

The complaint

Mx B is unhappy that MONY Group Financial Limited trading as MoneySuperMarket ('MSM') do not provide the option for customers to specify a non-binary gender identity in response to a question about gender on their price comparison website.

What happened

In April 2024, Mx B attempted to use MSM's price comparison website to obtain quotes for car insurance.

As part of this process, consumers are asked several questions and required to select from amongst the answers provided. One of the questions says "Are you:", and provides the following answer options:

Male

Female

There is an explanatory note beside this question which says:

"This information will not impact your individual insurance pricing. However, we appreciate that some people may not identify with a binary gender. In this case, please refer to your sex/gender as outlined on your birth certificate or gender recognition certificate."

It is not possible to proceed with the process of obtaining quotes unless one of the two options above is selected.

Mx B identifies as non-binary. So, they were not able to proceed with the application as their gender identity was not available to select as an option.

They contacted MSM on 19 April 2024 and asked why they it was necessary to answer this question, given insurance pricing isn't based on a consumer's gender. They mentioned they felt discriminated against.

MSM replied and apologised. They said the questions they ask are driven by their insurance partners' requirements. And, that there are currently two legal genders and until the law changes, they can only provide these two genders as possible options for the consumers to choose between.

Mx B wasn't happy with this response and asked to escalate their concerns. MSM therefore then logged the matter as a complaint.

MSM issued their final response letter to the complaint on 7 May 2024. They did not uphold the complaint and said they recognised that their current approach may not be appropriate for all customers, and they are actively working with their insurance partners to update their approach, in order to reflect the realities of gender identity. They said this would take some time, but that they do want and intend to make the necessary changes in due course. At the moment, however, to give a consumer full access to their products and services, MSM say that they do need to use a consumer's gender as stated on their birth certificate or gender recognition certificate (GRC).

Mx B remained unhappy and so referred their complaint to the Financial Ombudsman Service on 7 May 2024.

The matter was considered by one of our Investigators, who issued their findings on 7 June 2024. In summary, the Investigator did not feel MSM had acted fairly or reasonably and had caused distress to Mx B as a result. They recommended MSM pay Mx B £200 compensation for the distress and inconvenience caused.

MSM did not agree and ultimately requested that the matter be referred to an Ombudsman for a final decision to be made – which is why it has now been passed to me.

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.

If I haven't commented on, or referred to, something that either party has said, this doesn't mean I haven't considered it. Rather, that I've focused here on addressing what I consider to be the key issues in deciding this complaint and explaining the reasons for reaching my decision.

Having considered everything carefully, I agree with the outcome reached by the Investigator, and for broadly the same reasons. I'll set out my findings below.

Firstly, MSM are correct to say that currently, being non-binary isn't currently recognised as a gender in law in the way that male, or female, is.

However, being non-binary is protected from discrimination under the protected characteristic of gender reassignment under the Equality Act 2010. And, while I can't make a specific finding on whether the Equality Act has been breached (only a court can make such a decision), our Service is required to take relevant law into account, and I have done so in this case.

Furthermore, our Service ultimately makes our decisions on the basis of what is fair and reasonable in the individual circumstances of each complaint. We don't decide whether a business has acted fairly solely on the basis of what they're legally required, or not, to do.

Mx B's complaint is, ultimately, that they're being discriminated against based on their gender identity. So, my starting point is whether they have been treated differently to any other customer who has a different gender identity (such as those who identify as male or female). And, I think they have been.

From the information provided, MSM don't dispute this - in the sense that they accept there is no option for non-binary individuals to enter their gender identity on their website, whereas individuals who identify as male or female do have those options available to them. The result of this is that individuals who identify as male or female can use MSM's website to obtain quotes without having to misgender themselves to do so. Whereas non-binary individuals, like Mx B, cannot proceed without being required to misgender themselves, which I cannot agree is fair or reasonable.

I can see from what Mx B has told us that this did, understandably, cause them distress and upset. And, that they were stressed and disappointed. So, for this reason, I think it would be fair for MSM to recognise this distress with an award of compensation. Having carefully considered everything, along with our Service's guidelines and general approach to compensation, I think £200 compensation is fair and reasonable in the circumstances.

I note that MSM have said, in essence, that while they do want to make such a change to their website, they are bound by the information their insurance partners ask for, and many of them have not made such a change themselves. MSM have also said they're not legally required to offer a non-binary option.

I acknowledge that some of MSM's insurance partners may not yet make provision for potential customers who identify as non-binary. And I accept that MSM cannot be held responsible for good practice across the insurance industry, and that decisions made by insurance partners will inevitably have an impact on MSM's quote generating algorithms.

However, none of this prevents MSM from adding an option to allow non-binary consumers to correctly identify their gender on MSM's own website and including an explanatory note for consumers to make them aware that if they select this option they may receive fewer (or no) quotes, due to factors beyond MSM's control. Consumers would then be able to make an informed decision for themselves as to which option they wish to select (indeed, doing so may help encourage the relevant change within the industry MSM have mentioned, particularly if relevant insurers are made aware that their quotes will not be visible to some consumers).

I'm also disappointed to hear the argument from MSM that they are not legally compelled to make provision for non-binary consumers. The important point here is that there is nothing to legally *prevent* MSM from making this provision (despite what MSM suggested in their initial response to Mx B's concerns). I would hope and expect to see MSM recognising the potential impact on customers of not allowing them to identify in accordance with their authentic gender, and proactively taking steps to address and resolve this issue.

I cannot mandate that MSM make such a change, or instruct them to do so by a specific date. However, I would consider it reasonable for MSM to have taken significant action towards adding the option for consumer to identify as non-binary to their website within the next twelve months.

The compensation I've awarded is in line with this in the sense that I don't expect Mx B to experience any further distress in relation to this matter beyond twelve months. However, if the position remains the same after such time has passed, MSM should be aware that Mx B may choose to raise a further complaint if they feel they have experienced additional distress in relation to this matter.

My final decision

For the reasons I've explained above, I uphold this complaint and require MONY Group Financial Limited trading as MoneySuperMarket to pay Mx B £200 compensation for the distress caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mx B to accept or reject my decision before 4 September 2024.

Fiona Mallinson
Ombudsman