

The complaint

Miss F has complained about Fortegra Europe Insurance Company Ltd's decision to turn down her claims under her SMART Protection Insurance Policy.

Fortegra is the underwriter (insurer) of this policy. Much of this complaint concerns the actions of its appointed agent. As Fortegra accepts it is accountable for the actions of its agent, in my decision, any reference to Fortegra should be interpreted as also covering the actions of its appointed agent.

What happened

Miss F made a claim for stone chips and scratches to five of the panels on her car and scratches on the black gloss grill/light bay. Miss F said they had happened between 24 May 2023, when she last cleaned her car, and 5 June 2023, when she cleaned it again. This was on the basis that she did not notice any of them when she cleaned her car on 24 May. Miss F submitted a claim form to Fortegra detailing the damage with photographs.

Fortegra turned the claims down on the basis the photographs provided by Miss F suggested the damage had been caused by numerous incidents over a period of time, which could all be classed as wear and tear. Miss F complained to Fortegra about its decision. It issued a final response in which it said its decision to turn down the claims was correct. In this it expanded on what it had said in its letter declining the claims. It said there were at least 11 separate incidents of damage. And the size, location and direction suggested they had all occurred as result of separate impacts. And it reiterated its point that all the incidents could be classed as wear and tear. It also pointed out that Miss F's statement on the claim form that they'd happened 'with general driving of the vehicle' supported its view on this. It further explained that Miss F's policy excluded any damage that had been accumulated over an extended period, which it deemed to be wear and tear.

Miss F asked us to consider her complaint about Fortegra. One of our investigators did this and she said it should be upheld. She explained that Fortegra had not provided sufficient evidence to show the incidents of damage happened over a long period. And she didn't think they could be classed as wear and tear. She did however later acknowledge that the policy did not cover scratches to the black gloss grill/light bay, which meant Fortegra wouldn't need to pay to repair these. However, she said it should repair the rest of the damage in accordance with the policy terms. She mentioned that, based on what Fortegra had said, it seemed that almost any small chip or scratch could be classed as wear and tear.

Fortegra doesn't agree with the investigator's view. It remains of the view that the incidents of damage happened over an extended period. And it pointed out that the fact some of the stone chips show evidence of rust supports this. It's also said the fact Miss F can't provide details of any specific incidents of damage supports its view. It has also said classes all the incidents of damage as wear and tear, but it would not class them as this if each had been logged as soon as it had occurred. Fortegra has also explained the policy is only intended to cover isolated incidents; not a succession of incidents. And it's added that it is very unlikely all the incidents of damage happened over a period of around two weeks. It also seems to be suggesting that because repairing all the areas of damage will take more than an hour, its

Small to Medium Area Repair Technique (SMART repair) can't be used, as this process should typically be done within an hour.

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.

Industry rules set out by the regulator (the Financial Conduct Authority) say insurers must handle claims fairly and shouldn't unreasonably reject a claim. I've taken these rules, and other industry guidance, into account when deciding what I think is fair and reasonable in the circumstances of Miss F's complaint.

Miss F's policy, which started on 10 December 2021 and lasts until 9 December 2024 provides the following cover:

'If during the Policy term Minor Cosmetic Damage occurs to the bodywork of Your Vehicle within the Territorial Limits as a result of Day-To-Day Motoring, We will cover the cost of a SMART Repair by an Approved Repairer, subject to the following limits:

- *£1,000 including VAT for any one repair.*
- *£3,000 including VAT in total.*

Where the Minor Cosmetic Damage falls within the terms of Your Policy but is not repairable using a SMART Repair technique (as determined by an Approved Repairer), We will contribute up to £250 including VAT towards a Bodyshop Repair so long as the repair is not the subject of a motor insurance claim.

You will need to submit a paid invoice for the Bodyshop Repair, and any amount paid to You will be subject to the total limit defined above, during the Policy term.'

'Minor Cosmetic Damage' is defined as:

'Minor Cosmetic Damage: Accidental damage to the bodywork of Your Vehicle (damage to the roof, bonnet, boot lid/tailgate or any horizontal surface is limited to stone chip damage only) caused by a sudden and unforeseen incident during Day-To-Day Motoring resulting in:

- *a minor stone chip, up to 3mm in diameter, which can be filled and sealed to prevent rust; or*
- *a minor dent to a metal body panel, not exceeding 30cm in diameter and not where the panel has been ripped, perforated, torn or the area distorted; or*
- *a minor scratch, not exceeding 30cm in length; or*
- *a scuffed bumper, which is less than 30cm in diameter and sitting within one bumper panel; or*
- *a scratched or scuffed wing mirror cover/casing, where the damage is less than 30cm in diameter.'*

'SMART Repair' is defined as follows:

Any Minor Cosmetic Damage to Your Vehicle which requires a repair that can typically be achieved within one hour that involves using a Small to Medium Area Repair Technique. Such techniques use specialised tools, paints and materials and avoid the need for a Bodyshop Repair.

