DRN-4821469

The complaint

Mr F is unhappy that a van supplied to him under a hire purchase agreement with Oodle Financial Services Limited was set up by way of an agreement in his personal name, rather than being in the name of his limited company, which I'll refer to as S Ltd.

Mr F has been represented during the claim and complaint process by Mr L. For ease of reference, I will refer to any comments made, or any action taken, by either Mr F or Mr L as "Mr F" throughout the decision.

What happened

On 28 May 2022, Mr F was supplied with a used van through a hire purchase agreement with Oodle. He paid a £200 deposit, and the agreement was for £16,000 over 60 months, with an initial monthly payment of £397.20, 58 monthly payments of £347.20, and a final payment of £397.20. At the time of supply the van was almost seven years old and had done 83,000 miles.

Mr F complained to Oodle that, during the application process, he was contacted by a mobile number and information was requested by text message, and he thought his personal information may have been compromised. He was also unhappy that the agreement was in his personal name, and not that of S Ltd; and that he had difficulties setting up a direct debit because Oodle had the incorrect phone number stored for him on their system, so he wasn't receiving the secure text messages he was being sent to allow him to do this.

Oodle said that Mr F had been contacted through a company mobile phone, and none of his data had been stored on that phone, so they didn't think there had been any breach of data protection requirements. Oodle also said that they failed to make it clear to Mr F that they don't offer business finance, so the application would always have had to be processed as a personal application. However, they thought this was something that should be dealt with by the dealership, as they advised Mr F it would be business finance. Finally, Oodle accepted there had been failings relating to the direct debit and they credited his agreement with £100.

Mr F wasn't happy with this response, and he brought his complaint to the Financial Ombudsman Service for investigation.

Our investigator didn't think Oodle had done anything wrong by contacting Mr F through a company mobile phone, and he thought the £100 offered was reasonable for the direct debit issues. However, the investigator said that the agreement had been misrepresented to Mr F, and he didn't think he would've taken out the agreement had he known it was going to be in his personal name. So, the investigator said Mr F should be allowed to end the agreement and return the van to Oodle.

In response to the investigator's opinion, Mr F explained that the van was originally insured under S Ltd's fleet policy. However, in June 2023 when he realised the van was in his personal name, it was removed from this policy. The van was then put into safe storage where it remained, uninsured. The road tax on the van expired on 31 May 2023 and wasn't

renewed. However, Mr F didn't register the van as being off the road with the DVSA through a Statutory Off-Road Notice ('SORN').

After providing evidence of the lack of insurance on the van from June 2023, the investigator revised their opinion to include asking Oodle to refund all payments Mr F had made from June 2023 onwards, as he no longer had use of the van.

Oodle asked for evidence of the current milage and photographs of the van, so they could determine whether the mileage Mr F had travelled could be considered fair usage, and so they could consider if there was any damage to the van that fell outside of normal wear and tear. The investigator explained that Oodle keeping the payments Mr F made until June 2023 was fair compensation for the usage of the van, especially because there was no mileage limit specified on the agreement. The investigator also explained that any damage to the van had no bearing on his opinion, and once the van had been collected Oodle were entitled to assess its condition and charge for any damage allowable under the agreement.

On 2 January 2024, Oodle agreed to the investigator's opinion in principle, but still wanted confirmation of the mileage as, if this was *"exceptionally high"*, they wanted to be able to retain one monthly payment for every 1,000 miles the van had travelled. Oodle were provided with the mileage (120,306 miles) but the investigator explained why one payment per 1,000 miles wasn't fair, and that his opinion that Oodle are allowed to retain all the payments up to June 2023 remained unchanged. Given this, on 17 January 2024, Oodle accepted the investigator's opinion.

Oodle asked for confirmation of the location of the van to allow then to arrange for recovery. On 22 January 2024, Mr F confirmed that he'd arranged for the van to be moved to outside his home address. The van was then parked – untaxed and uninsured – on a public highway awaiting collection. Oodle were advised of this the same day, and they confirmed they would arrange for the van to be collected.

