DRN-4120066

The complaint

Mr A complains about a vehicle hire agreement he had with Mitsubishi HC Capital UK Plc trading as Novuna Vehicle Solutions (Novuna). He sought an amendment to the agreement in respect of the permitted mileage allowance and is unhappy with the new monthly rental amount he was quoted.

What happened

In January 2019 Mr A entered into a vehicle rental agreement. The agreement was over 48 months and Mr A was required to pay an initial rental of £815.51 and then 47 rentals of £271.84. In return, Mr A was allowed to use the vehicle over this period and was subject to the terms and conditions of the agreement. One of those terms related to the amount of miles Mr A was allowed to drive over the contract term.

Some way through the agreement term Mr A asked to amend the agreement as his expected mileage had reduced from when the contract started. The permitted mileage was reduced, to 12,000 miles per year, and the monthly rentals also reduced, to £174.71, after being recalculated by Novuna. Around six or seven months before the agreement ended Mr A again contacted Novuna and asked about increasing the permitted mileage.

Mr A was quoted a new monthly rental of £263.95 that would be payable over the remaining months of the agreement for a new annual mileage limit of 17,000. After some discussion, the contract amendment did not take place and the monthly rentals continued unchanged, as did the 12,000 miles annual mileage limit.

A number of discussions took place around this time as Mr A questioned the proposed new monthly rental of £263.95. He considered this to be too high and referred to where Novuna had explained that this new price had been calculated using the *anticipated excess mileage costs* over the remaining months rentals. Mr A has referred to the agreement terms and conditions and that excess mileage charges can only be applied once the agreement has ended. He is unhappy about the way that Novuna has calculated the revised monthly rental and believes a lower amount should be charged.

As the agreement amendment did not proceed, the agreement ran to the end of the original 48 month term with the remaining rentals at the amount that had been charged from when Mr A had previously amended the agreement. The annual mileage limit remained at 12,000 and as the mileage exceeded the permitted mileage (based on the 12,000 and not what Mr A had sought to increase it to) Mr A was charged an excess mileage charge.

After not being able to resolve matters with Novuna Mr A referred his complaint to our service. It was considered by an investigator but ultimately the investigator did not consider that Novuna had acted unreasonably or unfairly. Mr A remained unhappy with the investigator's conclusions and the complaint has now been referred to me for final consideration.

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 believe I will disappoint Mr A further as I have come to broadly the same conclusions as the investigator for what are essentially the same reasons.

Mr A is unhappy about the revised monthly rental price he was quoted by Novuna and believes this is too high as it includes a charge for excess mileage. Mr A has referred to the agreement terms and conditions and highlights the clause referring to excess mileage only permits excess mileage to be charged when the agreement ends.

I have considered the terms of the hire agreement between Mr A and Novuna and it appears silent on whether the agreement can be amended or not. But as the agreement was previously amended and I assume both parties were happy with that amendment, the absence of a specific amendment clause is not in my view significant. Novuna appears to have been happy to amend the original agreement, as was Mr A the first time it was amended, and Novuna was willing to accept a further amendment, subject to Mr A accepting the revised monthly rentals.

Where the terms of the agreement are silent on amending the contract it is ultimately down to the parties to negotiate and agree terms they are happy with and willing to proceed on. Mr A is correct in his reference to the agreement terms and conditions on excess mileage and that this can only be charged contractually when the agreement ends. Term 9 of the agreement refers to excess mileage in detail and applies to if the agreement ends early or runs its full term.

However, where Novuna has referred to *anticipated excess mileage* when explaining how the proposed new monthly rental has been calculated I do not consider it is seeking to apply this term of the contract into its calculation. The cost associated with increasing the milage over the remaining months of the agreement is related to the additional and higher amount of miles the car would travel. Reference to *anticipated excess mileage* is in my view likely to refer to the mileage that is expected over the contractually permitted mileage before the contract is amended. It is referred to *anticipated* mileage as it is not yet known at that time, but it is reasonable to assume as an increase is being requested, that the mileage will exceed the contractual mileage (before the amendment) when the contract ends. And it is referred to at this stage as *excess mileage* as it is simply referring to the expected mileage over the contractual mileage limit, again before the amendment is made.

It is clear from the exchanges between Mr A and Novuna at the time they were discussing the proposed amendment that there was some misunderstanding but I do not consider Novuna has caused this. Novuna has not sought, nor has it suggested it has, to apply clause 9 to the pricing of the amendment. It is of course unfortunate that the parties were unable to resolve any confusion but I again do not consider Novuna is at fault here.

I note Mr A proposed a lower monthly rental amount that he considered would be reasonable to charge but I don't consider Novuna was under any obligation to accept this. The contractual amendment did not actually take place and Mr A was then charged excess mile costs as he had exceeded the contractually permitted annual mileage allowance when the agreement came to an end. It was at this stage that Novuna sought to relay upon the excess mileage clause within the contract terms and a pence per mile charge was applied to the mileage that exceeded the permitted mileage.

I do not consider Novuna has acted unreasonably or unfairly by applying the charge, as the

proposed amendment never actually went through. I note Mr A says that Novuna failed to respond to him when they were discussing the proposed amendment but from the evidence presented I'm satisfied Novuna did try and explain how the proposed rentals had been calculated. And even if further discussion took place, I consider it unlikely that Mr A and Novuna would have come to a mutually acceptable position.

Mr A has also referred to what he considers to be harassment from Novuna around settling the amount it considers to be outstanding. I haven't seen sufficient evidence to conclude Novuna has been harassing Mr A.

As this final decision is the last stage in our process it will now be for the parties to move forward and for Mr A to settle the excess mileage charge that has been applied. Should Mr A not accept this decision and decide to continue his dispute with Novuna he will need to do so through an alternative route, such as through the courts.

My final decision

I again appreciate that Mr A will be unhappy with the outcome of his complaint. But for the reasons set out above, my final decision is that I do not uphold Mr A's complaint against Mitsubishi HC Capital UK Plc trading as Novuna Vehicle Solutions.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 18 September 2023.

Mark Hollands
Ombudsman