

The complaint

Mrs M complains that Fortegra Europe Insurance Company Ltd declined her claim for damage to her sofa. They said it wasn't caused by a single incident of accidental damage but had built up over time. She believes the sofa is faulty and wants them to deal with her claim.

What happened

Mrs M bought two leather sofas in 2020. She took out insurance with Fortegra to cover the sofas. The policy covers her for accidental staining, accidental damage, and structural faults.

In August 2022 Mrs M noticed that the leather on one of the headrests was starting to peel off and she submitted a claim to Fortegra. She told them nothing had happened to cause the problem. They sent a technician out to inspect the sofa and prepare a report on 26 September 2022.

The report says that there was peeling on one of the headrests, where a head would rest while the furniture was in use. That a leather diagnostic test was carried out, and when heated the leather was said to have given off a shampoo type smell, and to have felt oily-greasy to touch. The report concluded that the damage was caused by normal wear over time from head oils etc causing the leather to peel.

Based on the report Fortegra declined Mrs M's claim as they said her policy was designed to cover sudden and unforeseen damage occurring in a single incident of staining, accidental damage defined as sudden and unintentional damage and structural defects as shown in the coverage section on the front of her certificate. But the policy didn't cover any damage occurring over time, so they said her claim wasn't covered.

Mrs M wasn't happy with this. She told Fortegra that she didn't accept that shampoo would damage leather, that they couldn't explain the damage and were using shampoo as an excuse.

Fortegra didn't change their mind so Mrs M raised a complaint. Fortegra didn't uphold her complaint as they maintained that the damage had built up over time and so wasn't covered by her policy. They referred her to Section 4.4 of the policy which says, "Your product is not covered for : deterioration of the products appearance through normal use or general soiling for example wear on high areas of traffic e.g. arm rest, or a build-up of oils on a headrest and so on."

Mrs M didn't accept what Fortegra had said. She replied to them on 24 November 2022 saying that her husband normally uses the seat where the leather on the headrest was peeling. She told them that he's over 6 feet tall and when seated his head is above the headrest. She provided a photograph to illustrate this. She also said that he doesn't use any hair products, other than shampoo.

She also said that she'd reviewed her policy and noted that it covers "peeling of leather" under the heading "Structural Faults". So she said there was a fault with the leather which

was covered by her policy.

Fortegra weren't prepared to review their decision not to uphold Mrs M's complaint, so she complained to our service.

Our investigator considered the case but didn't uphold the complaint. She said she was persuaded by the engineer's report that the damage to the sofa was due to wear and tear. And that the policy didn't cover Mrs M for deterioration of the sofa due to normal use. She said the policy covered Mrs M for "sudden, unforeseen and unintentional damage resulting in rips, punctures, scuffs, burns, chips or scratches." But in light of the engineer's findings this didn't apply.

Mrs M didn't accept our investigator's opinion. She's said that leather shouldn't delaminate after two years and if it did it wouldn't be used for furniture. She believes the leather was poor quality. She's also said that peeling of leather is listed under the structural defects the policy covers, so her sofa should be covered.

I issued my provisional decision on 23 June 2023. And in it I said: -

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Mrs M's policy provides cover for accidental staining, accidental damage, and structural faults. For both accidental staining and damage it's said the damage needs to be sudden, unforeseen, and unintentional. Peeling of leather is specifically stated to be covered under structural faults.

Section 4 of the policy terms and conditions sets out a list of what's not covered. 4.4 states "Deterioration of the product's appearance through normal use or general soiling, for example wear on high traffic areas (e.g. arm rest), or a build-up of oils on a headrest/headboard, or dye transfer over an extended period of time."

This is the exclusion Fortegra have used to decline Mrs M's claim. In declining the claim they're relied on the report from their engineer who says he carried out a "leather diagnostic test" and "there was a shampoo type smell for the leather when heated and it also felt oily-greasy to touch."

No details of how the test was carried out are given, although due to the engineer's comments we can assume it involved heating the leather in some way. And based on his findings we know the engineer said the damage was caused by "head oils."

But I also have to consider what Mrs M has told us and what the policy says about cover for structural damage.

Mrs M has told us, and I accept, that her husband is the one who normally sits in the seat where the headrest is damaged. She's provided a photograph that shows his head above the headrest, not leaning against it. And she's said there's no damage to any other headrest, including that on the seat she normally uses, even though she's shorter than her husband so her head rests against the headrest.

I find her evidence more persuasive than an undefined diagnostic test. So I'm not persuaded that the damage was caused by a build-up of hair oils over time. And I think Mrs M's claim should be covered under the structural damage section of the policy which specifically states the policy covers "peeling of leather."

Mrs M has said she wants the sofa replaced as she doesn't think a repair will match the sofa. I'm not surprised she's said this, as she's told us the engineer said he didn't think a repair would be successful. But the policy provides for the damaged item to be repaired, and only if it can't be satisfactorily repaired will Fortegra replace it. So I think Fortegra need to be given the opportunity to repair the damaged headrest before they need to consider providing a replacement.

In dealing with Mrs M's claim I don't think Fortegra have considered the evidence she's provided and this has delayed the resolution of her claim. As a result of this she's suffered distress and inconvenience for which I think she should be compensated. And taking everything into account I think the appropriate level of compensation is £150.

So my provisional decision was that I upheld Mrs M's complaint.

Mrs M has confirmed that she accepts my provisional decision. Fortegra haven't responded and the deadline given to the parties to do this has now passed.

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 Mrs M has indicated that she accepts my provisional decision and Fortegra haven't responded, I don't see any reason to review my findings.

My final decision

For the reasons set out above and in my provisional decision my final decision is that I uphold Mrs M's complaint about Fortegra Europe Insurance Company Ltd.

And to put things right I require them to arrange to repair her damaged sofa, and if this isn't possible to provide a replacement in line with her policy terms and conditions. And to pay her £150 for the distress and inconvenience she's suffered as a result of how they've handled her claim.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 24 August 2023.

Patricia O'Leary
Ombudsman