Under the section of the policy entitled '*WHAT IS NOT COVERED*' it states the following amongst other things:

'Any damage that has been accumulated over an extended period, which We or the Administrator deem to be wear and tear.'

Any Minor Cosmetic Damage which is not reported within thirty (30) days of the Incident Date.

Damage that is not repairable by a SMART Repair, is beyond Minor Cosmetic Damage or because of the extent or number of areas of damage, a Bodyshop Repair is required.

I don't think the policy wording is particularly helpful, as it suggests that incidents of damage that would be covered individually are classed as wear and tear if they happen over a period of time. In my opinion, this is odd, as damage is either wear and tear or it is not. And I can't see how the fact that a policyholder claims for several incidents of damage that happened over an extended period suddenly makes them wear and tear.

I think what Fortegra doesn't want to cover is separate incidents of damage which have happened over an extended period, which the policyholder claims for at one time. But this is not what it's policy wording says. It actually says it won't cover accumulated damage which it classes as wear and tear. And I think this means it needs to show the damage concerned is wear and tear for it to be able to rely on the first of the exclusion clauses set out above. And wear and tear isn't defined in the policy. So I think it is for Fortegra to demonstrate that it is reasonable to class any incidents of damage as wear and tear. And, bearing in mind Miss F's policy actually covers minor stone chips and minor scratches, I do not consider it is reasonable to say the damage she has claimed for is wear and tear. I say this as it seems from the photographs that all the incidents of damage Miss F has claimed for can be classed as minor stone chips or scratches. And this means the only scratches not covered would be the ones on the grill/light bay, as Miss F's policy doesn't cover this part of her car.

Miss F has said that she thinks all the incidents of damage she has claimed for happened between 24 May and 5 June 2023 on the basis she didn't notice them when she washed her car on 24 May. This would mean she had reported them all within 30 days of them happening. And if this was the case the second exclusion clause set out above would not apply. However, I think it is highly unlikely that all the incidents happened in the period Miss F has suggested. I consider it is most likely Miss F didn't really notice them previously when she washed her car and they happened over an extended period. But I do think that it can be said it is most likely they happened during the period she had the policy. I say this because there aren't so many incidents that I wouldn't have expected them to have occurred over a period of around six months. But there are more than I would expect to have occurred over a period of two weeks.

This means that for some of the incidents at least, I don't think Miss F reported them within 30 days. So, technically the first exclusion clause set out above would apply to defeat her claims for some of the incidents of damage she has claimed for. Of course it is impossible to tell which incidents she reported after 30 days. However, I do not consider it would be fair for Fortegra to rely on the relevant exclusion for these incidents anyway. This is because I cannot see there is any prejudice to it due to them being reported late. I say this because I think it will cost the same to repair them using its SMART repair method or in a bodyshop irrespective of whether they were reported within 30 days or not.

There is also an exclusion for damage that can't be repaired by a SMART repair (the third one set out above), which is odd bearing in mind it says under the '*WHAT IS COVERED*' section that Fortegra will contribute £250 towards a bodyshop repair if this is the case.

Although, as far as I can see all the incidents of damage Miss F is claiming for should be able to be repaired by a SMART repair. But, if any incident cannot, it will be for Miss F to decide whether she wants it repaired by a bodyshop and, if she does, for Fortegra to contribute £250, subject to her providing a paid invoice.

I've noted what appears to be a suggestion by Fortegra that because it will take more than an hour to repair all the incidents of damage Miss F has claimed for they cannot be repaired by a SMART repair. But – if this is what Fortegra is suggesting - I do not agree, as each incident is separate and it seems each one can be repaired by a SMART repair. And, as I've said, if any cannot, it will be up to Miss F whether she wants to have it repaired in a bodyshop and have a contribution from Fortegra.

Putting things right

It therefore follows, that for the reasons set out above, I consider the fair and reasonable outcome to Miss F's complaint is for Fortegra to settle her claim for all the incidents of damage she has claimed for, except the scratches to the grill/light bay up to the policy limit of £3,000 overall and £1,000 per repair. If each of the incidents can be repaired by the Smart repair Fortegra should arrange and pay for this. If any of the incidents can't be repaired by a SMART repair, Miss F will need to have them repaired in a body shop if she wants to and submit an invoice to Fortegra and it must then give her a contribution of £250 for each of these.

My final decision

I uphold Miss F's complaint about Fortegra Europe Insurance Company Ltd and order it to do what I've set out above in the 'Putting things right' section.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss F to accept or reject my decision before 28 February 2024.

Robert Short
Ombudsman