

## The complaint

Mr B is unhappy that he's been charged for damage to a car supplied to him under a hire agreement with Mitsubishi HC Capital UK Plc trading as Novuna Vehicle Solutions.

## What happened

In November 2018, Mr B was supplied with a new car through a hire agreement with Novuna. He paid an advance rental of £2,245.82 and the agreement was for 35 monthly rentals of £374.30. Mr B also opted for a service and maintenance plan with an initial payment of £77.33, and 35 monthly payments of £12.89. At some point this agreement was extended, and the contract ended on 14 May 2023.

Term 3.1(b) of the agreement Mr B signed explained that *"you will be responsible to us for any damage caused to or deterioration of the Vehicle otherwise than through fair wear and tear as indicated in the guidelines issued from time to time by the British Vehicle Rental and Leasing Association (BVRLA)."* Given this, the car was inspected for damage by an independent inspector on 15 May 2023.

The inspector found damage to the front and rear bumpers, the right-hand front and rear doors, and the front right wheel, that fell outside of the BVRLA fair wear and tear guidelines. The total cost of this damage was £665. While Mr B accepted most of the damage, he didn't agree with the damage to the rear bumper, and he signed the inspection report stating this.

Mr B complained to Novuna about the damage charges. In their complaint response, dated 20 July 2023, Novuna said that the damage to the rear bumper was outside of the BVRLA guidelines, so they thought they'd acted fairly by charging for this. Mr B wasn't happy with this response, and he brought his complaint to us for investigation.

When raising his complaint with us, Mr B said that Novuna had failed to comply with the consumer duty regulations, and he was concerned about *"the number of false claims made by Novuna and how in particular they could impact vulnerable customers."* He didn't think the method used by the inspector for identifying the damage was fair and reasonable and he didn't think Novuna had carried out a review of his complaint with reasonable care, or with sufficient openness or transparency, given the customer duty rules. As such, to resolve this issue, he wanted Novuna to waive the full £665 damage charges.

Our investigator said the evidence clearly showed there was damage to the rear bumper that fell outside of the BVRLA fair wear and tear guidelines. As such, they thought Novuna had acted fairly by charging Mr B for this damage.

Mr B didn't agree with the investigator. He didn't think it was fair that in signing the hire agreement *"Novuna can do and say anything"*, and he thought the investigator's conclusions were simply bizarre. Mr B was also unhappy that the additional points raised in his complaint hadn't been addressed, especially the one about how the damage was identified, and he thought Novuna's actions were *"basically unacceptable theft."* As such, Mr B asked for an ombudsman to make a final 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've reached the same overall conclusions as the investigator, and for broadly the same reasons. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome. Where evidence has been incomplete or contradictory, I've reached my view on the balance of probabilities – what I think is most likely to have happened given the available evidence and wider circumstances.

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

Before I explain why I've reached my decision, I think it's extremely important for me to set out exactly what I've been able to consider here. In his complaint and comments, Mr B has raised the requirement of consumer duty and the cross-cutting rules, and he thinks that Novuna haven't acted in line with these. The consumer duty rules were introduced by the Financial Conduct Authority ('FCA') in 2023. However, these rules only apply to products sold on or after 31 July 2023, and they are not backdated. As Mr B signed the hire agreement with Novuna in 2018, and the extension agreement at some point before 14 May 2023, the consumer duty and cross-cutting rules don't apply here. As such, I won't be considering these as part of my decision.

In his complaint to us, Mr B also raised the general issue of how Novuna's actions might impact vulnerable customers. While I recognise this is a genuine concern, this doesn't fall within the scope of the Financial Ombudsman Service. When looking at a complaint, we only consider the facts and circumstances pertinent to the issue in hand – in this instance the damage to Mr B's car, and whether this was fairly charged for. If Mr B has a complaint about how a financial business treats customers in general, this is a matter he would need to raise directly with the FCA.

Finally, Mr B is unhappy with how Novuna dealt with his complaint. However, complaint handling is an unregulated activity and so, falls outside of our service's jurisdiction to consider. So, the way Novuna handled Mr B's complaint also hasn't been considered as part of my decision.

Turning to the damage to the car, although Mr B is asking for all the damage charges to be waived as a resolution to his complaint, he's only disputing the damage to the rear bumper. As he accepts the remainder of the damage, my decision will focus on the rear bumper damage only.

I've already referred to Term 3.1(b) of the agreement Mr B signed above, and I'm satisfied this allows Novuna to charge for any damage to the car that falls outside the BVRLA fair wear and tear guidelines. In relation to the damage being considered, these guidelines say:

*"obvious evidence of poor repair, such as flaking paint, preparation marks, paint contamination, rippled finish and poorly matched paint is not acceptable."*

When examining a car for damage, especially damage to the paintwork and dents to the bodywork, it's standard industry practice to use tools such as a black and white striped card that shows distortions when it's reflected in the paint/bodywork. While I note Mr B's

objections to this, as it's standard industry practice, I don't think the inspector was being unfair or unreasonable by using this tool. As such, I'm satisfied that any damage identified by this tool can be considered as part of my decision.

The photographs supplied with the report, and which were taken in Mr B's presence, clearly show rippled paintwork on the front bumper. And the ruler that's also in this picture shows the rippled paintwork extends for around 100mm. As rippled paintwork of any size is specifically detailed in the BVRLA guidelines as being unacceptable, I'm satisfied this damage is chargeable under 3.1(b) of Mr B's agreement. And I don't think the charge to repair and refinish the paintwork on the bumper is so high for the work that needs doing that it makes it unreasonable.

I have noted Mr B's comments that he's never had any repairs done to the bumper during the time the car was in his possession, so implying the damage must have been present when the car was supplied. And he's pointed to Novuna not being able to provide evidence of any undamaged paintwork to back up this point. However, I wouldn't expect Novuna, as the finance company, to have a detailed inspection undertaken on every car they finance before it's supplied to the customer. Instead, I'd expect the customer to raise the issue of any damage to the car with Novuna, especially as the agreement is clear that any damage is potentially chargeable.

While Mr B has referred to the damage to the car as only being visible using the inspector's tools, I can't agree that would be the case. Damage such as rippling to the paintwork would be visible upon close inspection and would also be identifiable by touch. As such, I think it's reasonable that damage of this type would be identifiable through regular maintenance such as cleaning and polishing.

As the photographs of the car show it's both clean and polished, then I think it's reasonable that, had this damage been present when the car was supplied, then Mr B would've noticed it and raised it with Novuna. As there's no evidence he did so, and Mr B hasn't said that he did, then I'm unable to conclude that the damage was more likely than not present when the car was supplied.

Given the above, and while I appreciate it will come as a disappointment to Mr B, I'm satisfied Novuna acted fairly and reasonably by charging Mr B for the damage to the rear bumper. And I won't be directing them to reduce or waive any of the damage charges.

### **My final decision**

For the reasons explained, I don't uphold Mr B's complaint about Mitsubishi HC Capital UK Plc trading as Novuna Vehicle Solutions.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 2 April 2024.

Andrew Burford  
**Ombudsman**