DRN-3551275

The complaint

Mr F is unhappy with the end of contract charges applied by Vauxhall Finance Plc trading as G.M.A.C. (GMAC) following the return of his car.

What happened

agreement with GMAC. The cash price of the vehicle was £8,723 and the agreement was for £9,521 over 60 months; with 59 monthly payments of £223.77, and a final payment of £223.97. The agreement also included two value added products (VAPs) – GAP insurance of £499 and a warranty of £299. At the time, the car was just over three years old and had done 35,137 miles.

Mr F voluntarily terminated the agreement in 2018. The car was collected and inspected for damage by the collection agent. Following this, GMAC charged Mr F £377 for damage to the car that fell outside of reasonable wear and tear and for an incomplete service history. GMAC also charged Mr F an additional £530.41 for the unpaid amount for the VAPs, which included interest calculated over the full term of the agreement.

Mr F complained to GMAC about these charges. GMAC waived the charge for the missing service history, bringing the damages charge down to £207. But they thought the remaining charges were fair. Mr F wasn't happy with GMAC's response, and he brought his complaint to us for investigation.

Our investigator said that, under the agreement Mr F signed, GMAC are entitled to charge for damage to the car that falls outside of industry guidance for fair wear and tear.

Mr F had said that the damage was present to the car when it was supplied to him, but the investigator had seen no evidence to support this. As, he thought that all this damage fell outside of industry guidance, he said it was fair for GMAC to charge for this.

With regards to the VAPs payment, the investigator explained why he thought this was a multiple agreement – the VAPs were financed separately to the car itself. And, because of this, GMAC were able to treat the VAPs payment separate to the voluntary termination (VT). However, the investigator didn't think this was made clear in the agreement.

In addition to this, the only reference to the cost of the VAPs being excluded from the overall cost of the agreement was under the heading *"Repossession: Your Rights."* So, the investigator didn't think Mr F would've referred to this section when deciding whether to VT the agreement.

The Financial Conduct Authority's (FCA's) Consumer Credit Sourcebook (CONC), under sections 2.3.2 and 4.2.5, explains that a customer must be given an adequate explanation of the key features of any regulated credit agreement. Which could allow customers to be able to make an informed choice. And Principle 7 of the FCA's Principles for Businesses explains that a firm must communicate information in a way that's clear, fair, and not misleading.

The investigator didn't think that the agreement Mr F signed was sufficiently clear about how the VAPs were being financed separately to the car itself, and how this would affect Mr F upon VT. Because of this, the investigator initially thought that GMAC should consider the VAPs and the car together when considering VT, and that Mr F's liability should be no more than 50% of the total amount financed for both of these elements.

GMAC didn't agree with the investigator's view. While they agreed the car and VAPs were financed separately, the car on a conditional sale agreement and the VAPs on a fixed sum loan agreement; they said they'd followed the prescribed wording of this type of mixed agreement, and were unable to change this. And they thought it was clear from reading the agreement as a whole, and not just relying on specific clauses, that the cost of the VAPs was excluded from VT and would need to be paid for separately.

After considering the comments from GMAC, the investigator still considered that the agreement wasn't sufficiently clear. And GMAC should've done more to explain how the agreement was structured, and what would happen on VT. But he'd changed his view as to what GMAC should do to put things right.

The investigator said that the car and VAPs should be treated separately, and Mr F's liability for the VT should be no more than £6,164.50 – the amount specified in the termination rights notice in the agreement. However, he didn't think Mr F would've expected to have to pay the whole amount of the VAPs and the full interest charged over the full term of the agreement if it was terminated early. And, as Mr F terminated the agreement 31 months into the 60-month agreement, his liability for the VAPs should be limited to $^{31}/_{60}$ of the total cost of the VAPs.

So, if Mr F has already paid at least £6,731.49 to GMAC, then he shouldn't be liable for any further charges for the VAPs. And, if he hasn't yet paid this amount, then GMAC should make arrangement for him to pay this. This is in addition to the damage charges, which were fairly applied.

GMAC still didn't agree with the investigator and have asked for an ombudsman to make a final 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.

Having done so, I have 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.

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 what I consider was good industry practice at the time. Mr F was supplied with a car under a regulated consumer credit agreement which means we're able to investigate complaints about it.

For clarity, I think it would be beneficial for me to state what aspects of this matter aren't disputed:

- Neither Mr F nor GMAC have challenged the investigator's view that the £207 damage charges were fair. As such, this element of the complaint is no longer in dispute.

- The investigator had, for the reasons he'd given, assumed the agreement to be a multiple agreement. And GMAC have confirmed that this was their intention. So, it's accepted that the agreement was a multiple agreement as defined by Section 18 of the Consumer Credit Act 1974. And GMAC used the prescribed wording they were required to within the termination and repossession sections this agreement; and using a heading of Conditional Sale Agreement was correct for this type of multiple agreement.

As such, my decision won't concentrate on these, and will instead focus on the elements where there is still no agreement.

CONC 4.2.5 says that:

> *(1) Before making a regulated credit agreement the firm must:*
> *a) provide the customer with an adequate explanation of the matters referred to in (2) in order to place the customer in a position to assess whether the agreement is adapted to the customer's needs and financial situation …*
> *(2) The matters referred to in (1) are:*
> *a) the features of the agreement which may make the credit to be provided under the agreement unsuitable for particular types of use;*
> *b) how much the customer will have to pay periodically; and where the amount can be determined; in total under the agreement;*
> *c) the features of the agreement which may operate in a manner which would have significant adverse effect on the customer in a way in which the customer is unlikely to forsee.*

I've seen a copy of the agreement Mr F signed on 8 August 2015. Under Section 6 ***"TERMINATION: YOUR RIGHTS"*** the agreement says *"you have a right to end this agreement. To do so you should write to the person you make your payments to. They will then be entitled to the return of the goods and to half the total amount payable under this agreement, that is £6,146.50. If you have already paid at least this amount plus any overdue interest and have taken reasonable care of the goods, you will not have to pay any more."* This is the prescribed wording that GMAC have said they were legally obliged to state.

