

complaint

Mr L complains that Volkswagen Financial Services (UK) Limited shouldn't have attempted to repossess his car and terminate his finance agreement when he failed to get it insured.

background

I provided my provisional decision in February 2018. In that decision I explained that I expected to make a different decision than the investigators and uphold Mr L's complaint. An extract of that provisional decision is set out below.

Mr L entered into a hire purchase agreement with Volkswagen Financial Services (UK) Limited (VWFS) to finance a car deal. He took receipt of his new car in March 2017. On 29 June VWFS wrote to Mr L to let him know his car was showing as uninsured. They wrote again in July and then again in August telling him that if he didn't get the car insured they would seek to repossess it and he'd have to pay what was owed on the outstanding agreement. But Mr L says he didn't get their letters because he was not in the country and by the time he returned, VWFS were seeking to enforce the repossession and obtain payment of the remaining instalments.

Mr L has provided a letter from his insurer that shows he had insured the vehicle under the wrong registration number. The registration number he'd used was the same but instead of a letter "O" he'd registered a zero.

VWFS said that it was Mr L's responsibility to ensure that the insurance details were correct and that they had warned him of their intentions, if he didn't arrange the appropriate insurance, but he'd failed to take the appropriate action.

But Mr L said he couldn't be expected to read the letters when he was out of the country and VWFS should have tried to contact him by telephone. And he also said it seemed extremely unfair to punish him for there being an error of just one digit in the insurance registration.

He referred his complaint to this service but our investigator agreed with VWFS. She said that the finance agreement allowed the finance provider to terminate the agreement if Mr L failed to insure the vehicle and that it also said that the responsibility would then lie with Mr L to pay any unpaid instalments. And she said that as Mr L hadn't been able to demonstrate that the registration error had been made by the insurer she couldn't support his complaint.

But Mr L disagreed and he asked for a decision by an ombudsman.

my provisional findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint and having done so I don't currently agree with the investigator's view.

I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it but because I don't think I need to refer to it in order to reach what I think is the right outcome.

the incorrect registration plate

It's clear that the vehicle wasn't insured and that under the terms of the hire agreement Mr L signed in March 2017, VWFS may therefore seek to repossess and seek payment of the balance after an early payment discount is applied. But is it fair and reasonable of VWFS to do so?

Mr L has shown evidence that he had obtained insurance. He thought he insured the vehicle. The difference between the registration number he had registered and the correct registration number is minimal. To the untrained eye it's almost impossible to tell the difference between a zero and a letter "O" when it's recorded on the insurance document.

I've discussed the issue with the insurer and they've explained that it is possible for a consumer to enter an incorrect registration number and that if this was done the vehicle's make and model would not be automatically populated and the consumer would be asked to manually enter these details.

So I think it's most likely that this is what happened in Mr L's case. It seems an easy and understandable mistake to make. It's one that Mr L may not have even been able to notice if he reviewed the document – but the cost to Mr L has been significant.

the communication issues

Mr L says that he was out of the country and didn't receive the letters VWFS sent him, between June and August 2017, warning him of the consequences if he didn't insure the car.

He's provided me with evidence to demonstrate this was the case. His bank statements clearly show transactions were being made by him abroad throughout June and July.

I've noted that Mr L returned to the country later in July and that he didn't contact VWFS until October. He's explained that he didn't return home but stayed with his mother as he was her primary carer after an operation. He's offered to provide evidence of this and says that he can produce the hospital records and a letter from his employee to explain he needed to be absent to care for her. I've not asked for this evidence – I don't currently intend to do so. I'll explain why.

