DRN-4092056

The complaint

Mr S complains about the charges Mitsubishi HC Capital UK Plc (t/a Novuna Vehicle Solutions) ("NVS") applied when he returned a car at the end of his hire agreement. Mr S says that NVS also incorrectly calculated his final monthly payment.

Mr S is represented in his complaint. For ease of reading, any reference to "Mr S" refers to testimony from both Mr S and his representative.

What happened

Mr S entered into a 3-year hire agreement with NVS in October 2018, and the agreement ran from 20 December 2018 to 20 December 2021. He says when the three-year agreement expired, he entered into a *"formal lease extension"* with it for a further 12 months, but then decided to return the car at the end of March 2022. He says he's experienced nothing but issues and excessive charges from NVS. Mr S told us:

- When he returned the car, NVS applied an excessive mileage charge. He accepts this charge and acknowledges that he exceeded his mileage limit, but he says he won't pay this charge until the NVS satisfactorily resolves the other issues;
- NVS applied charges of £200 for damage to the car that it says was beyond fair wear and tear, but he doesn't agree with the conclusions of the inspection report;
- he acknowledges there was a dent on the inside of the door, but he says this wouldn't have been visible when the door was closed, and as the car was more than three years' old, *"it would not have been returned in pristine condition with zero marks on";*
- he had the car repaired prior to its return to remove any minor scratches and damage;
- NVS incorrectly collected the first payment after he extended the hire agreement – he says based on previous experience, his monthly payments should've been taken in arrears and no payment should've been taken in the first month of the lease extension;
- he returned the car on 31 March 2022 – just 12 days into the month – but NVS charged him the full monthly amount, when it should've charged him a daily rate for the 12 days he had the car, and he's highlighted a term on his hire agreement that he says confirms that any charges for a secondary hire period *"should be charged on a pro rata daily rate if the car is returned part way through the month".*
- Mr S said he'd spoken with the subsequent owner of the car, and he questioned whether NVS had actually had repairs undertaken on it – he didn't think the amount it was charging him had been put towards getting the damages repaired.

Mr S says he's disappointed by the way he's been treated by NVS; it's acted dishonestly throughout; provided false information; and pursued him incorrectly for arrears on his account. He says NVS' actions have caused him stress and anxiety, and he's spent a lot of time corresponding with NVS which has been extremely difficult as he works full time in a demanding role.

NVS rejected Mr S' complaint. It said under the terms of Mr S' agreement, he needed to return the vehicle with no damage outside of fair wear and tear. And it explained that it had reviewed the photographs and the report provided by its collection agent, and it was satisfied that the identified damage was clearly evidenced and was outside fair wear and tear.

It explained that the third-party collection agent had inspected the car against the industry standards set out in the British Vehicle Renting and Leasing Association (BVRLA) guidelines and identified issues in two areas:

1. Rear door R – poor colour match/repair £140.00
2. B Post R – dent/paint damage £60.00

It said the charges had been levied correctly, and Mr S owed it £200.00 in respect of end of contract damages. NVS said that these charges reflect the loss of value in the vehicle because it was returned in a lesser condition than originally contracted. The charges are obtained from a pricing index, but it wasn't obliged to carry out repairs.

NVS told this Service that monthly payments following a formal extension to a lease are always taken in advance – not arrears – and it said a fully monthly payment is taken even when the car is returned part way through the last month; the clause in the agreement that Mr S had highlighted simply didn't apply to his situation. But it did say that the early termination fees that usually apply when a formal extension is terminated early had not been charged to Mr S.

Our investigator looked at this complaint and said she didn't think it should be upheld. She explained that the standard for what constitutes fair wear and tear is set out in the British Vehicle Renting Leasing Association (BVRLA) guidelines and her role was to decide whether the charges applied by NVS were fair and reasonable.

She explained she'd reviewed the evidence from the inspection and was satisfied that there was sufficient evidence to show that the damage identified exceeded BVRLA fair wear and tear guidance, and that the charges had been applied fairly.

Our investigator considered Mr S' additional complaint points but concluded they couldn't be upheld. She explained that the documentary evidence together with Mr S' own admissions confirmed he'd entered into a *formal* arrangement when he extended his hire agreement – and monthly payments under a formal arrangement are taken in advance. And she explained that the pro-rata daily charges for the last month only apply to informal extensions of less than six months.

Mr S disagrees, so the complaint comes to me to decide. He says he now accepts that the monthly payments would be taken in advance due to it being a formal lease extension, but he says he still thinks the last payment should've been calculated on a pro-rata daily basis.

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 conclusions as our investigator and for broadly the same reasons. As Mr S accepts the excessive mileage charge and has now indicated that he accepts that monthly payments under a formal lease extension would be taken in advance - these points aren't in dispute - so there's no need for me to reach a conclusion in respect of them in this decision.