Section 5 of the agreement confirms the *"Total Amount Payable*" to be £13,426.40. This includes the cost of the VAPs. And half of this amount is £6,713.20, and not the £6,146.50 specified in Section 6. So, the figure quoted in Section 6 relates to the total amount payable, less the cost of the VAPs. But this isn't clearly stated within Section 6.

Section 7 of the agreement *"**REPOSSESSION: YOUR RIGHTS**"* says *"if you do not keep to your side of the agreement but you have paid at least one third of the total amount payable under this agreement, that is £4,109.67, the creditor may not take back the goods against your wishes unless he gets a court order. (In Scotland he may need to get a court order at any time.) If he does take the goods without your consent or a court order, you have the right to get back any money that you have paid under this agreement."* This is also the prescribed wording that GMAC were legally obliged to state.

However, the agreement went on to explain that *"the Termination and Repossession rights set out on the notices above only apply to that part of this Agreement which relates to the Vehicle. The figures shown in the notices above do not include any amounts payable with respect to any GAP insurance or Warranty you have purchased."* This is stated in addition to the prescribed wording, and GMAC have chosen to combine this important piece of information relating to Sections 6 and 7 and refer to it in Section 7 only.

While Mr F has signed to say he read and accepted the agreement, this was in 2015. And he didn't look to VT the agreement until almost three-years later. As such, I think it's reasonable that Mr F would've only referred to the termination part of the agreement at this point and wouldn't have re-read the entire agreement. Given the lack of any explanation as to the how the VAPs would be treated in Section 6 of the agreement, this would lead Mr F to believe this his liability was less than it actually was. This situation could've been avoided had GMAC given the same warning in Section 6 as they did in Section 7, or made reference in Section 6 to additional terms in Section 7 also applying.

In addition to this, there is nowhere on the agreement that explains that the car is being financed under a conditional sale agreement, while the VAPs are being financed under a fixed sum loan agreement. And, as such, they are treated differently.

It's clear from reading the agreement that GMAC are relying on the figures at the start of the agreement, specifying the price and interest for each item, in making an argument to treat each of the repayments as divisible into elements relating to each different item purchased by Mr F. Which would support their claim that, upon a VT, separate liabilities accrue in respect of that part of the repayments that relates to the VAPs. However, the agreement doesn't divide repayments into separate liabilities in that way.

Instead, Section 11 says; "*If you have opted to buy GAP Insurance and/or Warranty on credit from us, you will pay for them by the Repayments"*; and Section 13 says Mr F will only become the legal owner of the car when he has paid "*the Total Amount Payable and all other sums due under this Agreement"*, where the Total Amount Payable includes the price and financing costs of *all* the items purchased, including the VAPs. So, the price of acquiring ownership of the car actually includes the entirety of the repayments, and not just the part of them identified at the start of the agreement as the cost of the vehicle.

So, the repayments aren't treated in the agreement as divisible, pro-rata, according to the cost of the different items. Rather, they are treated as indivisibly applicable to all the items purchased.

As such, while GMAC may've provided a technically correct legal analysis of the agreement, and explained why it complies with the necessary legislation; I'm satisfied that the agreement is unclear as to what would happen in these circumstances (and VT is a common way of ending this type of agreement), so is not in line with the FCA's Principle 7. And is unclear under CONC 4.2.5 – specifically part (2) c), as the operation of the agreement is not in a manner which Mr F would reasonably be able for forsee.

Turning now to the financing of the VAPs under a fixed sum loan agreement. Given the above, I'm not satisfied there's any contractual basis for GMAC's claim that, upon VT, a pro-rated share of all the future repayments for the VAPs is accelerated becomes payable. And, if the agreement had included such a term, I'm also not satisfied this would be a fair term because it would overcompensate GMAC and circumvent the statutory and common law rights of a consumer to have accelerated payments mitigated by a rebate in respect of early receipt of interest.

As such, while GMAC can fairly argue that the costs of the VAP were covered by a fixed sum loan agreement, they haven't rebated the interest on this agreement when it was repaid by virtue of Mr F exercising his right to VT. Which they are required to do.

Putting things right

The investigator has recommended that the cost of the VAPs are pro-rated over the 31-months of the agreement before VT. And, given that GMAC didn't adhere to Principle 7, and failed to fairly rebate the interest on the fixed sum loan part of the agreement, I consider this to be a fair recommendation. And I haven't seen any compelling reason why this should be changed.

So, GMAC should cap Mr F's total VT payments at £6,713.40, calculated as:

- £6,164.50 (the VT amount quoted in Section 6); plus
- $^{31}/_{60}$ of the total amounts payable in respect of the VAPs, which is £566.99. This represents the amount of use of the insurance products.

If Mr F has repaid less than £6,731.40 in relation to this agreement, then he should repay up to this amount in order to satisfy the terms of the VT. If Mr F has already paid more than £6,731.40, then he shouldn't be liable for any further charges in relation to the VAPs.

In addition to this, Mr F is also liable for the £207 end of contract damages charges.

My final decision

For the reasons explained, I uphold Mr F's complaint. Vauxhall Finance Plc trading as G.M.A.C. must follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 15 August 2022.

Andrew Burford
Ombudsman