

## The complaint

Mr L has complained to us about a hire agreement with Mitsubishi HC Capital UK Plc (previously known as Hitachi Capital UK Plc), trading as Novuna Personal Finance (“Novuna”).

## What happened

In 2019 Mr L acquired a car using an agreement provided by Novuna. On 7<sup>th</sup> September 2023, Mr L returned the car and it was inspected by a third party business. The inspection was for the extent of damage that fell outside of fair wear and tear.

Mr L accepted that some of the areas identified by the inspection were chargeable. The bill for those comes to over £400. He disagreed with three other areas; they were marks on two of the rear alloy wheels and a charge raised for a key fob. So he complained to Novuna.

The charges Mr L complains about are:

ITEM	£
Rear alloy wheel right – corrosion/rust	56.55
Rear alloy wheel right – corrosion/rust	56.55
Remote key – broken	144.65

In its final response to Mr L Novuna said it thought the damage to the wheels appeared to be corrosion and fell outside of fair wear and tear. It said if any problem with the alloys had been reported to it during the lease, it could have had the wheels checked for warranty issues. And it said the charges for the alloys were correctly applied.

In relation to the charge for the key, Novuna said that it recommended that customers rectify damage and replace missing items before returning a vehicle. It said it followed the Code of Conduct of the BVRLA (British Vehicle Rental and Leasing Association). It said its charges represented trade prices, were free of VAT and no penalty was added. It also said the cost of the charge for the key was price indexed and levied with other lease companies.

Mr L complained to this Service and our investigator issued an opinion. They said, in summary, that they’d considered the agreement and the BVRLA guidelines and rust or corrosion on alloy wheels was not within the definition of fair wear and tear. They said in relation to the replacement remote key, Mr L had been given enough time prior to returning the car to have replaced the key beforehand. They said they were satisfied based on the photograph of the remote key that it was broken, and that it exceeded fair wear and tear. They said they wouldn’t ask Novuna to remove any charges.

Mr L disagreed with the investigator’s view so the complaint has been passed to me to decide.

I issued a provisional decision in this complaint on 16 July 2024. In this I said:

*Mr L's complaint is about a hire agreement. Entering into this type of consumer credit contract is a regulated activity, so I'm satisfied I can look into this. Having done so, I think this complaint should be upheld in part. I'll explain why.*

*First of all I've considered whether Novuna could charge Mr L for the damage. In the hire agreement, under the heading "Your obligations concerning the vehicle" it stated:*

*"3.1 You agree:*

*(b) to keep the Vehicle in good condition and repair. 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 think Mr L agreed to be charged for any damage to the car outside of fair wear and tear. And "fair wear and tear" was indicated by reference to guidelines set out by the BVRLA.*

#### *Alloy wheels*

*Looking at the marks on the alloy wheels, Mr L told us he thinks it could be a manufacturing defect. In the photographs marks on the alloys are clearly visible. I note that while in one photo the marks are largely lower down on the rim and look like kerbing, on the photo of the other wheel most are mainly on the spoke. Mr L told us he hasn't kerbed the wheels – and I understand this. But even if that's the case, I also need to consider that kerbing isn't the only way that damage can happen to alloys. There are other possible causes of damage that could have happened such as chipping, rust or corrosion.*

*So I've looked at what the BVRLA guidance says. Its states as follows:*

*"Any damage to the wheel spokes, wheel fascia, or hub of the wheel/alloy is not acceptable. There should be no rust or corrosion on the alloy wheels."*

*Mr L had the use of the car for just over four years. Thinking about it overall, I think it's most likely that the alloy damage happened because something happened while Mr L was using the car. In addition I've borne in mind that if it was a manufacturing defect it's most likely Mr L would have contacted Novuna during the lease. I've looked carefully at the photos and it looks like in the main the marks are largely corrosion with a very small amount of kerbing (or damage caused by use in some other way). So on balance, I think these fall outside of the definition of fair wear and tear and overall I think it's fair and reasonable for Novuna to have charged Mr L for this.*

#### *Key charge*

*Next, I've looked at the charge for the remote key. Mr L returned both key fobs. He told us that Novuna's description of one of the keys as "broken" was not right. He explained that the remote key still worked; the problem was that it was missing its plastic cover. And looking at the photograph it seems clear that the key fob was missing the back battery cover.*

*Looking at the BVRLA fair wear and tear standards, they state:*

*"The full set of keys, including the spares and locking wheel-nut keys should be returned if originally supplied."*

*I've considered whether the missing cover is outside the definition of fair wear and tear. Although it's a relatively minor defect I accept that there is likely to have been some devaluation to the car from it. So overall, as it is likely to have caused a reduction to the value of the car, I think it's fair that Novuna charge Mr L for it.*

*Next I've considered the amount of the charge Novuna levied; £144.65. After Mr L's hire ended, the car was approximately four years old. I don't think it's likely that a person buying this vehicle second hand would expect it to be in perfect condition. The question is then what*

*is a fair amount to reflect the devaluation. Novuna told us they didn't repair the key, and BVRLA guidelines say that not carrying out repairs is a valid commercial decision. They also told us that the charge they've billed is a fair reflection of the cost.*

*Novuna informed us that level of the charge was set by using a pricing index and levied with other lease companies. Mr L told us that a replacement cover could be found on a third party website and he sent us a link.*

*So I checked information that is available about these keys online. Entire second-hand keys are available. So any purchaser of the car could buy a whole key, and just use the back cover from it. They cost approximately £25 to £45. Alternatively the replacement covers are available from third party websites for even less, around £15. So I don't think it's likely that anyone buying this car would have any real difficulty replacing the missing cover and I think it's likely it would cost them in the region of £15 to £45. I've thought about what would constitute a fair amount and I think it would be fair to use a figure halfway between £15 to £45. This figure is £30 and I think that represents a fair and reasonable estimate of the cost.*

*There is a substantial difference between £30 and the charge of £144.65 billed by Novuna. On balance I'm satisfied £30 is likely to be a more accurate figure in terms of the devaluation to this car. And so I think it would be fair and reasonable for Novuna to seek to recover this amount. So I intend to direct Novuna to reduce Mr L's bill by the appropriate amount as set out below.*

### **My provisional decision**

*My provisional decision is that I intend to partially uphold this complaint and to direct Mitsubishi HC Capital UK Plc (previously known as Hitachi Capital UK Plc) to reduce Mr L's bill by £114.65.*

Finally I asked the parties for their comments in relation to the provisional decision. We received no comments from Mr L. Novuna provided comments and told us that its pricing is taken from a matrix levied with other leasing companies. It told us that it was unable to consider replacing keys with second hand parts. It said it remained its position that it is the customer's responsibility to ensure replacement of a missing key cover before the return of the car. It also told us that although disappointed, it accepted the 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.

In relation to the comments provided by Novuna, I pause here to commend the measured tone.

For the avoidance of doubt however, my provisional decision did not imply that Novuna should be considering replacing keys with second hand parts. Rather it was about quantifying the loss in value of the car, in a way which was as fair and reasonable as possible given the information that was available. Overall I still consider the outcome I explained in the provisional decision to be fair and reasonable.

### **Putting things right**

Novuna needs to put things right in accordance with what I've set out below.

### **My final decision**

I partially uphold this complaint. Mitsubishi HC Capital UK Plc (previously known as Hitachi Capital UK Plc) should reduce Mr L's bill by £114.65.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 12 September 2024.

Katrina Hyde  
**Ombudsman**