

The complaint

Mr S is unhappy with the end of contract charges applied by Mitsubishi HC Capital UK Plc trading as Novuna Vehicle Solutions ("Novuna"), following the return of a car under a hire agreement.

What happened

On 17 December 2018 Mr S was supplied with a new car through a hire agreement with Novuna. He paid an advance rental of £3,880.08 and the agreement was for 36 months; with monthly rental payments of £646.68. The car was first registered on 26 November 2018, so was a few weeks old when it was supplied to Mr S.

Novuna contacted Mr S on 8 November 2021 to let him know the agreement was coming to an end on 16 December 2021, and what he needed to do to return the car. He was told that, no later than seven to ten days before the end of the agreement, he would need to make arrangements for the end of contract inspection to take place, and that collection of the car would be three working days after the inspection. Mr S was also advised that collection could only take place Monday to Friday, excluding public holidays, and that the inspection and collection of the car couldn't take place between 23 December 2021 and 2 January 2022.

Mr S contacted Novuna about returning the car on 23 December 2021. And he was told that, as the car was now more than three years old, it couldn't be returned without a valid MOT certificate. Mr S had an MOT done on 30 December 2021, at which point the car had done 10,570 miles, less than the 24,000 allowable under the agreement.

Given the availability for the inspection and collection to take place, and that Mr S was out of the country during some of January 2022, the car wasn't collected until 1 February 2022.

Novuna invoiced Mr S for damage to the car that fell outside normal wear and tear, and for additional rental for the period 16 December 2021 to 1 February 2022. Mr S disputed the damage charges, as he thought the damage to the car was minor; and he thought his liability for additional rental should only run until 24 December 2021, as he didn't think it was his fault that the car couldn't be collected sooner. He was also unhappy that he had to arrange for an MOT on the car and said he hadn't been advised he would need to do this before the car was returned. Novuna didn't uphold his complaint and, because the invoices weren't paid, they recorded this as arrears, and then a default, on his credit file.

Mr S wasn't happy with what had happened, and he brought his complaint to the Financial Ombudsman Service for investigation.

On 2 June 2023, an ombudsman issued a decision on Mr S's complaint, explaining that the part of his complaint about the MOT wasn't something we were able to consider, as Mr S hadn't raised this with us within six months of Novuna issuing their final complaint response about this. However, we were able to consider the rest of Mr S's complaints.

Our investigator said the car had been independently inspected for any damage that fell outside of industry fair wear and tear guidelines. And the pictures taken by the inspector

showed the damage that Mr S was being charged for, and that this was outside of industry guidelines. So, he thought Novuna had acted reasonably by charging Mr S for this.

The investigator also said that Novuna had contacted Mr S and advised him what he would need to do to arrange for his car to be collected. And he thought this was in line with the agreement Mr S signed. So, he didn't think Novuna were responsible for any delay in the car being returned, and they'd acted fairly by charging Mr S for the additional period the car was in his possession and available for him to use.

Finally, the investigator thought Novuna were expected to report clear and accurate information to the credit reference agencies. And, because Mr S hasn't paid valid invoices, then Novuna were reasonable to report this information. So, he didn't think Novuna needed to do anything more.

Mr S didn't agree with the investigator. He said that Novuna didn't give him the opportunity to deliver the car to them, despite what it said in the agreement, and had he been given this option, *"I would have delivered it on 2 Jan."* So, at the very least, he believes he's been overcharged by a month.

Mr S also commented on the need for him to MOT the car, and that it was incumbent on Novuna to bring this to his attention and not rely on the terms of the agreement. So, he thought this maybe a breach of the Unfair Terms in Consumer Contracts Regulations 1999 but was certainly unreasonable.

Finally, Mr S said that he'd returned the car with considerably less mileage than the agreement allowed, which would've increased its value. And, had he exceeded the mileage, then he would've been charged for this. So, he thought Novuna had received a windfall, and natural justice should mean this is taken into consideration when looking at things holistically. So, he's 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 have 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.

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 what I consider was good industry practice at the time. Mr S 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.

However, before I address the complaint, I'd like to address Mr S's comments about the MOT. As explained in my colleague's decision dated 2 June 2023, the MOT isn't something we're able to look into. As such, and while I appreciate Mr S's feeling about this, I won't be addressing his comments about if/how he was advised about the need for an MOT, or whether this makes any part of the agreement potentially unfair.

damage to the car

I've seen a copy of the agreement Mr S electronically signed on 6 December 2018. And this explained Mr S's obligation *"to keep the vehicle in good condition and repair. You will be responsible 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, I'm satisfied that Mr S was made reasonably aware of his obligations regarding keeping the car in good repair, what standards Novuna would apply on its return, and that Mr S would be charged for anything that fell outside of these standards.

