

## **The complaint**

Mr K complains about Fortegra Europe Insurance Company Ltd (Fortegra) declining a claim under his furniture care policy for damage to two sofas and an armchair.

Fortegra use agents to administer the policy and to assess claims. References to Fortegra include these agents.

## **What happened**

Mr K took out a five-year furniture care policy with Fortegra (at a cost of £276) when he purchased two sofas, an armchair and a footstool. The policy came into force in June 2020 and covered accidental damage, including staining. In January 2024, Mr K lodged an online claim for damage to the three main items of furniture. The claim form referred to ink pen marks and pink colouring marker and a patch of discolouring/fading. The claim also referred to fading on the back of the sofas and a number of the gliders under the sofas were missing. He included photographs of the damage with his claim.

Having considered the claim form, Fortegra told Mr K they were declining the claim. They said the policy was designed to cover sudden and unforeseen damage that occurred in a single incident of staining and accidental damage. The policy didn't cover any gradually occurring stains or damage. Based on the evidence from the claim form and conversations, Fortegra concluded the accumulation of damage claimed for wasn't a single incident. So, they wouldn't be processing the claim further. They referred to sections 4.3 and 4.4 in the policy terms and conditions.

Fortegra wrote separately to Mr K to say the policy required him to report each incident as soon as possible, which allowed them the best opportunity to repair or remove the stains successfully. They also said the policy excluded coverage of the structure of the furniture, so the missing gliders wouldn't be covered.

Fortegra also arranged for a technician to visit Mr K's property to inspect the damage and report back. In their report, the technician noted various ink stains to the arms and seats, of varying colours and consistency (which they thought suggested multiple incidents). On the fading to the backs of the sofas, the report concluded this was likely due to the sofas being too close to the wall behind. So, when the sofas reclined, the backs scraped the wall.

Mr K challenged the decline of his claim. He said sections 4.3 and 4.4 of the policy weren't part of the policy terms and conditions when he took out the policy. He also said the pen marks all occurred at the same time the week before he made his claim. He'd tried to remove one stain with a pen stain remover, but this only discoloured the stain. Fortegra treated Mr K's challenge as a complaint. However, they didn't reply within the eight-week period for responding to a consumer complaint. So they told Mr K about his referral rights to this Service.

Mr K complained to this Service, unhappy at Fortegra declining his claim and refusing to repair his sofas. This meant he'd have to pay to have them repaired privately. He said the policy he'd taken out covered stains and conditional damage under the terms of conditions

on the retailer's website. Fortegra were saying they wouldn't cover the damage under sections 4.3 and 4.4 of the policy, but these weren't part of the policy when he took out cover in January 2020. He wanted Fortegra to accept his claim and repair the damage to his sofas (remove the ink stains).

Our investigator upheld the complaint, concluding Fortegra hadn't acted fairly. Fortegra said the claim was declined because the stains built up over time. But Mr K said the stains were the result of a one-off incident. The policy terms said damage had to be reported within 28 days, but the investigator didn't think Fortegra hadn't shown the damage couldn't have happened within a 28-day period. And where the policy mentioned accumulation of damage, the terms and conditions appeared to only refer to animal damage. The investigator thought Fortegra should progress that part of Mr K's claim. But she thought Fortegra fairly declined to cover the damage to the back of the sofas and missing gliders.

Fortegra disagreed with the investigator's view and asked that an ombudsman review the complaint. They said Mr K's claim specifically stated the staining had built up over a period of time and in a call with his wife, she confirmed the ink stains were a build-up. The technician's report confirmed damage across multiple areas of the three pieces of furniture and stated the damage wasn't the result of a sudden incident, with the ink stains varying in colour, type, and patterns. So, the exclusion at section 4.19 of the policy applied. Only when the claim was declined did Mr K change details of the damage to say it happened at one time. Just because the damage was only from pens didn't mean it occurred at one time.

Fortegra also said, in respect of the 28-day timeframe in which to report an incident, Mr K had a duty to report a claim after each incident. If not reported or claimed after the incident, it was no longer sudden and became damage that was accumulated over multiple areas. As Mr K didn't report the damage after each incident, the decline of the claim was correct.

### **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.

My role here is to decide whether Fortegra have acted fairly towards Mr K.

The key issue in Mr K's complaint is the decline of his claim, in particular the damage from the pen/ink stains. He says the damage to the sofas should be covered under the policy as it was a one-off event. Fortegra maintain the damage wasn't due to a specific event but to accumulation over time, a policy exclusion.

