

## The complaint

Mr D is unhappy with what happened when he returned a car at the end of a hire agreement taken with Hyundai Capital UK Limited.

He says charges for damage should be waived as he used less mileage than his allowance.

## What happened

In March 2018 Mr D acquired a new car using a hire agreement taken with Hyundai. The agreement was taken over 48 months and had an annual mileage allowance of 15,000 – a total of 60,000 miles over the term.

Mr D returned the car and it was inspected in March 2022. The mileage was recorded as 22,190 miles. Mr D was then charged for the following damage:

<i>Rear door left scratched</i>	£175
<i>C post left scratched</i>	£175
<i>Rear bumper dent</i>	£95
<i>Rear door right chips</i>	£100
<i>Sill extension right</i>	£100
<i>Front door right chips</i>	£100

Mr D was unhappy with this and complained to Hyundai. Hyundai said all the damage fell outside of fair wear and tear.

Mr D referred his complaint to the British Vehicle Rental and Leasing Association ('BVRLA'). The BVRLA gave its opinion that all of the damage fell outside of fair wear and tear and so Hyundai could charge Mr D for it.

Mr D then referred the complaint to our service. He disputed the charges and said Hyundai should waive them as a gesture of good will due to the car being returned with less mileage. And he said the contract terms were unfair, as a term should've been included to make sure he didn't lose out if the car was returned with a lower mileage than the allowance.

Our investigator issued an opinion and didn't uphold the complaint. She said, in summary, that the damage fell outside of fair wear and tear. And she said the contract didn't include a provision for what happened if the car was returned with less miles than the allowance.

Mr D remained unhappy. He said, in summary, that Hyundai hadn't acted fairly and the contract was "*loaded in favour of Hyundai*". He said the complaint wasn't about whether Hyundai was entitled to charge for wear and tear, but rather whether it was fair for it to do so. He reiterated he thought there should be a term in the contract to make sure he wouldn't be worse off when returning the car with lower mileage and said Hyundai should waive the balance as a gesture of goodwill.

Our investigator explained this didn't change her opinion, so the case 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.

Mr D complains about a hire agreement. Entering into regulated consumer credit contracts such as this is a regulated activity, so I'm satisfied I can consider Mr D's complaint against Hyundai.

I think the crux of the complaint here is whether it was fair and reasonable for Hyundai to charge Mr D for damage to the car, given it was returned with a lower mileage than the total allowance.

In terms of the damage itself, there is very little I can add to what the BVRLA and our investigator have said here. Mr D also doesn't seem to be disputing the damage itself in his later contact with us.

So, I'll only very briefly comment here that I'm satisfied it's set out in Mr D's hire agreement, which he signed, that he agreed to be held responsible for damage outside of fair wear and tear. I've reviewed the photos from the inspection and compared these to the "*returned conditions schedule*" and the BVRLA's guide to fair wear and tear. Having done so, I'm satisfied all the damage fell outside of fair wear and tear.

I've very carefully considered what Mr D said about the contract. What I need to consider is if Mr D was misled or given incorrect information about what would happen when he returned the car, or if Hyundai have acted unfairly.

The contract sets out a *maximum* mileage the car could cover without further charge. I know Mr D feels another term should've been added into the contract for his benefit. But it isn't my place to tell Hyundai what it should or shouldn't include in its terms and conditions. I need to consider if it's acted fairly and reasonably, given the terms Mr D agreed to.

The contract doesn't include a term that Mr D would get anything back if the car was returned with a lower mileage. And it doesn't include a term that specifically says Mr D wouldn't be responsible for any damage if the mileage was lower than the maximum allowed.

I haven't seen anything to suggest Mr D was misled, or that the terms of the agreement were misdescribed to him. So, thinking about everything here, I don't think Hyundai have acted unfairly by charging Mr D for the damage, even though he could've covered more miles in the car without being charged.

I appreciate Mr D's point that Hyundai could choose to waive the charges as a gesture of goodwill. And he's right in saying that it could do so. But, in this case, it hasn't. Considering everything, I don't think this means it hasn't acted fairly.

### **My final decision**

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 14 October 2022.

John Bower  
**Ombudsman**