

The complaint

Miss M and Mr S complain about Acasta European Insurance Company Limited's offer to settle a claim made under their furniture warranty.

What happened

The background to this complaint is well known to both parties, so I'll provide only a brief summary here.

In March 2019, Miss M and Mr S took out a five-year furniture warranty policy underwritten by Acasta to cover a sofa they'd purchased. The policy covers accidental damage to the fabric, staining and structural defects.

They made a claim in March 2022 after accidental damage to the footstool which was part of the sofa suite.

Acasta accepted the claim and sent out a technician. They decided the fabric cover of the footstool needed to be replaced altogether. They said this would arrive from the manufacturer in around 6-8 weeks. This was confirmed by email to Miss M and Mr S in late March 2022.

Miss M and Mr S chased things up around seven weeks later and were told the manufacturer needed a sample of the material from the footstool. They were understandably frustrated that they weren't told this at the outset, that no progress had been made and that things only started moving because they chased. Nonetheless, they sent the sample as requested.

Just after this, Miss M and Mr S say Acasta told them they were declining the claim because the footstool wasn't part of the sofa. This is odd because the stool is specifically mentioned in the policy certificate.

Eventually, after Miss M and Mr S contacted the manufacturer for confirmation, Acasta accepted the footstool was covered.

Acasta then wrote to Miss M and Mr S to say the manufacturer had ceased production of the particular model of sofa. They said that meant the footstool's fabric couldn't be replaced. And they offered to settle the claim in a different way.

In essence, they offered a credit note with the retailer for over £1,100 or a cash settlement of just over £500. This reflected the policy terms relating to replacement of a damaged item. These say the maximum Acasta will pay to settle a claim is the original purchase price.

And they said this would bring the policy to an end, again in line with the terms and conditions, because the sofa had been replaced entirely.

Miss M and Mr S weren't happy with this settlement offer. They say they couldn't replace their sofa with a similar one from the original retailer or elsewhere for the money being offered by Acasta.

They said they'd made enquiries with the manufacturer and their model of sofa had been in stock up to May 2022. The assumption being that the footstool or the footstool fabric would have been in supply up to around that date.

And so, if Acasta had dealt with the claim in a timely manner – and as they originally said they would in March 2022 – the footstool or the fabric would have been replaced and their sofa would be intact and not needing replacement.

Miss M and Mr S complained to Acasta. They apologised for the delays and offered £200 in compensation for Miss M and Mr S's trouble and upset. But they said their settlement offer was correct and would stand, given that they were offering the maximum amount allowed under the policy terms.

Miss M and Mr S weren't happy with this and brought their complaint to us. They think the delays meant they're now unable to replace their sofa.

They want Acasta to pay the full cost for a replacement of their sofa with a similar model. They want compensation for the "financial and moral stress" they've suffered. And they want Acasta to compensate them for the loss of around two years of the warranty which would have been remaining had the claim been settled by repairs to the footstool.

Our investigator looked into it and didn't think Acasta should be asked to do any more. He thought the settlement offer was fair given that it was at the maximum afforded by the policy. He thought the policy had ended in the way set out in the terms and conditions. And he thought the £200 compensation was reasonable given the extent of the delays and inconvenience experienced by Miss M and Mr S.

Miss M and Mr S disagreed and asked for a final decision from an ombudsman.

Because I disagreed with our investigator's view, I issued a provisional decision. This allowed both Acasta and Miss M and Mr S an opportunity to provide further evidence or information and/or to comment on my thinking before I issue my final decision in this case.

My provisional decision

In my provisional decision, I said:

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

There's no doubt in my mind that Acasta made errors in the way they handled this claim. There's no real dispute about that given that Acasta have admitted it and offered compensation to Miss M and Mr S.

To be clear, those errors led to delays from the outset. Acasta didn't ask Miss M and Mr S to provide a sample of fabric until they were chased for progress – almost two months after the claim was made. And they then unnecessarily and unreasonably questioned the validity of the claim, causing further delays.