In considering this case, I've first looked at what the policy defines as accidental staining and damage. The relevant definitions of *Accidental Staining* and *Accidental Damage* are:

***“Accidental Staining – this means sudden and unintentional spills to the outer cover of the item of food, drinks, human & domestic pet bodily fluids, cosmetics, dyes, tar, inks, glue, soaps, wax, paints and caustic solutions which result in a stain.”***

***“Accidental Damage – this means sudden and unintentional damage resulting in rips, punctures, scuffs, burns, chips or scratches to the external surface of the item. When relating to wood or high gloss finishes, cover is limited to scratches which have penetrated into the surface finish by over 1.5mm.”***

In this case, the pen/ink damage would fall under the first definition, while the scuffs to the back of the sofas (and potentially missing gliders) would fall under the second definition.

While the pen/ink stains are the main issue in dispute, I've also considered the two other types of damage included in Mr K's claim. These are fading on the back of the sofas and that a number of the gliders under the sofas were missing.

On the fading on the backs of the sofas, the technician report states:

*"...customer complains also of paint transfer to OSB covers on corner, this is not sudden one-off incident...sofas too close to wall and cannot be reclined without hitting wall thus scraping wall."*

Looking at photographs included in the technician report, they show the sofas touching the wall behind. Which indicates the technician's conclusion is reasonable, repeated reclining in that position would be likely to scuff the backs of the sofas in the areas the photographs show to be damaged. In terms of the above definition of accidental damage, I think the scuffs likely wouldn't be the result of 'sudden and unintentional' damage.

I've concluded the damage is likely to have occurred gradually over time, so Fortegra acted fairly and reasonably in declining this part of the claim.

On the issue of the missing gliders underneath the sofas, the Insurance Produce Information Document (IPID0 for the policy states the policy *"provides cover for individual incidents of accidental staining and/or accidental damage"* The IPID also sets out a list of the more important things under a heading *"What is not insured"* which includes 'structural damage' Given the wording, I'm satisfied that missing gliders wouldn't be covered under 'individual incidents of accidental staining and/or accidental damage'.

So, I've concluded Fortegra acted fairly and reasonably in declining this claim element.

Coming back to the main issue, the pen/ink stains, I've considered the evidence and information available. Having done so, I've concluded Fortegra haven't acted fairly and reasonably. I'll set out the reasons why I've reached this conclusion.

When declining the claim and disagreeing with our investigator's view, Fortegra refer to the evidence available from the claim form and further conversations. They concluded this indicated the accumulation of damage wasn't a single incident. They refer specifically to an extract from the claim form, which includes the following question (and response from Mr K):

*"Issue has built up over a period of time? (Yes)"*

Fortegra also refer to the following note of a conversation:

*"Called consumer on BEST asked consumer's wife if the open marks were a build-up...she said yes."*

Fortegra also instructed a technician to inspect the furniture and report back on whether the damage was likely to be from a single incident or accumulation. The technician's report includes the following statement:

*"3 seater leather elc recl. Customer claim to ink marks to covers. Found various in stain mark to arms, seats, lsb of varying colours/consistency & locations suggesting multiple incidents, middle seat cc has colour loss from attempted clean of ink pens mark which can be seen in colour loss area. Children play/activity area to left of sofa and likely children caused staining. 2 seater leather elc recliner, again found various ink stain mark to arms, seats, lsb of varying colours/consistency & locations suggesting multiple incidents."*

But in challenging the decline of the claim, Mr K, as recorded in Fortegra's claim notes, states:

*"...the pictures in the claim are from pen marks which all occurred at the same time last week, my child, done pen and colour marks all over each sofa which I explained in the claim and over the phone call today when you called my mobile about the rejection."*

Mr K refers to the claim form, which includes the following text immediately underneath the question about whether the issue has built up over time, the question being *How did the incident occur?*:

*"sofa has ink pen marks, and pink colouring marker, and no coming off with the cherish pen remover stick, and there is a patch of discolouring/fading and it's like greeny color. Also back of all 3 sofas leather faded a lot, and bottom of all sofas a lot of the gliders are missing."*

While this describes the staining, it doesn't explicitly say the incident happened at the same time. However, the claim form also includes a question *"Date of Incident?"* to which the answer is '5<sup>th</sup> January 2024'. Which indicates a specific date of incident.

