

## **The complaint**

Mrs W is unhappy with the charges Mitsubishi HC Capital UK Plc (“Mitsubishi”) applied, when she handed back a car she acquired under a hire agreement.

Mrs W has been represented. For clarity, I’ll only refer to Mrs W throughout this decision.

## **What happened**

In March 2018, Mrs W entered into a three-year hire agreement to acquire a brand-new car.

In March 2021, Mrs W called Mitsubishi as she had received a letter about outstanding arrears. At the time, Mitsubishi told her the outstanding arrears were £4,333.34. In later conversations, it said a payment of £3,939.40 was required to settle the account. So Mrs W paid this amount. In April 2021, Mrs W received an arrears letter stating she needed to pay £393.34. Unhappy with this, Mrs W complained to Mitsubishi.

Following this, the car was collected on 19 April 2021 by Mitsubishi’s recovery agents – who I’ll refer to as B. B issued a report on the condition Mrs W’s car when it collected it. It said the following damage, totalling £1,140, was outside of fair wear and tear:

1. Right quarter panel – dent - £175
2. Right back post– dent - £60
3. Left front alloy wheel – scuffed - £65
4. Left front door – dent - £175
5. Left back post – dent - £60
6. Left sill panel – scratched - £140
7. Left rear door – chips - £140
8. Left quarter panel – dent - £175
9. Right front wing – scratched - £75
10. Right centre post – scratched - £75

In May 2021, Mrs W made a further complaint to Mitsubishi. She said the damage identified by B should be considered as fair wear and tear.

Mitsubishi issued its response to Mrs W’s complaint in July 2021. It said when it had provided information about the final payment amount, it did this in good faith that the final rental payment would be paid. But as the Direct Debit was declined, the final rental payment remained outstanding.

It also issued a separate response to Mrs W’s complaint about the damage charges. It said following Mrs W’s complaint, it removed the charge for the left quarter panel and reduced the charges for the left front and rear doors to £75 for each door. This left a balance of £800. It said following further comments received from Mrs W, it removed the charges for the right back post, left back post, right centre post, the right quarter panel and right front wing. So the outstanding balance was £355. It said these charges had been applied correctly in line with the industry standard - The British Vehicle Rental & Leasing Association’s (“BVRLA”) fair wear and tear guidelines.

As Mrs W was unhappy, she referred her complaint to this service. She said due to the impact of Covid-19, she had missed a couple of payments under her agreement. She said she cancelled the Direct Debit because Mitsubishi told her to. And she said she was unhappy that Mitsubishi said she still owed one more rental payment after she had paid the settlement amount. She was also unhappy about the remaining damage charges Mitsubishi were pursuing her for.

Our investigator looked into the complaint but thought Mitsubishi had told Mrs W that she owed £4,333.34 in arrears. She said it wrote to Mrs W in March 2021 and confirmed this was the amount owed. And so she thought Mitsubishi was entitled to pursue Mrs W for the final instalment.

With regards to the damage charges, our investigator thought the charges for the left front alloy wheel, left sill panel and left front door were applied fairly in line with the BVRLA guidance. But she thought the charge for the left rear door should be removed. She also said that because Mrs W complained a number of times about the damage charges, this caused distress and inconvenience to Mrs W and so, Mitsubishi should pay Mrs W £75 in recognition of this.

Mitsubishi agreed. But Mrs W said she thought it was unfair that Mitsubishi were charging for damage that she could have repaired for cheaper. Our investigator didn't think the charges Mitsubishi had applied were excessive and said Mrs W hadn't mitigated her loss as she had an opportunity to repair the damage before returning the car, but didn't do so.

As Mrs W remains in disagreement, the complaint has been passed to me to decide.

### **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.

Mrs W was supplied with a car under a hire agreement. This is a regulated consumer credit agreement which means we're able to look into complaints about it.

When reaching my decision, I'm required to consider relevant industry guidance. Here, relevant guidance includes the guidelines on fair wear and tear published by the trade body, the BVRLA. This guidance is generally intended for the return of new cars at the end of the first leasing cycle.

What I need to decide in this case is whether it is fair for Mitsubishi to pursue Mrs W for the final instalment payment and whether it has fairly applied the damage charges to the areas of damage identified by B. If it didn't, I'll need to think about what's fair to put things right.

