarily persuaded that Arval failed to undertake proportionate checks. But I need make no finding on this point because like the investigator I'm simply not persuaded that further checks by Arval would have, or should have, caused it to conclude that it shouldn't (on the grounds of affordability) lend to Miss L.

In coming to the above finding I've had regards to what the credit report and the bank statements Miss L has provided show was her personal and financial circumstances at the relevant time. And in my view these show that Miss L had no adverse information recorded against her (such as county court judgements, defaults and missed payments) and an income (excluding one off or non-regular account credits) sufficiently in excess of what could be fairly and reasonably described as being non-discretionary expenditure (such as rent, credit commitments, utilities, and food) to be able to afford a monthly hire agreement payment of £413.54 and other car running costs.

Therefore I don't uphold this aspect of Miss L's complaint.

quality of the car

Miss L says she was provided with a car that was of unsatisfactory quality and I, like the investigator, agree.

Based on what has been said and provided by the parties I'm satisfied that Miss L was experiencing problems with the car that would warrant her not having to pay rentals in respect of it between September 2023 and November 2023 – a total of £1,240.62.

I also think that it could be said that Miss L's use of the car was impaired before the problems with it were diagnosed that would warrant her not having to pay 50% of the rentals in respect of it between July 2023 and August 2023 – a total of £413.54.

So with the above in mind I would have, everything else being equal, directed Arval to 'pay' (to the extent it hadn't done so already) £1,654.16 to Miss L by way of compensation. And in coming to this finding I can confirm that I'm satisfied that there is insufficient evidence for me to conclude there were problems with the car before July 2023 that would warrant me making an award in Miss L's favour and that the first time Miss L advised Arval of possible problems with the car was September 2023.

repossession of the car

I don't underestimate Miss L's strength of feeling on this particular point and accept that she holds the view that Arval had no grounds (legal or otherwise) to repossess the car and that it did so simply because she had been able to evidence the car was of unsatisfactory quality. But I don't agree.

It's not in dispute that on 15 November 2023 Arval issued a Notice of Intention to Repossess (the car) under section 76(1) of the Consumer Credit Act 1974. But Miss L submits that the reason given in this notice for its issue is wrong/unfounded.

The notice states:

Why am I receiving this notice?

You have informed us of a change to Your Financial circumstances which we consider to be material since the date of this agreement.

On 20/10/23, You explained to us the reasons that you were unable to make payments consistently throughout the lease. This is in material breach of the Hire Agreement.

Termination of Hire Agreement

Under clause 11 (b)(i) we may terminate your Hire Agreement if you materially breach any provision of the agreement and in Arval's opinion is not capable of remedy. Your Hire Agreement will terminate immediately and we will invoice you for the end of contract charges due under the Agreement including:

- An early termination charge (Clause 12 (b) of the Hire Agreement);
- Any damage to the Vehicle (Clause 10 (d) of the Hire Agreement);
- Any costs and expenses incurred by Arval in recovering the vehicle (Clause 12 (b) of the Hire Agreement)

Repossession of the Vehicle

We will now repossess the Vehicle through our agents under clause 12 (a) of the Hire Agreement. You must make the Vehicle, all paperwork and relevant accessories (such as carpets, satellite navigation system if they came with your Vehicle) available to our agents who may contact you to arrange collection.

If you have difficulty in paying any sum owing under this agreement or taking any other action required by this notice, you can apply to the court which may make an order allowing you or any surety more time.

If you are not sure what to do, you should get help as soon as possible. For example, you should contact a solicitor, your local trading standards department or your nearest Citizens' Advice Bureau.

I've listened to a recording of the call of 20 October 2023 and those preceding it. And having done so I'm satisfied that it wasn't unreasonable, especially in the light of the recorded arrears position under the agreement in October 2023 and what Miss L was looking for by way of assistance and compensation, for Arval to conclude that Miss L's personal and financial circumstances had changed and were such that there was no reasonable prospect of the arrears being cleared within a reasonable timeframe or of Miss L being able to maintain the contractual rental payments for the remainder of the agreement term.

And in this respect I would draw Miss L's attention to the agreement she signed which states at 11 (b):

We may also by notice in writing to You (following sending any notices as required by the Consumer Credit Act 1974) terminate this Agreement, and the hiring of the Vehicle at any time with immediate effect if:

- (i) You materially breach this Agreement in any way including (without limitation) missing any payments due*
- (ii) ...*
- (iii) There has been a change in Your Financial circumstances which We may reasonably consider to be material since the date of this Agreement*
- (iv) ...*

Finally on this particular complaint point I would add that I've seen no evidence that Arval failed to send what it was required to send under the Consumer Credit Act 1974.

Therefore I don't uphold this aspect of Miss L's complaint.

unreturned items

In light of what the police have concluded on this matter and what both Miss L have said and submitted on it I'm simply not persuaded that I can reasonably find that Arval are responsible for what Miss L says were items (in the car when it was repossessed) that haven't been returned to her.

other

It's clear that the relationship between Miss L and Arval was somewhat strained during the life of this agreement, and prior, with numerous complaints being raised by Miss L and a number of offers being made by Arval to settle those complaints.

I've reviewed all of these complaints and confirm that if I was to uphold them all, which for the avoidance of doubt I'm not saying would be the case, I would have, everything else being equal, directed Arval to pay (to the extent it hadn't done so already) no more than £1,000.00 to Miss L in compensation.

summary

I uphold Miss L's complaint in part and would have, everything else being equal, directed Arval to 'pay' her £2,654.16 (£1,654.16 plus £1,000.00).

But I'm satisfied that Arval has already compensated Miss L substantially more than this by writing off in the region of £8,000 of arrears, arrears that I'm satisfied were payable by Miss L, in removing all reference to the agreement from Miss L's credit file and in not seeking an excess mileage charge (and possibly other charges) from her.

I would also add that although I've found that Arval isn't responsible for what Miss L says were items (in the car when it was repossessed) that haven't been returned to her, had I not done so I wouldn't have been minded to award Miss L anything given the size of the arrears write off by Arval.

I appreciate Miss L will be disappointed but taking everything into account I'm satisfied that Arval need do nothing further to compensate her in the particular circumstances of this complaint.

My final decision

My final decision is that having done what it has already done Arval UK Limited need do nothing further in respect of this complaint.

My final decision concludes this service's consideration of this complaint, which means I'll not be engaging in any further consideration or discussion of the merits of it. However, I would point out that if Miss L doesn't accept my decision she will be free to pursue legal action against Arval UK Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss L to accept or reject my decision before 12 September 2024.

Peter Cook
Ombudsman