I've then looked at the policy terms and conditions, specifically those referred to by Fortegra when declining the claim and subsequently. Sections 4.3 and 4.4 are included under a heading *Section 4 – what is not covered* and state:

*"3. Colour loss, fading and any natural characteristic to the covering of the item including splitting, cracking, scars, knots, bobbles, swirls, shading or hairline marks (less than 1.5mm) which are naturally occurring in wood or high gloss finishes, or formed during the manufacturing process."*

*"4. Leather or fabric relaxing, stretching, creasing or a change in texture (this inevitably happens to a natural product over time). Increased visibility of valleys, troughs or crazing in the leather caused by general soiling and external catalysts which occur over a period of time."*

While neither section wording appears relevant to the decline of the claim for the pen/ink stains, section 4.3 would apply to the colour loss issue noted in the technician's report (the result of attempted cleaning). And Fortegra's claim notes include a reference (against a heading of *claim decision* that reads (my emphasis) *"Declined (build-up and 4.3 & 4.4)"*. Which I think reasonable to interpret to mean the discolouration element was declined on the basis of section 4.3.

I've then looked at the wording of Section 4.19:

*"19. An accumulation of multiple different stain types across multiple areas of the item."*

Looking at this wording in the context of the statements in the technician's report, I think it's clear the 'multiple areas' element is met, given the stains affected both sofas and the armchair, in multiple places. However, I don't think the damage can reasonably be characterised as 'multiple different stain types' as the stains are all of a form of ink – either from a pen or permanent marker.

So, I've concluded the damage can't reasonably be held to fall within the definition of Section 4.19. Therefore, it isn't reasonable for Fortegra to rely on the exclusion to decline the claim.

So, the question then becomes one of whether the damage was the result of an accumulation or – as Mr K maintains – the result of a single incident.

Looking at the claim form as a whole, the evidence is contradictory -there's reference to a specific date of incident, but the answer yes to whether it's a build-up (as Fortegra stress). And there's the note of the phone call to Mr K's wife (and then to him). Mr K's statement refers to a single incident 'the previous week'. That statement (in an email to Fortegra) is dated 23 January 2024 (the claim form was submitted on 19 January). Allowing for some leeway over what 'the previous week' might entail, this would indicate a single incident.

I've also considered the nature of the incident, pen marks from a child across the sofas. Looking at the photographs, the furniture is in close proximity in an area of the property which the technician's report describes as a 'children play/activity area' to the left. So, I think it's plausible a child caused the damage in one incident.

I've also considered the general principle that where a consumer makes a claim under an insurance policy, the onus is on them to show the loss or damage is due to an insured event or peril (in this case, a specific one-off accidental staining). Based on the evidence I've seen, I think, on balance, Mr K has shown this to be the case.

Where an insurer relies on an exclusion to decline a claim, the onus is on them to show the exclusion applies. Based on the above points and conclusions, I've concluded Fortegra haven't done enough to show the exclusion was fairly applied. That is they haven't done enough to show it wasn't a one-off incident.

On the issue of reporting an incident within 28 days, the relevant policy wording is contained in *Section 6 – Claims Procedure* which includes the following statement:

*"2. You must make any claim as soon as possible , and always within 28 days of the event, giving rise to a claim. Any delay may mean that we will not pay the claim, or that we will reduce the claim or the amount of cover. We may ask to inspect the product to help assess your claim."*

The dates above show the recorded date of the incident as 5 January 2024, with the claim lodged on 19 January 2024, which is within the 28-day period. Allowing for Mr K making an initial attempt to clean one of the stains – but not succeeding and not pursuing any further – I don't think this unreasonable.

Taking these points together, I've concluded Fortegra acted fairly and reasonably in line with the policy terms and conditions in declining Mr K's claim for the elements of scuffing to the backs of the sofas and the missing gliders, but not the pen/ink stains to the furniture.

I've then considered what Fortegra should do to put things right. The technician's report includes a 'best recommendation' of a 'cosmetic repair with leather kit'. The claim notes indicate Fortegra advised Mr K to go privately through a technician. It isn't my role to assess a claim or the way it should be settled, so I think Fortegra should accept the claim for damage from the pen/ink stains and determine an appropriate resolution for the stains, in accordance with the remaining terms and conditions of the policy.

### **My final decision**

For the reasons set out above, my final decision is that I uphold Mr K's complaint in part. I require Fortegra Europe Insurance Company Ltd to:

- Accept the claim for damage from the pen/ink stains and determine an appropriate resolution for the stains, in accordance with the remaining terms and conditions of the policy.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 30 October 2024.

Paul King  
**Ombudsman**