

The complaint

A company that I'll refer to as M has complained about how Fortegra Europe Insurance Company Ltd dealt with a claim on its Van Hire Excess Insurance Policy.

Ms P, a director of M, has brought the complaint on M's behalf. For ease of reading, I will refer to M throughout.

What happened

M bought a daily van hire excess policy from Fortegra. The van M rented was damaged and M had to pay the rental company for the damage and so claimed on the policy with Fortegra. Fortegra reviewed the claim and turned it down. It said only van rentals which started and ended during the period of insurance would be covered. And as the van had been delivered to M the day before the policy started, Fortegra said the claim wasn't covered. Fortegra also said the lead driver on the policy wasn't the person named on the rental agreement and so there was no cover.

Unhappy with Fortegra's response, M complained. It said the van had been delivered the day earlier without its knowledge and that the rental company had written to Fortegra to confirm the rental started the same day as the policy. It also said M had an account with the rental company and the agreement only had Ms P's name on it as she's the contact for the account with the rental company. M said it had paid £1,150 to the rental company because Fortegra declined the claim.

Fortegra reviewed the complaint and didn't uphold it. It maintained its position that as the van was delivered the day before the policy started there was no cover. It also said the lead driver on the policy would also need to be the policyholder and as the rental agreement was not in the lead driver and policyholder's name then there wasn't any cover. M didn't agree and referred its complaint here.

Our investigator looked into the complaint and recommended it be upheld. She found that Fortegra hadn't applied the term about when the rental started fairly and also didn't think Fortegra had shown what difference it made about the lead driver not being the person named on the van rental agreement. Because of this, our investigator recommended Fortegra reconsider the claim in line with the terms and conditions of the policy.

I issued a provisional decision on this complaint on 19 May 2023 where I said:

"The terms and conditions of M's policy which Fortegra have relied upon say:

"When purchasing a daily policy, the policy period must fully cover the period shown on the rental agreement. No policy can be purchased retrospectively." And:

"The lead driver indicated on the rental agreement must coincide with the policyholder and

lead driver's name on the certificate of insurance.”

I'll address the terms concerning the rental period first. The certificate of insurance states the policy is in force from 24 March 2022 until 28 March 2022. The rental agreement shows a start date of 23 March 2022 but says to charge from 24 March. M has also provided an e-mail from the rental company to Fortegra which explains the van was dropped off in the afternoon of 23 March 2022 ready for the rental to commence on 24 March 2022.

As the rental period for the van is 24 – 28 March 2022, I'm satisfied the policy fully covers the rental period shown on the agreement. I say that because it appears the van was dropped off early due to the rental company and that M's rental didn't actually start until 24 March. I'm therefore not satisfied that M has applied this term in a fair and reasonable way and so I'm not satisfied it can rely on this term to turn down the claim.

For the second term Fortegra has relied upon, I can see the rental agreement is in M's name and Ms P's name. M has said this is because M has an account with the rental company and so Ms P is listed as she manages the account for M. I can also see from the internal screen shots the rental company sent to Fortegra that there are internal notes which say, “Must meet with named primary driver” and the screen shot notes there are two additional drivers. M has said the primary driver is the same person who is listed as the “lead driver” on the policy with Fortegra.

Fortegra has pointed out that during the sale process it makes it clear that the lead driver will also be the policyholder. For the policy with Fortegra, the policyholder is Ms P and the lead driver on the certificate of insurance is the same person M has said was the primary driver of the rental vehicle.

When considering this term, I can see the only person named on the rental agreement is Ms P, and this coincides with the policyholder as that is also listed as Ms P. I've also noted that Fortegra has listed the lead driver and policyholder as two different people, so it would never be possible for this term to be met and Fortegra was clearly aware of this when it sold the policy. Furthermore, M said the lead driver on the policy was also the primary driver of the van under the agreement and this appears to be supported by the internal notes I've seen. So when taking into account it would never be possible to meet this term, I'm not persuaded it's fair and reasonable for Fortegra to rely upon it to decline this claim, given that it knew the lead driver was not the policyholder when it sold the policy and provided cover on that basis

As I'm not satisfied Fortegra has shown it's applied the terms in a fair and reasonable way I'm

not satisfied it's shown it was fair to turn down the claim. Because of this, M said it's paid £1,150 to the rental company. It's also provided an invoice which says: “Customer's Deductible/Damage Excess Owed: 1,150”. As M has paid this amount and I'm not satisfied Fortegra has acted fairly and reasonably in declining this claim. Fortegra needs to pay M's claim, subject to any policy excess or limit. As M has been without this money, 8% simple interest per year should be added to what it pays, to compensate M for not having the money. This should be calculated from the date M paid it until the date Fortegra makes payment.”

M responded and said it didn't have anything further to add. Fortegra responded and accepted my provisional 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.

As neither party disagreed with my provisional decision, I see no reason to depart from it.

My final decision

For the reasons explained above and in my provisional decision, my final decision is that I uphold this complaint. I require Fortegra Europe Insurance Company Ltd to pay M's claim, subject to any policy excess or limits. 8% simple interest per year should also be added to what it pays, calculated from the date M paid the invoice until the date of payment.

Under the rules of the Financial Ombudsman Service, I'm required to ask M to accept or reject my decision before 4 July 2023.

Alex Newman
Ombudsman