#### *Final instalment payment*

Mrs W says it's unfair for Mitsubishi to ask her to pay the final instalment amount after she had already paid the outstanding arrears. I've seen a copy of an email that was sent to Mrs W on 12 March 2021. The email confirms that 11 payments have been missed under the hire agreement between 1 April 2020 and 1 March 2021. It confirms the outstanding arrears total £4,333.34. So I think Mitsubishi clearly told Mrs W she owed £4,333.34 of arrears under the agreement when it sent her this email.

However, following this, when Mrs W called Mitsubishi in late March 2021, Mitsubishi told Mrs W that a payment of £3,939.40 was due to clear the arrears. This was correct at the time as the amount didn't include the final instalment payment due on 1 April 2021. But the final instalment amount wasn't received by Mitsubishi in April 2021.

Whilst, I can understand why Mrs W would have been unhappy to receive an arrears notice for the final instalment payment of £393.34, given she thought she had settled the arrears, I'm satisfied she owes this amount under the agreement. This is because under the terms of the agreement, Mrs W agreed to pay one rental of £1,181.81 followed by 35 rentals of

£393.94. Before Mrs W paid the arrears, she had paid the initial rental of £1,181.81 and 24 monthly rentals. When Mrs W paid the £3,939.40, this represented 10 monthly rentals. So after this payment was made, Mrs W had paid the initial rental and 34 rentals under the agreement. But as her agreement says she needed to make the initial rental payment followed by 35 monthly rentals, she still owes one monthly payment under the agreement. And so, given Mrs W agreed to the terms of the agreement, Mitsubishi is entitled to recover the final instalment amount from Mrs W.

#### *Alloy damage*

In relation to alloys, BVRLA guidance says:

*“Scuffs up to 50mm on the total circumference of the wheel rim and on alloy wheels are acceptable.”*

I've looked at the photograph provided by B for the front left alloy where damage was identified. The photograph provided shows damage and scuffing exceeding 50mm. This has been measured with a ruler which is shown in the photograph. The scuffing can also be seen in the photographs Mrs W has provided.

In light of this, I'm satisfied Mitsubishi is entitled to charge Mrs W for the damage to the alloy as it falls outside of fair wear and tear.

#### *Left front door*

B's condition report identified a dent in the left front door. In relation to dents, the BVRLA guidance says:

*“Dents of 15mm or less in diameter are acceptable provided there are no more than two per panel and the paint surface is not broken... Dents on the roof or on the swage line of any panel are not acceptable”.*

I've looked at the photograph provided by B for the dent it identified in the left front door. I can't see the dent in the pictures provided by Mrs W, as the photographs provided don't focus on this area of damage. Having reviewed B's image, I think the dent is less than 15mm. However, the dent is on the swage line of the panel. And so I'm satisfied Mitsubishi is entitled to charge Mrs W for this damage.

#### *Left sill panel*

B's condition report identified that the left sill panel was scratched. In relation to scratches, the BVRLA guidance says:

*“Surface scratches of 25mm or less where the primer or bare metal is not showing are acceptable provided they can be polished out. A maximum of four surface scratches on one panel is acceptable.*

*Scratches on treads, sills and seals that reflect normal use are acceptable”.*

The photograph provided by B shows a number of scratches which measure over 50mm. The primer and bare metal are also showing. Mrs W hasn't provided a photograph to show this area of damage. Given the scratches measure more than 50mm and the primer and bare metal is showing, I don't think this reflects normal use. And so I'm satisfied Mitsubishi is entitled to charge Mrs W for the damage identified to the left sill panel.

#### *Cost of the repairs*

Mrs W says the cost of the repairs is excessive and she could have had the repairs carried out cheaper. However, I'm satisfied Mrs W was provided with the opportunity to have the repairs carried out independently whilst she was in possession of the car. As she didn't exercise her right to do this, I think Mitsubishi is entitled to charge for the damage at the rate its charged.

Having said this, I acknowledge that Mrs W complained to Mitsubishi about the damage charges on a couple of occasions. This resulted in the charges being reduced initially and then again, following a further complaint from Mrs W. I accept this would have likely caused Mrs W some inconvenience given she had to complain a number of times and her complaints led to a number of the charges being removed. But I think the £75 Mitsubishi has agreed to pay for the distress and inconvenience caused is fair and reasonable in the circumstances.

### **My final decision**

My final decision is that Mitsubishi HC Capital UK Plc should do the following, if it hasn't already, in full and final settlement of Mrs W's complaint:

- Remove the £75 charge applied for the left rear door damage from the outstanding amount Mrs W owes for the damages: and
- pay Mrs W £75 for the distress and inconvenience caused.

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

Sonia Ahmed  
**Ombudsman**