

## The complaint

Mr T complains about how Fortegra Europe Insurance Company Ltd dealt with and settled a claim he made for damage to his sofas.

## What happened

The background to this complaint and my initial conclusions were set out in my provisional decision dated 21 October 2024 – a copy of which is set out here. In my provisional decision I explained why I intended to uphold Mr T's complaint. I said:

### ***"What happened***

*In September 2019, Mr T purchased two leather sofas from a company, which I'll refer to here as "C". These sofas cost him £1,249.95 and £979.95 each.*

*At the time of Mr T's purchase he also bought a Protection Plan, which is provided by Fortegra. This policy of insurance covered his sofas from C against structural faults and accidental damage and staining. Mr T's sofas were delivered on 9 January 2020 and his policy with Fortegra commenced at that time.*

*Over the time Mr T has owned his sofas he says he's experienced problems with the quality of the leather. He's reported leather peeling on around three occasions prior to his most recent claim under the policy. Fortegra says that previous claims under this policy have resulted in repair costs of £241.50 being incurred.*

*On around 1 July 2023, Mr T notified Fortegra that he was experiencing peeling to the leather of his sofas again. He also stated that there was structural damage to his sofas due to seat sagging. So, he asked Fortegra to raise a claim on his behalf.*

*On 21 August 2023, Fortegra partially repudiated Mr T's claim because it considered the leather peeling to be due to colour loss, which it said had been caused gradually. It stated this was excluded from the terms of the policy Mr T had purchased. But it accepted that any loss of resilience in the structure of the sofas would be covered by the Protection Plan.*

*Mr T complained to Fortegra about its assessment of his claim. And when it responded to his complaint, on 13 October 2023, it upheld his complaint and accepted it had partially repudiated the claim in error. It explained that there was no evidence that the damage Mr T had reported had occurred as a result of colour loss. And it offered to pay him £50 in compensation for repudiating part of the claim and the delays and trouble and upset this had caused.*

*Fortegra made enquiries regarding a like for like replacement sofa. However, on 23 November 2023, it informed Mr T that the sofa he'd purchased had been discontinued by the manufacturer. So, it said it wasn't able to replace or repair Mr T's sofas on a like for like basis.*

*To resolve Mr T's claim, Fortegra offered him £1,988.40 as a re-selection value, which it said would enable him to purchase a replacement sofa from C on a like for like basis. In the alternative, it offered him a cash settlement of £994.20 to keep and arrange to repair the sofa himself.*

*Mr T was dissatisfied about how Fortegra was proposing to settle his claim. He stated that neither offer was fair as he'd be left out of pocket whichever option he chose. So he complained.*

*Fortegra investigated Mr T's complaint but didn't uphold it. It stated its offers were in line with the policy terms. So, it didn't think it had made an error in how it had offered to resolve Mr T's claim. But Mr T wasn't happy with how Fortegra had resolved his complaint and referred it to our service.*

*After our investigator assessed the evidence provided, they initially recommended upholding this complaint. They weren't satisfied that either the re-selection offer or cash settlement offer was fair. However, Fortegra persuasively argued that the policy terms meant the re-selection offer had been fair and our investigator agreed with that interpretation of the policy. But they weren't persuaded the cash settlement was reasonable as they said Fortegra hadn't provided evidence showing how the cost of it replacing or repairing the sofa had been calculated. Our investigator also recommended that Fortegra pay £100 compensation to Mr T to reflect the trouble and upset he'd been caused. Fortegra agreed that this compensation was fair and reasonable.*

*Mr T accepted our investigator's view of his complaint, but Fortegra didn't accept that it had accepted outside the policy terms in relation to the cash settlement it had offered. So, I've been asked to decide this complaint.*

### **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.*

*Where the information I've got is incomplete, unclear or contradictory, as some of it is here I must base my decision on the balance of probabilities. I'd like to thank Mr T and Fortegra for the level of detail contained within their submissions. I've read and considered all the information provided and, I haven't specifically referred to a point that Mr T or Fortegra have made it isn't because I haven't considered it. My decision will focus on what I think are the key issues, which is an approach that reflects the informal nature of this service.*

*I'm conscious that our investigator's view didn't fully take into account the evidence provided by Fortegra in relation to the cost it would incur if it was to replace Mr T's sofas. This is important evidence, which has resulted in me reaching a different conclusion to our investigator in how I think this complaint should be resolved. For this reason, I'm drafting a provision decision. This offers Mr T and Fortegra the opportunity of providing any representations they wish me to consider before a final decision is issued.*

*I'm sorry to hear about the difficulties Mr T experienced here. I'm sure he's suffered upset and inconvenience as a result of what happened. However, the crux of this complaint is whether Fortegra made a mistake, or treated Mr T unfairly, such that it needs to now put things right.*