On 30 January 2024, Oodle advised Mr F that they'd instructed a third-party collections agent and that the van would be inspected for any damage following collection. Mr F objected to this, as he didn't think he should be responsible for any damage. However, the same day, the van caught fire, which Mr F has subsequently said he was told by the police was an arson attack.

The van was badly damaged in the fire and the investigator issued a revised opinion explaining that it was Mr F's responsibility to ensure the van was insured. The investigator also explained that Oodle aren't responsible for the cost of the fire damage.

Mr F didn't agree with the investigator as the investigator's opinion was that Oodle were to collect the van at no cost to himself. And repairing the fire damage would be a cost. Mr F also said he was unable to tax or insure the van because he was never provided with the V5C after being provided with the van, and he doesn't believe he was responsible for insuring the van as *"if Oodle wished to protect their asset then it was their responsibility to obtain insurance as they would solely benefit from this."*

I issued a provisional decision on 16 April 2024, where I explained my intention to uphold the complaint. In that decision I said:

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. Mr F was supplied with a van under a hire purchase agreement. This is a regulated consumer credit agreement which means we're able to investigate complaints about it.

In this instance, both parties agree that the agreement was misrepresented to Mr F, and this gives him the right to return the van to Oodle. Both parties also agree that, as Mr F hasn't used the van since June 2023, all payments he had made since then should be refunded to him, plus statutory interest. As such, I'm satisfied I don't need to consider the merits of this. Instead, my decision will concentrate on what I think Oodle should do to put things right now that the matter has been complicated by the fire.

As I've already explained, it's not disputed that the agreement was misrepresented to Mr F. This misrepresentation allows him to ask for the agreement to be unwound, and to walk away after returning the van to Oodle. However, I don't think this means that the agreement itself is therefore invalid and the terms and conditions don't apply. I say this because the agreement was in Mr F's sole name and was signed by Mr F in his personal capacity i.e., it was not signed on and behalf of S Ltd. What's more, the original vehicle invoice was in Mr F's personal name, not that of S Ltd, and he used the van from May 2022 to June 2023, complying with the terms of the agreement he'd signed during this period.

Given this, I think the following terms are important to note when considering my decision:

> ***B. Looking after the vehicle***
> *As the vehicle is ours until you pay the option to purchase fee, we need you to look after it and not do anything that we don't allow you to do with it.*
> ***You have to**:*
> - *keep the vehicle under your control and in good condition and repair at your own expense; …*
> - *ensure the vehicle is at all times insured at your expense under a policy that meets our requirements*
>
> ***C. Loss and damage to the vehicle***
> *You are responsible for all loss of, or damage to, the vehicle even if it is not your fault or caused by events beyond your control. You won't be responsible for loss or damage due to fair wear and tear which is consistent with the age and mileage of the vehicle …*
>
> ***D. Insuring the vehicle – our requirements***
> *The policy you take out on the vehicle must meet the following conditions:*
> - *it must be in your name*
> - *it must cover the full replacement value of the vehicle under a fully comprehensive policy, covering usual risks (e.g. third party liability, fire, theft and accidental damage) …*
>
> *… you must pay your insurance premiums, including if the vehicle is off the road, damaged, missing or a total loss.*

I've also noted there are certain legal requirements that supersede the agreement, i.e., that any motor vehicle parked on a public highway must be both taxed and insured.

Mr F has shown that the van was insured on S Ltd's fleet policy until June 2023, and public records show that it had a valid road tax until 31 May 2023. I've noted Mr F's comments about the V5C, but this wouldn't stop him from insuring the van. I haven't seen any evidence that he ever chased Oodle for the missing V5C but, even if he had, he was still able to contact the DVSA to obtain a replacement V5C which would've allowed him to renew the road tax or declare the van as being off the road through a SORN.