The car was independently inspected on 1 February 2022, with Mr S present during the inspection. And Mr S is being charged for the following damage, which he disputes is outside of normal fair wear and tear guidelines:

- Front Alloy Wheel L. Scuffed and rim damage 100mm+. £65
- Rear Alloy Wheel R. Scuffed and rim damage 100mm+. £65
- Rear Bumper. Scuffed 26-100mm. £75

The BVRLA guidelines state *"scuffs up to 50mm on the total circumference of the wheel rim and on alloy wheels/wheel hubs are acceptable."* However, the inspection photographs show damage to the rims of two wheels that exceeds 100mm in each case.

What's more, the BVRLA guidelines state *"surface scratches of 25mm or less, where the primer or bare metal is not showing are acceptable, providing they can be polished out. A maximum of four surface scratches on any panel is acceptable."* And the inspection photographs show two scratches on a body panel, one of which is below 25mm, the other of which is in excess of 100mm.

Given the inspection report evidence and the BVRLA guidelines, I'm satisfied that Novuna acted reasonably by charging Mr S for this damage. And I won't be asking them to reduce or remove the damage charges.

additional rental charges

The agreement Mr S signed states *"once the minimum period has expired the hiring of the vehicle may continue for a secondary period unless either you or we give not less than 10 days prior written notice to terminate the hiring of the Vehicle on the last day of the minimum period ... During any secondary hire period, you will continue to pay rentals and additional service payments at the rates and frequency set out in the Agreement."*

I've seen a copy of the email Novuna sent to Mr S on 18 November 2021. This advised him that the original agreement ended on 16 December 2021, and asked him to contact them *"a minimum of 7-10 days before your contract ends"* i.e. by no later than 7 December 2021, to arrange for the car to be inspected and collected. It's not disputed that Mr S didn't do this, and the agreement therefore entered a secondary hire period after 16 December 2021. And, as per the above, Novuna were entitled to charge Mr S for the time the car was in his possession during this secondary hire period.

As the car was more than three years old at the end of the agreement, and as the agreement clearly stated that Mr S was required to *"ensure ... statutory testing of the Vehicle is carried out"* i.e. there was a valid MOT certificate, it was reasonable for Novuna to ask for this to be in place before the car was returned.

Novuna's email of 18 November 2021 explained that inspection or collection of the car could not take place between 23 December 2021 and 2 January 2022. But Mr S didn't contact Novuna to arrange collection until 23 December 2021 and didn't have the MOT completed until 30 December 2021.

I'm aware that Mr S said he'd have returned the car to Novuna on 2 January 2022, if they'd told him where he could take this. But the 18 November 2021 email was clear in the returns process that needed to be followed, and that the car would be collected within three working days of the inspection. And Mr S hadn't booked in the inspection before the MOT had been done. What's more, 2 January 2022 was a Sunday, and was followed by a public holiday, both days on which Novuna had made it clear that inspection/collection couldn't take place.

It's not disputed that, due to the availability of both the inspector and Mr S, the earliest the car could be collected was 1 February 2022. And, while Mr S has said he didn't use the car between the MOT and collection (although the inspection report showed the car had done around 100 more miles than the publicly available MOT record shows), the car was available for his use, had he wanted to use it. As such, I'm satisfied that Novuna weren't responsible for the car being collected after the initial term of the agreement had ended, and they are therefore able to charge Mr S for the secondary hire period.

Mr S has said that he did substantially less mileage than was allowed under the agreement, and that he would've been charged if he'd exceeded this. None of which I disagree with. However, the mileage allowed under the agreement was a maximum mileage, and not something Mr S was required to do. What's more, there's nothing in the agreement that says Mr S would receive a rebate if he did below a certain mileage. As such, I don't think that any rebate should be applied because Mr S chose to do less than the maximum mileage allowable under the agreement. And I won't be asking Novuna to reduce or waive the secondary hire period charge.

reporting to credit file

The agreement Mr S signed is clear that *"once we have entered into an agreement with you, that fact and the details of your payment history may be passed by us to one or more [credit reference agencies], who will add this information to the records they hold in your name [and] missing payments could have severe consequences and may make obtaining credit more difficult."* What's more, I'd expect any reasonable person taking out credit to understand that any missed payments would be reported and show on their credit file.

There's nothing in the agreement that separates payments due under the initial agreement, secondary hire payments, and/or end of contract damage charges, when it comes to what's considered as payments due. As such, if any of these payments are not paid, Novuna have the right to report this as arrears to the credit reference agencies, and to register a default if any arrears remain outstanding and unpaid. Given this, I don't think Novuna have done anything wrong by reporting the conduct of Mr S's account to the credit reference agencies, and I won't be asking them to amend this reporting.

Given all the above, and while I appreciate it will come as a disappointment to Mr S, I'm satisfied that Novuna have acted fairly. And I won't be asking them to do anything more.

My final decision

For the reasons explained, I don't uphold Mr S'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 S to accept or

reject my decision before 12 September 2023.

Andrew Burford
Ombudsman