DRN-3217298

The complaint

Mr C complains that Volkswagen Financial Services (UK) Limited (VFS) was wrong to terminate a hire agreement (HA).

What happened

Mr C entered into this agreement with VFS in November 2020 to hire a new car for 24 months. Under the relevant terms and conditions, he was required to keep the car comprehensively insured. In May 2021 VFS checked with the motor insurance database (MID) and couldn't find the car. This suggested it wasn't insured so VFS tried to contact Mr C by phone, email and post.

Mr C didn't respond and VFS issued a default notice near the start of May 2021 under section 87(1) of the Consumer Credit Act 1974 (CCA). Mr C didn't reply to that either so the HA was terminated and VFS instructed a third party collections agent to take the car back. The agent managed to get in touch with Mr C and he said the car had been insured throughout.

After some further investigation, it became clear that the car wasn't registered at the MID because the insurance policy was issued with the wrong registration - the registration recorded by the insurers was incorrect by one letter. This has now been rectified and Mr C wants to keep the car and carry on with the HA but VFS has refused.

VFS says the HA was terminated properly. It considers Mr C was in breach because he failed to keep his details up to date and/or respond to communication attempts. It doesn't think the insurance would have covered any claim made while the car registration was wrong and considers Mr C should return the car and pay financial compensation of over £3,000.

Mr C feels VFS has acted unfairly. He says he'd moved house a few months after he got the car and didn't update his address, so he didn't receive correspondence VFS sent by post. He acknowledges VFS sent emails and phoned him as well, but says he thought this contact about some other products he was offered and didn't want – or possibly phishing – so he didn't open it. He got in touch with VFS as soon as he heard from the third party agent - because they used personal information which he could see was legitimate. He thinks it's unreasonable that VFS won't accept this was a genuine error – especially as he never missed a finance payment and the car was insured throughout.

Our investigator acknowledges Mr C didn't do everything he should have here. But, he's satisfied the car was insured in line with the terms of the HA. And he doesn't think it was reasonable or proportionate for VFS to end the agreement in these particular circumstances. He recommends VFS should re-instate the HA and make arrangements with Mr C for all payments to be brought up to date and clear his credit file of any adverse information - subject to any arrears being paid.

VFS disagreed and asked for an ombudsman to look into the matter. VFS remains of the view Mr C's agreement was terminated correctly. It says the termination came about because the car was flagged as being uninsured and the HA was terminated because Mr C

failed to respond. VFS considers this would not have happened if Mr C had updated his contact details and it is also concerned that the insurer does not actually say the vehicle would have been covered in the event of an accident.

Having considered the available evidence, I was minded to uphold this complaint. My reasons weren't quite the same as the investigator's, however . And I thought it was fair to give the parties the chance to see my provisional findings and respond (if they wanted) to before I made my final decision. I issued a provisional decision on 13 December 2021. I've set out what I decided provisionally - and why – below. This forms part of my final decision.

My provisional decision

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Where evidence is incomplete - as some of it is here - I make my decision on the balance of probabilities. In other words, what I consider is most likely to have happened, in the light of the available evidence and the wider circumstances.

This service provides informal dispute resolution and I must take account of the relevant law (amongst other things). I'm satisfied this includes the CCA here. But, it's not my role to apply the law - only a court can do that. I make my decision based on what I think is fair and reasonable - in all of the circumstances.

I think the crux of Mr C's complaint is that it was wrong of VFS to terminate this HA in the way that it did. I consider sections 87-89 of the CCA are relevant in this situation. These provide

> *87 Need for default notice.*
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> *(1)Service of a notice on the debtor or hirer in accordance with section 88 (a "default notice") is necessary before the creditor or owner can become entitled, by reason of any breach by the debtor or hirer of a regulated agreement,—(a)to terminate the agreement, or (b)to demand earlier payment of any sum, or (c)to recover possession of any goods or land, or (d)to treat any right conferred on the debtor or hirer by the agreement as terminated, restricted or deferred, or (e)to enforce any security.*
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> *88 Contents and effect of default notice.*
>
> *(1)The default notice must be in the prescribed form and specify(a)the nature of the alleged breach; (b)if the breach is capable of remedy, what action is required to remedy it and the date before which that action is to be taken; (c)if the breach is not capable of remedy, the sum (if any) required to be paid as compensation for the breach, and the date before which it is to be paid.*
>
> *(2)A date specified under subsection (1) must not be less than 14 days after the date of service of the default notice, and the creditor or owner shall not take action such as is mentioned in section 87(1) before the date so specified or (if no requirement is made under subsection (1)) before those 14 days have elapsed.*
>
> *(3) The default notice must not treat as a breach failure to comply with a provision of the agreement which becomes operative only on breach of some other provision, but if the breach of that other provision is not duly remedied or compensation demanded under subsection (1) is not duly paid, or (where no requirement is made under subsection (1)) if the 14 days mentioned in subsection (2) have elapsed, the creditor or owner may treat the failure as a breach and section 87(1) shall not apply to it.*

(4) The default notice must contain information in the prescribed terms about the consequences of failure to comply with it and any other prescribed matters relating to the agreement. (4A)The default notice must also include a copy of the current default information sheet under section 86A.