Mr F has also said that he arranged to have the van stored at a safe off the road location from June 2023 onwards. Given the issue with the V5C, and in whose name it should be issued – Mr F or S Ltd – I can understand why he didn't tax or SORN the van from June 2023 onwards. However, term D is clear that Mr F should still have insured the van while it was off the road and, as he doesn't dispute that the van was in his name so couldn't be covered by S Ltd's fleet policy, this insurance should also have been in his sole name. So, by failing to insure the van from June 2023 onwards, Mr F was in breach of the agreement he signed. And this requirement to insure the van isn't affected by the fact that the agreement was misrepresented.

Turning now to the investigator's opinion, and the recommendation that Oodle collect the van at no cost to Mr F. This meant that Oodle were unable to charge Mr F for the collection of the van. What it didn't mean, and I don't think it could be reasonably interpreted to mean, is that the requirement under term C that Mr F is responsible for any damage that falls outside of normal wear and tear is waived. I also say this because the investigator made it clear during the investigation that Oodle were still entitled to charge for this damage, and if Mr F objected to any charges this would need to be dealt with by way of a separate complaint.

So, now to the damage caused by the fire. As I've stated above, it was not until 17 January 2024 that Oodle accepted the investigator's opinion and agreed to arrange to collect the van. Oodle asked for the location of the van on 22 January 2024, and this was provided by Mr F the same day. Mr F also confirmed that he'd arranged for the van to be moved from the safe off the road location where it had been stored (and from where Oodle could've collected it) to his home address. This location transfer was entirely Mr F's choice.

When Mr F advised of the location from where the van could be collected, he did so just after 3pm on 22 January 2024. As such, I don't think he could reasonably expect that Oodle would arrange to collect the van the same day. So, Mr F would've known that the van would be at his home address at the very least overnight.

Despite this, and knowing the van was neither taxed nor insured, Mr F chose to park the van on a public highway, even though the van could've been parked on his driveway (the photographs Mr F has provided of the van on fire clearly show a car parked on his driveway, so he had the ability to park the van off the road). While this wouldn't have changed the fact that Mr F hadn't insured the van, it would at least avoid the need for road tax.

After being advised of the location of the van, Oodle needed to arrange collection. While I've noted Mr F's comments that Oodle should've collected the van themselves, they are a finance company and I wouldn't expect them to maintain a fleet of recovery vehicles just for circumstances like this. Instead, I think it's reasonable that they instructed a specialist third-party to collect the van, and this would undoubtedly mean a short delay between instruction and collection.

Oodle contacted Mr F about collection on 30 January 2024, which I don't think is an unreasonable timescale. And, during the eight days between being advised Oodle had agreed to collect the van, and arranging the date of collection, Mr F took no action to either insure the van or move it off the public highway knowing it was uninsured and untaxed. What's more, at no point during this period did Mr F advise Oodle that the van was not insured, not taxed, and parked on a public highway. As such, Oodle had no knowledge or opportunity to take any action to protect their asset. And it was around six hours after Mr F was in contact with Oodle about the collection that the van was severely damaged by fire.

Taking all the above into consideration, I'm satisfied that it was Mr F's responsibility to insure the van; that he failed to take reasonable steps to ensure the van was legally parked and, as

far as possible out of harms way; and he's therefore liable for the fire damage to the van (which, had it been insured, would've been covered as a risk by the insurance company).

Turning to what I think Oodle should now do to put things right. The agreement was misrepresented, so Mr F is still able to return the van, with a refund of the payments he's made since June 2023. However, the fire damage is outside of what would be considered normal wear and tear so, under term C of the agreement, Mr F is liable for this. As such, I'd expect Oodle to deal with this in the fairest way possible.

Given the circumstances, I'd expect Oodle to obtain quotes for repairing the fire damage and as to the value of the van in its current condition. They are then able to charge Mr F the lower of (a) the cost of repairing the van (so long as, from an insurance perspective, the van would be classed as a Cat S or Cat N write off), or (b) the difference between the outstanding amount on the agreement and the value of the van in its current condition.

