

The complaint

Mr C has complained about the settlement he was offered by Fortegra Europe Insurance Company Ltd (Fortegra) under a furniture warranty.

What happened

Mr C contacted Fortegra to make a claim for damage to his sofa under a furniture warranty. Fortegra assessed the damage and agreed to make a repair to the sofa. Mr C said the replacement fabric didn't match the colour of his sofa. Fortegra then said Mr C could select a sofa for £999 or accept a cash settlement for £499.50.

Mr C complained because he said he couldn't replace the sofa for the amounts offered. When Fortegra replied, it said it had offered settlement in line with the terms of the policy. So, Mr C complained to this service. Our investigator didn't require Fortegra to do anything further. He said Fortegra's offer was in line with the terms of the policy.

As Mr C didn't agree, the complaint was referred to me.

I issued my provisional decision on 21 June 2023. In my provisional decision, I explained the reasons why I was planning to uphold the complaint. I said:

Mr C was initially concerned that Fortegra was unable to match the sofa material. I can understand this would have been frustrating for Mr C. However, Fortegra has said it has been unable to match it and I can't require it to do something that doesn't seem to be possible. As an alternative, Fortegra offered to replace the sofa for another up to the value of £999 or a cash equivalent of £499.50.

The policy terms and conditions said:

"The most we will pay under this protection plan is the original price you paid for the product, after any discounts you were given at the time you bought it or £15,000, whichever is the lowest.

...

If a repair cannot be achieved, we may replace the damaged part. If this is not possible [we] may provide a replacement product(s), or settle the claim by a cash settlement at [our] and your insurer's discretion instead of a repair or replacement (up to the limit of indemnity).

...

Any replacement will be of a similar standard, specification and style as your original product, if the limit of cover allows this."

Fortegra has said Mr C paid £999 for his sofa, so that was the amount it offered to cover the cost of a replacement. It said Mr C would need to contact the retailer and select the sofa himself and then get approval from Fortegra for the sofa selected. Mr C has said the amount offered isn't enough to cover the cost of replacing his sofa. I have looked at the retailer's website and it still seemed to sell the equivalent sofa. This cost about £350 more than the amount Fortegra offered.

I'm mindful that if the sofa was replaced by Fortegra, it wouldn't be paying the money to Mr C. It would be paying it to another company that would arrange the new sofa. Fortegra has confirmed to this service it has an agreement in place with that company which gives it a discount on the retail price of products. Even though the retail price of Mr C's sofa has increased, Fortegra would still pay the other company a lower amount than Mr C originally paid for the sofa.

In order to put Mr C back in the position he was in before the claim, Fortegra needs to replace the sofa, as it isn't possible to repair it. It can provide Mr C with an equivalent sofa to the damaged one without paying more than Mr C paid for the sofa. So, it is currently my view Fortegra needs to replace the damaged sofa with the equivalent to the damaged one up to the amount it would itself pay to the company that would replace the sofa at trade prices.

I've also thought about compensation. I think Mr C has been caused inconvenience and frustration by how his claim has been dealt with. So, I also intend to say Fortegra should pay Mr C £100 compensation to reflect this.

I asked both parties to send me any more information or evidence they wanted me to look at by 19 July 2023.

Mr C replied and didn't agree with my decision. In summary:

- he said the claim shouldn't be settled under his policy. It should be settled under Fortegra's policy as it had damaged his sofa.
- he said he had spoken to the sofa retailer and been told the sofa was still available and in the exact fabric Mr C's sofa was covered in. He said it cost £1,249.00.
- he questioned why Fortegra couldn't just put the damage right.
- he questioned if something illegal was going on and whether there was some sort of cover up in favour of Fortegra.
- he questioned why his insurance was being used against him and why he was expected to accept an inferior sofa, based on its price.

Fortegra replied and said the policy was indemnity based and the full indemnity of the policy was £999.00. If it paid more than this to the consumer, it said this would be betterment, which was not in line with the terms and conditions of the policy.

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 uphold this complaint and for the reasons given in my provisional decision. As part of this, I have considered the points raised by both parties.

Mr C has said the damage to the sofa shouldn't be dealt with under his policy as Fortegra had damaged the sofa. He said it should be dealt with under its own insurance. So, I've thought about this. It's my understanding that Fortegra was dealing with the sofa because Mr C had made a claim under the policy. Fortegra replaced some material on the sofa. However, after it was fitted, it was identified that the new fabric didn't match the rest of the sofa. So, Fortegra offered a cash settlement or to replace the sofa, in line with the terms of the policy.

The repair not being successful because the fabric didn't match, didn't mean that Fortegra had to settle the claim outside of the policy. It is common for insurers to attempt a repair

before considering other options under the policy, which is what Fortegra did. When the repair was unsuccessful, it offered alternative ways to settle the claim, which were also under the terms of the policy. I haven't seen anything that showed me Fortegra needed to deal with the sofa damage through a policy other than the one Mr C claimed under.

Mr C has also said he spoke to the sofa retailer and was told that the sofa was still available and in the exact fabric Mr C's sofa was covered in. When Mr C responded to my provisional decision, this service checked directly with two of the retailer's stores whether it still stocked Mr C's sofa and in the exact fabric he had bought. Both stores said that specific material had been discontinued. A store also confirmed that a similarly named fabric was noticeably different as it had a different weave. One of the stores, which was located near to Mr C, also confirmed it didn't have a sofa in stock with fabric that matched Mr C's sofa. I'm aware this is different to what Mr C has said he was told. I'm unable to explain why the information provided to this service by the retailer was different. However, I remain of the view that I can't require the sofa or fabric be replaced with an exact match when the retailer has told this service it no longer makes sofas with that fabric. As a result, I also remain of the view that it is reasonable for Fortegra to offer an alternative settlement for the sofa.

Fortegra has said if it paid more than £999 to settle the claim, it would be betterment. However, I haven't said Fortegra needs to pay more than £999 to settle the claim. I also haven't said it should make a cash settlement. I have said it needs to replace the sofa.

The policy said "*If a repair cannot be achieved, we may replace the damaged part. If this is not possible [we] may provide a replacement product(s), or settle the claim by a cash settlement...*". So, based on the wording of the policy, replacing the sofa is different to paying a cash settlement. Fortegra has confirmed that where it replaces a sofa it receives a discount, which makes the cost to itself significantly lower than the retail price. Even, if the sofa cost £1,350, which is the price I found for a similar sofa on the retailer's website, Fortegra would still pay less than £999 for the replacement sofa. So, it wouldn't be paying more than £999.

I remain of the view that in order to put Mr C back in the position he was in before the claim, Fortegra needs to replace the sofa, as it isn't possible to repair it. So, in line with the words of the policy, Fortegra needs to provide Mr C with a sofa "*of a similar standard, specification and style as [the] original product, if the limit of cover allows this.*" Based on the information Fortegra provided to this service, due to the agreement it has in place, it can provide Mr C with an equivalent sofa without it paying the sofa supplier more than Mr C paid for the sofa. So, it is within the limit of cover.

Putting things right

Fortegra should provide a replacement sofa equivalent to the one damaged and apply the £999 limit to the trade price. It should also pay Mr C £100 compensation.

My final decision

For the reasons I've given above and in my provisional decision, my final decision is that this complaint is upheld. I require Fortegra Europe Insurance Company Ltd to:

- Provide a replacement sofa equivalent to the one damaged. The £999 limit should be applied to the trade price, not the retail price, as the trade price is what it will pay for the replacement.
- Pay Mr C £100 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 21 August 2023.

Louise O'Sullivan
Ombudsman