(5)A default notice making a requirement under subsection (1) may include a provision for the taking of action such as is mentioned in section 87(1) at any time after the restriction imposed by subsection (2) will cease, together with a statement that the provision will be ineffective if the breach is duly remedied or the compensation duly paid.

89 Compliance with default notice.

If before the date specified for that purpose in the default notice the debtor or hirer takes the action specified under section 88(1)(b) or (c) the breach shall be treated as not having occurred.

In light of the above, I'm satisfied that a creditor like VFS is required to serve a default notice that sets out the nature of the alleged default in order to terminate a regulated agreement (such as this HA) properly. I've seen a copy of the default notice served by VFS. This says (as far as it's relevant):-

1. *Provision of the agreement breached: It was a term of the Agreement that you must keep the vehicle comprehensively insured.*

2. *Nature of the breach: The vehicle is not comprehensively insured.*

3. *The action required to remedy the default: You must comprehensively insure the vehicle by 24 May 2021.*

I'm satisfied the breach VFS relied upon in order to terminate the HA was a failure to insure. So, if Mr C wanted to put this breach right and avoid termination, he would have needed to insure the car by the date specified. I have also seen correspondence from the relevant insurer. I am satisfied this confirms that the car was insured *throughout* the relevant period - the insurers say the error was corrected without charge as soon as Mr C notified the mistake and the car remained on cover as the description was correct.

I think this means the breach alleged in the default notice never actually took place - which renders the default notice invalid. VFS seems to accept the default notice is wrong and it now says the HA was terminated on different grounds – namely Mr C didn't respond to contact attempts and he failed to keep his details up to date.

I think it's more likely than not Mr C genuinely thought the contact he received from VFS was "spam" or suspicious – given he responded to the collections agents in good time - almost as soon as he heard from them. And I think it's understandable he didn't notice the registration was wrong when he received the insurance documents initially – as the letters that were mis-recorded look very similar. Ultimately however, I'm satisfied that VFS was obliged to tell Mr C what he'd done wrong - and what he needed to do to put things right - if it wanted to terminate this HA. And, even if I accept Mr C should have let VFS know his address had changed and he was wrong to disregard the efforts VFS made to try to get in touch, these aren't the breaches set out in the default notice. I'm satisfied this means VFS failed to comply with its obligations under the CCA when it terminated the HA.

I note VFS also told Mr C that it would re-consider termination if he was able to show that the fault lay with the insurers. I think this suggests the key question for VFS wasn't whether Mr C

failed to keep his details up to date and/or respond to correspondence but rather *who* made the mistake that led to the car not appearing on the MID. I understand Mr C then went to some time and trouble to get evidence from the dealer (amongst others) about *how* the car's registration came to be recorded incorrectly. I'm satisfied this information shows that the incorrect registration was provided by the dealer direct to the broker who arranged the insurance. And, having led Mr C to believe things would be reconsidered if the mistake wasn't his, I don't think it was fair of VFS to disregard that new evidence.

I understand Mr C has now updated his contact details with VFS. He told us he has the funds in place to bring the payments due under the HA up to date. And, given the car is insured (and has been throughout), I'm not aware of any grounds upon which a valid default notice could be issued at this point (there seems to be no current or on-going breach).

Taking everything into account, I consider it would be fair and reasonable for VFS to acknowledge that the default notice served was invalid and take the steps necessary to reinstate the hire, on the terms agreed at the outset. If Mr C is not in a position to bring all the payments due under the agreement up to date immediately, I'd expect VFS to agree a suitable repayment plan. I also consider it is fair and reasonable for VFS to arrange for any adverse information recorded on his credit file (as a result of what happened) to be removed when the arrears are paid off.

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 invited the parties to let me have further submissions if they wanted to and Mr C and VFS have both responded to say they accept my provisional findings. I see no fair and reasonable grounds to depart from my provisional conclusions, in these circumstances. I remain of the view that VFS should take the steps necessary to reinstate the hire agreement on the terms agreed at the outset.

I understand that Mr C may not be in a position to bring all the payments due up to date immediately. As I said in my provisional decision, I'd expect VFS to agree a suitable plan to enable Mr C to pay off the arrears, in this situation. And I think it's fair and reasonable for VFS to arrange for any adverse information recorded on Mr C's credit file (as a result of what happened) to be removed when the arrears are repaid.

My final decision

For the reasons I have set out above, my decision is I uphold this complaint and I require Volkswagen Financial Services (UK) Limited to

1. reinstate the hire agreement on the terms agreed at the outset;

2. agree a suitable repayment plan with Mr C to pay off arrears; and

3. remove any adverse information recorded on Mr C's credit file (as a result of what happened) when the arrears have been brought up to date.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 14 January 2022.

Claire Jackson

Ombudsman