If those delays hadn't occurred, it's not unreasonable to suppose that the replacement fabric would have been provided within 6-8 weeks, as Acasta's engineer promised when he visited to inspect the sofa.

And in that case, it's reasonable to assume Miss M and Mr S would not have had to replace their sofa – the footstool would have been re-covered. They would also still

have had two years cover remaining on a five-year warranty which cost them £229.

In my view it's an error here to apply the policy limits. If Acasta were simply settling a claim, then of course, those limits would apply.

But they're not simply settling a claim here. What we're asking them to do is cover the knock-on costs incurred by Miss M and Mr S solely as a consequence of Acasta's errors – and the subsequent delays.

Those costs are the cost of having to replace their sofa plus the cost of having to buy a new warranty which will cover two years that Miss M and Mr S might have expected to benefit from had Acasta not made the errors they did.

In short, Acasta's errors have put Miss M and Mr S in the position they found themselves in – with a need to entirely replace a sofa with inadequate funds from their claim to cover that cost. And without a warranty on whatever sofa they choose to replace their current sofa.

That being the case, I'm minded to say that Acasta should refund two-fifths of the original cost of the warranty (two-fifths of £229). And replace Miss M and Mr S's sofa with a similar model or pay for its replacement with a similar model.

It would be reasonable to suggest Acasta should agree a replacement model with Miss M and Mr S and then purchase and deliver it. Suffice to say, it should be a model with similar specifications, fabric and size to the original.

If Miss M and Mr S don't wish to accept that, Acasta should pay a cash settlement to Miss M and Mr S. This should be the same amount it would cost Acasta to purchase and deliver a replacement as set out above.

I can understand that Miss M and Mr S have found this whole episode very frustrating and stressful, especially when Acasta delayed the originally planned repair and then when they said they were declining the claim altogether.

That said, bearing in mind that the actual impact on Miss M and Mr S was that they had a damaged footstool for a period of time, I'm satisfied that the £200 compensation offered by Acasta was fair and reasonable.

It's not entirely clear to me whether that £200 has been paid or was offered and declined. If it has been paid, clearly Acasta don't need to pay any more compensation. If it hasn't been paid as yet, they should pay it now."

So, in summary, I said I was minded to uphold the complaint and to require Acasta to replace the sofa with a similar one (or pay for its replacement), refund two-fifths of the premium and pay Miss M and Mr S £200 in compensation.

The responses to my provisional decision

Miss M and Mr S didn't provide any further information, evidence or thoughts in response to my provisional decision. I assume that's because they agree with it.

Acasta commented in some detail, for which I am grateful.

They agreed that they should refund Miss M and Mr S for the remaining time on the warranty, so paying them £91.60 (two-fifths of the original £229 premium).

They said they still thought their offer to Miss M and Mr S relating to replacement of the sofa was fair.

First, they'd decided not to subtract from the amount offered the cost of a previous claim – which they would usually be entitled to do under the terms of the policy.

And second, our service's usual approach, if part of a matching set is damaged and can't be replaced with an exact match, is to ask the insurer to pay for the specific item damaged in full, but to pay half the cost of replacing any undamaged matching items. In which case, we should have asked them to pay for the footstool and half the cost of the sofa.

They also clarified that they'd sent a cheque to Miss M and Mr S for the £200 they offered in compensation, but that it hadn't yet been cashed. They're happy to pay the £200 again if the existing cheque is returned or cancelled.

Acasta went on to say that if I don't accept their further arguments around the settlement, it would nonetheless be difficult - and possibly unfair to Miss M and Mr S – to maintain my position that Acasta should replace the sofa with a similar one.

They pointed out that fashions change and it's now difficult, if not impossible, to identify a similar model to Miss M and Mr S's sofa. Whether any candidate sofa met the criteria I tried to set out would be a matter of subjective judgement - and might lead to further delays in settling the matter.

They also pointed out that it would also make it difficult to assess how much they would have to pay Miss M and Mr S if they replaced the sofa themselves.

Acasta suggested that a fair alternative might be to increase their initial offer (£1,199 – which was what Miss M and Mr S paid for the sofa) in line with inflation – using the Bank of England calculator.