The evidence Mr L has provided to date has been very consistent and reliable. I'm minded that this process has taken a long time and that Mr L spends long periods out of the country when he's not able to access or gather information. There would appear to be no value in Mr L providing inaccurate information about his whereabouts in August. If he was at home he would surely have contacted the insurance company and clarified the insurance he'd set up. His actions appear to be consistent with this. As soon as he got home in October he contacted his insurer, recognised his mistake and changed his insurance certificate so it reflected the correct registration number. He didn't contact VWFS until October either and this is consistent with his explanation that he was away. I think it's most likely that he didn't get back to his address, review VWFS's letters and take remedial action until October and by that time, unfortunately, it was too late.

a fair resolution

Mr L had a responsibility under his hire purchase agreement to insure the car VWFS had financed for him. He thought he'd complied with this but made a silly, albeit understandable, mistake when he recorded one digit incorrectly on his registration plate.

The consequences of this mistake have been significant. Mr L is being asked to pay over £10,000 to settle his agreement, the car has been repossessed and adverse information has been added to his credit file.

VWFS will point to the fact that Mr L wasn't insured and had to be and they'll also say that as the letters they sent to Mr L were not returned they could safely assume he'd received them. I'd agree with these points. It is clearly Mr L's duty to insure the vehicle correctly and put himself in a position where he can receive correspondence. So he has some liability for this problem. But the issues in this case are exceptional and I think Mr L could expect VWFS to be a little more understanding.

I was surprised to read that the car had been repossessed when Mr L's complaint was with us – especially after he'd acted to get it insured properly as soon as he'd noticed the mistake. I don't think VWFS have acted entirely within the spirit of our rules by doing that. VWFS has now got its asset back – the car has been returned to them. I think a fair resolution would therefore be for them to wind up Mr L's contract with nothing further to pay from the point that the car was repossessed and to return his credit file to good order.

my provisional decision

For the reasons I've given above my provisional decision is that Volkswagen Financial Services (UK) Limited should cancel the credit agreement with nothing further to pay from the point at which the car was repossessed and remove any adverse information that has been added to Mr L's credit file as a result of this issue.

I invited Mr L and VWFS to respond to my provisional decision.

VWFS explained that Mr L's car had not been repossessed and that he still had it despite the agreement being cancelled. They disagreed with my findings as they said it was clear the car hadn't been insured and the customer had therefore breached his contract with them regardless of how small the mistake had been. They stressed that they had given Mr L a chance to remedy the situation but he hadn't contacted them until it was too late. And they said that if my opinion remained unchanged they would like me to consider that, despite still having the car, Mr L has not made any payments to them since 24 August last year. They therefore thought it reasonable that these payments were made to them before they agreed to remove any adverse information they had added to Mr L's credit file.

Mr L accepted my view but said as he still had the car; it might be better for both sides if he kept it and continued payments against his agreement as before. But VWFS said this wasn't possible as the agreement had already been terminated and they had no facility to reverse this action.

I thank Mr L and VWFS for their responses. I've re-considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I have finished my re-consideration and having done so I've not been persuaded to change my findings. Please let me explain why.

I apologise to VWFS for suggesting the car had been repossessed. This was my misunderstanding. I now see that, whilst collection agents were sent, the car was not repossessed and Mr L still has it.

The points that VWFS have made are not new ones and I believe I have answered them in my provisional decision. Whilst I understand their concern because it's clear the car wasn't insured. I hope they can understand that these are exceptional circumstances.

Whilst Mr L would like to continue with his agreement, VWFS have explained that this isn't possible and I accept their view here.

It's clear that Mr L has had the car throughout and that no payments have been made to VWFS since 24 August 2018. For that reason I think it's fair that Mr L pays off the balance, which I believe is currently eight instalments, before VWFS take action to clear his credit file and cancel his agreement with nothing to pay and my final decision will reflect this.

my final decision

For the reasons given above I uphold this complaint in part and ask Volkswagen Financial Services (UK) Limited to cancel the credit agreement with nothing further to pay and remove any adverse information that has been added to Mr L's credit file as a result of this issue.

It is understood that these actions will only be taken once Mr L has repaid the outstanding instalments due on his agreement that would have been due between 24 August 2018 and the date of this decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 3 May 2018.

Phil McMahon
ombudsman