Therefore, it's my intention to ask Oodle to:

- *end the agreement with no further monthly payments to pay;*
- *collect the van at no collection cost to Mr F;*
- *invoice Mr F for the fire damage to the van, calculated as specified above;*
- *refund the payments Mr F has made since June 2023 onwards; and*
- *apply 8% simple yearly interest on the refund, calculated from the date Mr F made the payments to the date of the refund[†].*

For clarity, Oodle are able to offset the payment refund and interest against the amount Mr F owes for the fire damage to the van.

[†]If HM Revenue & Customs requires Oodle to take off tax from this interest, Oodle must give Mr F a certificate showing how much tax they've taken off if he asks for one.

Responses

Oodle agreed with my provisional decision. They also said that, if the cost of the fire damage was more than the total payment refund, they would pursue Mr F for the difference and report this on his credit file until the amount was repaid in full.

Mr F initially asked if Oodle had insured the van themselves, and whether the decision would include the restoration of his credit file. The investigator advised him that, as per my provisional decision, it was his responsibility to insure the van, not Oodle's; and that the credit file would be considered as part of my final decision.

Mr F then responded saying that, as soon as Oodle accepted the *"FOS Decision"* on 17 January 2024, this was a *"binding decision stating that the Agreement was to be unwound, the effect of this being that the Agreement is essentially rescinded."* He also said that, when an agreement is rescinded due to misrepresentation, then he is no longer bound by the terms and obligations of that agreement. Which includes the requirement to ensure the van is adequately insured. Given this, Mr F says that Oodle clearly failed to mitigate their losses by insuring the van themselves. So, he didn't think he was liable for any damage as a result of the van being uninsured.

Mr F also said that he required his driveway to park his personal car, pursuant to the insurance on that vehicle; and it wasn't possible for the van to remain at the safe storage location as the person who was storing it didn't want the responsibility of giving access to a

recovery vehicle. As such, he said that *"the only logical place for collection [was] on the road"*, and he said that Oodle didn't specifically object to this when advised.

Finally, Mr F has said that Oodle's delays in collecting the car were unreasonable; that they have failed to adhere to the *"FOS Decision"* and remove any adverse entries from his credit file; and that he never received an invoice for the van in his personal name.

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've noted Mr F's comments about the agreement with Oodle being rescinded on 17 January 2024, after they accepted the decision from the Financial Ombudsman Service, and the effect of this is that he was not liable to making sure the van was insured.

However, what Mr F has referred to as a *"FOS Decision"* is actually the investigator's opinion. When this is accepted by both parties, then they agree to carry out the recommendation. But this is not a legally binding document, and for any decision to be legally binding on both parties, it has to be a final decision issued by an ombudsman, and formally accepted by the customer, in this case Mr F. As I've said, the document Mr F is referring to isn't a final decision issued by an ombudsman – as this is – so neither party are obligated to either accept it or are excluded from changing their mind if they do (which Oodle did after being advised of the fire damage to the van).

As such, and while I appreciate this will come as a disappointment to Mr F, Oodle's acceptance of the investigator's opinion on 17 January 2024 did not have the effect of rescinding the agreement and removing Mr F's obligations, including insuring the van. As such, the onus remained on Mr F to insure the van, something he admits not to doing from June 2023 onwards, even though, by his own arguments, he was required to do by an agreement that hadn't been rescinded at the time. So, he remains liable for the costs resulting from the fire damage.

What's more, even if the agreement had been rescinded (which as I've said it wasn't), this doesn't remove Mr F's legal obligations to ensure that any vehicle he chooses to park on a public highway must have valid road tax and insurance.

I've seen the email dated 23 January 2024, where Mr F advised Oodle *"the vehicle is currently parked on the street at my home address."* Mr F has pointed out that Oodle didn't object to this and, as such, this was essentially them giving permission for the van to be stored there. While this is also noted, given both Mr F's legal and contractual obligations, it's also reasonable to assume that, from this email, Oodle believed the van would be both taxed and insured. And, had Mr F advised Oodle of the true position i.e., that the van was parked on the street at his home address *both untaxed and uninsured*, I'm satisfied it's more likely than not that Oodle would have objected to this.