This would come to £1,460.21, to which Acasta were happy to add delivery costs at £80, bringing the overall total to £1,540.21. They'd then add the £200 compensation and the £91.60 refund.

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.

Miss M and Mr S haven't responded to my provisional decision, so they've given me no cause to think again about the proposed compensation (£200) and the premium part-refund (£91.60). I'm glad that Acasta have also agreed that those figures are fair and reasonable.

Acasta haven't given me any good reason to change my basic stance on this complaint.

They had already agreed not to subtract from their offer the amount it cost them to carry out a previous repair. That was for good reason - and it was fair and reasonable for them to do so.

I can see their argument about matching sets. However, I don't think in this case the "items" in question are a sofa and an entirely separate but matching footstool.

The footstool appears to be an integral part of the sofa. It may be moveable, but it's clearly intended to be used to extend the sofa and allow the user to put their feet up, whilst sitting

on the sofa. So, I don't think the "matching sets" argument holds any water in this particular case.

I do however think Acasta have – very fairly – tried to suggest a means by which we might avoid a potential situation where Miss M and Mr S can't agree with Acasta what an adequate or equivalent match for their sofa looks like in the current market.

I am very keen to avoid the possibility that Miss M and Mr S can't or won't accept any suggested replacements from Acasta – because they're not a sufficiently close equivalent to their sofa – whilst Acasta won't accept Miss M and Mr S's preferred alternative because it's too expensive.

That said, I think it's important that Miss M and Mr S aren't put in a position where they can't reasonably replace the sofa with something equally useful and pleasant.

The increased settlement figure in line with inflation seems to me to be an elegant way to avoid the possibility of a further impasse. And it's clearly fair to Miss M and Mr S to give them what they paid for the sofa - but at today's prices.

So, I'm satisfied that's a fair and reasonable way to conclude this matter if it can't be concluded in the manner already suggested. I'll clarify what I mean by this below.

Putting things right

Acasta should now pay Miss M and Mr S £91.60 as a part-refund of their policy premium.

They should also pay Miss M and Mr S £200 in compensation for their trouble and upset, assuming Miss M and Mr S return the previous cheque issued by Acasta for this amount or in some other way satisfy Acasta that they won't or can't cash that cheque in future.

Acasta must also replace Miss M and Mr S's sofa with a suitable equivalent model, if the two parties can agree on that within a reasonable timeframe. Acasta would also, in that case, cover delivery costs.

If the two parties can't agree on an acceptable replacement, Acasta should either issue a credit note – for use with any of their suppliers – for £1,540.21 or pay Miss M and Mr S in cash the cost of that credit note to themselves. Miss M and Mr S will understand that if they take this option, this will be a slightly lower figure.

I should be clear that I'm not suggesting that Miss M and Mr S enter into a long process of negotiation with Acasta about a replacement sofa. If they can find a suitable sofa from Acasta's suppliers now for less than £1,540.21, I assume they'll be happy to take it.

If not and they want to take the credit note to put towards the cost of a slightly more expensive sofa from Acasta's suppliers, that's up to them.

And if they don't wish to take the credit note, they can tell Acasta to pay them in cash the cost (to Acasta) of the credit note. Acasta have previously told us that the cost to them of a credit note worth £1,199 would be £1,079.10. I'm expecting that the cost to Acasta of a credit note for the £1,540.21 would be a similar proportion of the overall value of the note.

My final decision

For the reasons set out above, I uphold Miss M and Mr S's complaint.

Acasta European Insurance Company Limited must:

- pay Miss M and Mr S £91.60 as a part-refund of their policy premium;
- pay Miss M and Mr S £200 in compensation for their trouble and upset (assuming the previous cheque is returned or cancelled); and
- replace their sofa with a model Miss M and Mr S agree to; or
- provide a credit note for use with their suppliers to the value of £1,540.21; or
- provide a cash settlement at the amount it would cost them to purchase the credit note mentioned above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M and Mr S to accept or reject my decision before 8 September 2023.

Neil Marshall
Ombudsman