End of contract damage charges

The terms and conditions of the agreement say that Mr S must *"keep the vehicle in good condition and repair"*. It goes on to say, *"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)".*

So, I'm satisfied that Mr S was responsible for returning the car in good condition, and that the car's condition would be assessed against the guidelines issued by BVRLA. But the question is whether all the charges applied by NVS are fair and reasonable.

Fair wear and tear guidelines have been issued by the British Vehicle Rental and Leasing Association (BVLRA) and these are accepted as an industry standard in determining whether any damage goes beyond fair wear and tear. So, I have taken these into account when deciding what is fair and reasonable for NVS to charge Mr S.

Rear door R – poor colour match/repair

The BVRLA guidance says that customers can arrange *"to repair areas of damage and replace missing equipment and accessories before the vehicle is returned, ensuring that any work carried out is done to a professional standard by a repairer who can provide a transferable warranty for the work".*

In respect of bumpers, paintwork and bodywork, the standard goes on to say that *"evidence of poor repair, such as flaking paint, preparation marks, paint contamination, rippled finish or poorly matched paint, is not acceptable".*

NVS says there is evidence of poorly matched paint, and it says this can be seen in the photographic evidence provided by the third-party inspector.

I've looked very carefully at the photograph that NVS provided, and I'm satisfied that the damage highlighted by it is indeed present; put simply, the repair work carried out on the door is of low quality such that I consider it to be damaged and in need of further repair. So, I think the charge in respect of the poor paint finish on the door has been applied fairly.

I've considered what Mr S says about having paid a third party to repair the damage prior to returning the car – but in the absence of a transferrable warranty for the work he had undertaken, it's not unfair of NVS to charge him if the quality of the paintwork is deemed to be substandard, and therefore damaged.

B Post R

The BVRLA guidance says that *"Dents of 15mm or less in diameter are acceptable provided there are no more than two per panel and the paint surface is not broken".*

NVS' third-party inspection agent provided a photograph of the left post, and I can see they used the industry recognised approach – zebra boards – to highlight areas of damage. Where there's no damage, the zebra board reflects straight, solid and parallel lines. But in this case, there's evidence of damage; the lines are no longer parallel highlighting where the where a dent is present.

In this photograph, it's clear that the size of the damage exceeds the BVRLA standards, and so I'm satisfied the charge was applied fairly and reasonably.

Given all of the above, I'm satisfied that the charges NVS asked Mr S to pay were applied fairly and in line with relevant industry guidance and that NVS has acted fairly in respect of the charges it applied.

Mr S said he'd spoken with the subsequent owner of the car, and he questioned whether NVS had actually had repairs undertaken on it – he didn't think the amount it was charging him had been put towards getting the damages repaired. But, as long as the charges NVS makes are fair and reasonable, it's for it to decide whether to use that money to undertake repairs or simply compensate it for a possible reduction in value of its asset when it's sold to a new customer.

Pro-rata payment / Daily charge

Mr S highlights a clause in his credit agreement that he says supports his position; his final payment should've been calculated on a daily basis. The clause in question says *"During any secondary hire period, you will continue to pay rentals and additional service payments at the rates and frequency set out n the Agreement. If the secondary period is terminated early under clause 1.4, your final liability…will be calculated by us pro rata on a daily basis."*

I've considered this very carefully, but I have to tell Mr S that I don't agree with him. I don't think this clause applies in this case and I'll explain why.

Mr S' original credit agreement was for 36 months. And the clause upon which he relies was contained within that agreement. But it's clear that a secondary period is an additional period *"of no more than 6 months".* I think this was to cover situations where a customer may have needed to keep their car for a short period beyond the credit agreement – for example, their new car wasn't yet available to collect; or perhaps they were away on holiday and were unable to return the car on the date the hire agreement ended.

Mr S' circumstances were quite different. He told us he had entered into a *"formal lease extension",* and the documentary evidence I've seen from NVS concurs. It confirms a new 12-month period as an extension to the existing contract, effectively revising the hire agreement to a 48-month term. None of the other terms and conditions changed, it was a formal arrangement with monthly rentals continuing to be collected in advance. And although Mr S terminated the agreement early, NVS chose not to charge an early termination fee – something it could've done.

I've based my decision on all the available evidence and arguments put to me by both parties to decide a fair and reasonable way to resolve this complaint. The informal nature of our service means that I'll focus on what I consider to be the crux of an issue – our rules allow me to do that. It's my role to exercise my independent judgment to reach a decision that I think is fair and reasonable - and explain why. And that's what I've done in this case.

I recognise that Mr S will be disappointed with my decision, but I hope he understands how I've reached the conclusions that I have.

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 S to accept or reject my decision before 15 September 2023.

Andrew Macnamara

Ombudsman