

The complaint

Mr P complains the settlement figure he received from Mitsubishi HC Capital UK PLC, trading as Novuna Vehicle Solutions, wasn't fair, when the car he acquired financed through a hire agreement was declared written off.

What happened

In October 2021 Mr P acquired a car financed through a hire agreement with Novuna. The agreement was for 36 months. He said approximately 33 months into the agreement the car was involved in an accident and was subsequently declared written off. Mr P said he received an invoice for £4,163.45 from Novuna for the shortfall between its valuation of the vehicle and the settlement figure paid by the insurance company. Mr P brought a complaint to Novuna. He wanted the basis for its valuation of the car. Mr P also asked his insurance company for the basis of its valuation.

In its final response Novuna said its Written-Down Value team advised the basis for valuation is not information it is able to disclose. It said it reviewed the valuation and confirmed it was correct. Mr P remained dissatisfied and brought his complaint to this service.

He said he wasn't prepared to simply take Novuna's word that its valuation is 'fair'. He said he wanted to understand how the valuation had been arrived at and whether it could be challenged. He said even if its fair he wanted to understand so he could challenge the insurance company. He said he understood there being a difference in valuation when a car is relatively new but when a car is that close to the end of a three-year lease period there really should be a large gap in valuation.

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.

I realise this will come as a disappointment to Mr P but having done so I won't be asking Novuna to do anything further for the reasons I've outlined below.

In deciding what I believe to be fair and reasonable in all the circumstances, I'm required to consider relevant law, rules, guidance, codes of practice as well as what I consider to have been good industry practice at the time.

Mr P's agreement is a regulated consumer hire agreement, and our service is able to consider complaints relating to it.

I've seen a copy of Mr P's agreement which he signed on 5 October 2021. By signing this agreement, he agreed to be bound by its terms. The hire agreement sets out Mr P's contractual obligations. I note section four titled 'insurance'. It says:

4.2 if the insurance is not enough to meet your liability under this agreement, then

you will pay us a difference. If the amount is more, we will pay the surplus.

4.3 if the vehicle was lost, stolen, destroyed or deemed a total loss for insurance purposes, the hiring of the vehicle shall immediately end, and you will pay to us a replacement value of the vehicle as determined by us together with amounts due under clause 7.2.

The insurer valued the car at £8,608.33 and paid this to Novuna to settle the finance agreement. Novuna's valuation of the car meant there was a shortfall of £4,163.45 which Mr P was liable for. He questioned the basis for Novuna's calculation.

Mr P is asking for the calculation of the value the business is placed on the vehicle. He said if it was simply the standard written down value there would be no commercially sensitive data and no reason for the business to withhold it. He said it appears that it is "based" on the written-down value but with additional undisclosed factors which may or may not be fair. He said how can he be sure that it isn't hiding an uplift that circumvents the law preventing it from making a profit in the circumstances.

In Mr P's case the insurance company had a different opinion about the value of the car but that's not part of my decision here. As Novuna is not the policyholder it had to accept the insurance company's valuation.

Novuna has said it reviewed the written-down value (WDV) and confirmed its correct without adjustment. It said the difference between the market valuation and the WDV is likely due to volatility in the second-hand vehicle market particularly for electrical vehicles. It said the market valuation is ultimately determined by the insurance company and it doesn't have oversight of this, nor does it factor in the WDV calculation. It said if Mr P does not have Guaranteed Asset Protection (GAP) insurance to cover the shortfall between the settlement and the insurance proceeds the customer has the right to challenge the insurer on its market value. It said the settlement valuation calculation is commercially sensitive and it couldn't disclose it to the customer.

Mr P has also said that not providing the calculation renders the relevant clause, 4.3, an unfair term under the Consumer Rights Act 2015 (CRA), failing both the transparency and fairness tests. I'm not persuaded this is the case. While Novuna hasn't provided the exact calculation its settlement figure covers the cost of the vehicle and of ending the finance agreement. The insurance figure is the fair market value of the vehicle. So, the figures are calculated from different starting points.

It's not uncommon for a finance company to provide a different settlement figure in circumstances such as Mr P's, compared to the valuation from the insurance company. I say this because many consumers choose to take out GAP insurance which makes up the difference between the amount a consumer might go for a written off car on finance and the settlement figure offered by the insurance company.

While I can see the merit behind what Mr P has asked of Novuna I'm afraid I don't believe it has acted unfairly or that it has done anything wrong by not agreeing to it and so it would be unfair of me to compel it to provide commercially sensitive calculations.

My final decision

My final decision as I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 27 February 2025.

Maxine Sutton
Ombudsman