

The complaint

Mr M complains that Fortegra Europe Insurance Company Ltd have declined his claim for minor cosmetic damage repairs to his car.

What happened

In February 2024 Mr M made a claim under the cosmetic Minor Damage Protection Insurance policy he held with Fortegra for damage to his front bumper.

Fortegra declined the claim, saying that the damage fell outside the terms of the policy as it wasn't SMART repairable as they only repair metal bodywork, and the panel that had been damaged was plastic.

In their final response Fortegra said that there were three dents to the bumper, and "Cracked or dented bumpers are not covered by the policy terms and conditions"

Mr M was unhappy with Fortegra's response and brought his complaint to us.

One of our investigators has looked into Mr M's complaint and he thought that Fortegra should reconsider Mr M's claim, evidencing the use of the policy and experts to provide him with a claim outcome.

Fortegra didn't agree and so the case has come to me to review

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.

I am upholding Mr M's complaint with the same recommended outcome as the investigator, although I have given slightly different reasons, and I will explain why.

I've reviewed all the evidence and arguments provided by both parties to see whether Fortegra's decision to decline the claim was in line with the policy terms and applied fairly.

Under "What is covered", the policy says:

"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...."

*£500 including VAT for any one repair.
£3,000 including VAT in total during the Policy term.*

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.

In their final response Fortegra say that there is no cover because the damage to the front bumper has resulted in the panel becoming slightly dented, the impact has deformed the shape of the bumper under the nearside headlight. Above the nearside fog light surround and on the leading edge of the lower valance section of the bumper.

They also say that as the damage is on a plastic panel it is beyond the policy definition of Minor Cosmetic Damage and cannot be repaired using the SMART repair techniques.

They have quoted the following policy term:

What is not covered"

iv. 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"

v. Where the body panel, bumper or wing mirror is ripped, perforated, cracked or torn, or there is damage to the structure and/or alignment"

However, I'm not satisfied that Fortegra have interpreted the policy terms properly or fairly.

Firstly, I can see no exclusion in the policy for repairs to plastic panels. Given that most cars under 7 years old - which is the age up to which cover under this policy is offered – have a significant amount of plastic bodywork, I would expect an exclusion of such importance to be specified in the terms. So I don't think Fortegra have acted in line with the terms and conditions in saying there is no cover because the damage is on a plastic panel.

Secondly, I can find no requirement in the policy that the repair must be completed by a SMART repair to be covered. Under the policy exclusions entitled "What is not covered", the placement of the commas in point iv) creates a list of three separate exclusions, and so it effectively reads:

What you are not covered for:

- a) Damage that is not repairable by a SMART repair
- or
- b) Is beyond Minor Cosmetic Damage
- or
- c) Because of the extent or number of areas of damage a bodyshop repair is required

So I don't agree that in order to be covered, the damage must be repairable with a SMART repair – there are other types of damage covered as long as they fall within the definition of Minor Cosmetic Damage.

That interpretation also aligns with the "What is covered" section where it provides for payment to be made for minor cosmetic damage which is **not** repairable by SMART repair.

'Minor Cosmetic Damage' is defined in the policy as:

"Accidental damage to the bodywork of Your Vehicle (damage to the roof bonnet, boot lid, tailgate or any horizontal surface is covered only if a SMART repair is achievable) caused by a sudden and unforeseen incident during Day to Day motoring resulting in:

- *a minor stone chip, up to 3mm diameter and 1.5mm in depth, 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, up to 1.5mm in depth, not exceeding 30cm in length.*
- *a scuffed bumper, which is less than 30cm in diameter, less than 3mm in depth and sitting within one bumper panel; or*
- *a scratched or scuffed wing mirror cover/casing, where the damage is less than 30cm in diameter and less than 3mm in depth.*

So the question is whether the damage to Mr M's car falls within one of the bullet points above. I think it is clear from the above list that dents are only covered if they are to metal body panels, but chips scratches and scuffs are not specified as being to metal, so I am satisfied that sort of damage would be covered on a plastic panel – including the bumper. There is a specific provision about when scuffing to bumpers can be considered minor cosmetic damage.

However, I'm also not an expert on identifying the types of damage on bodywork, and so I don't think I am able to fairly say whether damage meets the definition of Minor Cosmetic Damage above – or whether it is repairable by SMART repair. I can see that Fortegra have suggested there are dents, which wouldn't be covered if the bumper isn't metal, but I can't say with certainty what the type and extent of the damage is from the photographs I have been provided with and so I think that the investigator is right to recommend that the damage should be assessed by an expert to determine whether it fits within the definition of Minor Cosmetic Damage as I have explained it above, or is SMART repairable – and then use that evidence to determine the claim properly in line with the policy terms.

Putting things right

I think Fortegra should have an expert assessment of the damage presenting on Mr M's car to determine if it falls within one of the bullet points in the definition of minor cosmetic damage as explained above, and/or whether a SMART repair is possible. These reports would then need to support a new claim decision.

My final decision

I am upholding Mr M's complaint about Fortegra Europe Insurance Company Ltd and I am directing them to put things right as above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 27 August 2024.

Joanne Ward
Ombudsman