

## **The complaint**

Mrs R complains that MotoNovo Finance Limited imposed unfair charges when she returned a car after the finance agreement was terminated.

## **What happened**

The details of this complaint are well known to both parties, so I won't repeat them again here. The facts are not in dispute so instead I'll focus on giving the reasons for my 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 agree with the conclusions reached by the investigator for the following reasons:

Mrs R acquired the car in 2017. It was first registered in September 2013 and so when it was returned it was over six years old. The contract she signed states:

*“Excess charges may also apply if you choose to hand the Vehicle back in a less than reasonable state in keeping with its age and mileage (i.e. where the Vehicle has not been maintained in line with Manufacturer's specification).”*

In identifying what constitutes damage which goes beyond reasonable wear and tear this service and the majority of the industry relies on The British Vehicle Rental and Leasing Association (BVRLA) guide. We do so regardless of whether the finance provider is a member of the BVRLA.

The guidance is usually used for new cars that have been returned at the end of their first finance agreement, so we'd mainly use it to consider damage to cars that are four years old or less. However, we refer to the guide even if we are considering complaints involving used or older cars.

The guide says that age and mileage are factors which need to be taken into account when considering what would be deemed fair wear and tear. This applies to all cars but older cars, or cars with higher mileage, might therefore require a slightly different application of the guide. This is because it's likely the older or higher the mileage of a car the more reasonable wear and tear it will likely suffer. For example, a 3-year-old car with high mileage would arguably expect to show more signs of wear and tear than a car of the same age but with much less miles. A 6-year-old car with average mileage also might expect to show more wear and tear than a 3-year-old car with average mileage. So, in cases where the car was older and/or with higher mileage we apply a broader approach than what's explicitly set out in the BVRLA guidance.

It's also worth noting that used cars may have already had some minor damage when acquired by the consumer. This would have likely impacted the price paid at the time. So this

is a factor we take into account when making decisions as to what is fair and reasonable.

In this case we have the benefit of detailed photographs taken by Mrs R when she left the car with the agent acting for MotoNovo. As is often the case photos do not always provide a clear and definitive picture of the level of damage, but these ones are a useful addition to those taken by MotoNovo's agent.

I am satisfied they were taken at the time she left the car and I am also satisfied that those taken by the agent were several days later when the inspection was carried out. There are discrepancies, the most obvious one being the marks shown on the driver's door in the agents' photo which have all the hallmarks of being new. This somewhat undermines the value of the inspection report.

Other areas of damage which make up the charge are minor scuffs and dents which I consider to be fair wear and tear given the age of the car. For example, there are some minor marks on the alloy wheels which I do not consider to be excessive for a car approaching seven years old.

MotoNovo has also suggested that because a clear piece of plastic was placed on the passenger seat the photograph showing it with some marks should be ignored and the one provided by the agent which suggest it is dirtier is to be preferred. I don't consider that to be a reasonable inference. One can see the seat quite clearly in Mrs R's photograph and while it is not pristine I do not consider its condition to be unreasonable.

So I consider we have damage which I don't believe was present when she left the car and we have minor scuffs and marks which have been charged but which I believe to be the result of fair wear and tear. Overall, I consider our investigator's conclusion that Mrs R pay for the damage which was poorly repaired to be a fair and reasonable conclusion.

### **Putting things right**

MotoNovo should refund most of the charges.

### **My final decision**

My final decision is that I uphold this complaint and I direct MotoNovo Finance Limited to the difference between the amount Mrs R has paid, £1556.67, and the £368 of charges which I believe to be fair. It should also pay annual simple interest at 8% from the day payment was made until it is repaid.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs R to accept or reject my decision before 25 March 2022.

Ivor Graham  
**Ombudsman**