Turning to the delays, Mr F has said that Oodle unreasonably delayed in collecting the van, and that they should've done so after being instructed to by the Financial Ombudsman Service on 31 October 2022. The 31 October 2022 document Mr F is referring to is the investigator's opinion which, as I've said above, isn't legally binding on Oodle. What's more, the final paragraphs of this opinion stated:

> *I think this is a fair outcome in the circumstances, for the reasons I've explained. Please let me know by 14 November 2023 whether you agree to my recommendations so the case can be resolved.*

But if you don't accept what I've said – and want an Ombudsman to make a final decision on the complaint – you must provide any further evidence or representations by 14 November 2023. Requests for more time must also be made by that date. If I don't hear from you by 14 November 2023 I'll arrange for an Ombudsman to determine the complaint.

Given this, I don't think it could be reasonably interpreted that Oodle had an obligation to collect the car on 31 October 2023. And it wasn't until 17 January 2024 that they accepted that Mr F could reject the van, and 22 January 2024 when Mr F advised Oodle of the whereabouts of the van. As such, and for the reasons given in my provisional decision, I don't think the eight day delay in Oodle arranging to collect the van was unreasonable.

Both parties have raised the issue of Mr F's credit file. Where we decide that rejection should be allowed, it's our usual practice to say that a financial business should remove all adverse information from a customer's credit file. And we would expect this to take place once any outstanding amounts, for example any charges for damage that falls outside of normal wear and tear, has been repaid. I see no compelling reason why this shouldn't also apply to this complaint, and my directions to Oodle have been expanded to clarify this.

Finally, Mr F has said that he never received the invoice in his personal name. However, as it's no longer disputed that the agreement was misrepresented, this has no bearing on my final decision that Oodle need to do something to put things right.

Putting things right

Given the circumstances, Oodle should obtain at least two quotes from VAT registered garages for repairing the fire damage to the van. Mr F may also obtain a quote for the repair from a VAT registered garage of his choice and provide it to Oodle by no later than the date of collection of the van. Oodle should also obtain the value of the van in its current condition, either through reference to the Motor Trade Guides, or by another industry acceptable means. They are then able to charge Mr F the lower of (a) the average cost of repairing the van (so long as, from an insurance perspective, the van would be classed as a Cat S or Cat N repair), or (b) the difference between the outstanding amount on the agreement and the value of the van in its current condition.

Oodle should also:

- end the agreement with no further monthly payments to pay;
- collect the van at no collection cost to Mr F (this does not include Oodle paying any additional storage costs Mr F may have incurred as a result of the fire damage to the van, or as a result of the car being parked on a public highway untaxed and/or uninsured, as Mr F remains liable for all costs resulting from this);
- refund the payments Mr F has made from June 2023 until the agreement is ended;
- invoice Mr F for the fire damage to the van, calculated as specified above*;
- apply 8% simple yearly interest on the refund, calculated from the date Mr F made the payments to the date of the refund†; and
- once all the outstanding balance has been paid, including anything owing as a result of the fire damage and/or any other damage to the van that falls outside of normal wear and tear, remove any adverse entries relating to this agreement from Mr F's credit file.

*Oodle are able to offset the payment refund and interest against the amount Mr F owes for the fire damage to the van.

†If HM Revenue & Customs requires Oodle to take off tax from this interest, Oodle must give Mr F a certificate showing how much tax they've taken off if he asks for one.

I would again remind Mr F that Oodle are only obligated to take these actions after he has formally accepted this final decision, after which point my decision becomes legally binding and he is unable to take any further action. If he chooses not to accept this final decision, then Oodle are not required to take any further action, but he would be free to pursue the matter by other means.

My final decision

For the reasons explained, I uphold Mr F's complaint about Oodle Financial Services Limited, and they are to 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 27 June 2024.

Andrew Burford
Ombudsman