*It's not in dispute that there was damage to Mr T's sofas due to leather peeling, which Fortegra has now agreed is covered by the terms of its policy. However, there's a*

*disagreement between Mr T and Fortegra about whether the settlement offers proposed are fair.*

*An insurance policy is intended to put a consumer back in the position they were in prior to their loss occurring or as close as is possible. An insurer isn't under an obligation to provide a solution where that would put a customer in a better position than if the loss hadn't occurred. But it shouldn't put them in a worse position either.*

*Mr T's Protection Plan, in common with many insurance policies of this type, allows Fortegra to settle this claim in a number of ways. I say this because the terms and conditions of the policy Mr T holds allow Fortegra to either replace or repair an item or make a monetary payment instead.*

*Section 2 of the policy outlines in clear terms:*

*"The most we will pay under this Protection Plan is the original price you paid for the insured item(s), after any discounts you were given at the time you bought it or £15,000..., whichever is the lowest."*

*Section 3 of the policy goes on to explain:*

*"If a repair cannot be achieved we may choose to replace the damaged part. If this is not possible [we] may provide a replacement product(s) or settle the claim by a cash payment at [our] discretion instead or a repair or replacement (up to the limit of cover). Any cash settlement will be limited to the equivalent cost of repair or replacement by [us]."*

*Here, Mr T is unable to receive identical replacement sofas due to the manufacturer discontinuing these items. Fortegra has stated it's also unable to provide Mr T with a like for like replacement. And it's unable to repair Mr T's sofas because the leather is unavailable as a result of the manufacturer discontinuing the sofas in question. In view of the above difficulties, Fortegra's offered Mr T two options of settling his claim, which it argues is in line with the policy terms. So, I've carefully considered whether these offers are fair and reasonable.*

*Fortegra's first offer in resolving Mr T's claim is to provide him with a re-selection offer for £1,988.40. It's stated this is the value Mr T can use to select new sofas from C. The invoice Mr T has provided from C shows he paid £2,229.90 for his sofas when they were purchased in 2019.*

*From the purchase price, I can see that Fortegra has deducted £241.50. It's explained that this deduction takes into account the cost of previous repairs to the sofa. And once this sum has been deducted, this provides the re-settlement of figure of £1,988.40.*

*Our investigator initially didn't think deducting previous repair costs from the re-selection value was fair because this isn't specifically referred to within the policy terms. But Fortegra has argued that, as Mr T holds an indemnity policy, it's reasonable for it to deduct costs already incurred under the policy, as a result of previous claims, from the re-selection amount. This is because the re-selection value added to the cost of previous repairs takes Mr T up to the limit of cover, which is restricted to what he paid for his sofas when they were purchased. I'm persuaded that's a reasonable argument and that this approach is in keeping with most policies of this type.*

*I acknowledge that Mr T believes he doesn't feel able to purchase new sofas from C for the re-selection value offered. But I'm satisfied that the re-selection offer Fortegra has provided*

*is fair. It's for the value he paid for his sofas less the costs of previous repairs. And it puts him, as close as is possible, to the position he was in prior to the damage to his sofa occurring in July 2023. So, I'm not intending to uphold this part of Mr T's complaint or tell Fortegra to increase this offer.*

*As an alternative resolution to Mr T's claim Fortegra offered to pay him a cash settlement of £994.20 if he wanted to retain his sofas and arrange to repair them himself. For me to decide that this is a fair and reasonable offer I'd have to be persuaded that this figure reflects the cost to Fortegra of it repairing or replacing the damaged sofas.*

*Like our investigator, I acknowledge that the cash settlement is 50% of the value of the re-selection offer made by Fortegra. But the terms and conditions don't outline that a 50% deduction is to be applied to a re-selection offer for the purposes of offering a cash settlement.*

*I understand that Mr T would like his sofas to be repaired and has obtained quotes in relation to the likely cost. He hasn't shared those quotes with our service. But he's told us he's unable to get the leather replaced for the cash settlement Fortegra has offered. So, it's fair that Fortegra provides evidence that its cash settlement offer is reasonable in the overall circumstances.*

*I can see that our investigator has asked Fortegra on several occasions to provide evidence showing how it has calculated the cost of repair or replacement. However, Fortegra has said the reduced cash is given at its discretion.*

*I acknowledge that the policy terms refer to discretion but I'm satisfied that the way in which the policy is drafted means that discretion here applies to Fortegra having the choice of cash settling the claim as an alternative to repairing or replacing an item. I'm persuaded that the policy clearly provides for the cash settlement to be limited to the cost Fortegra would incur if it were to repair or replace the damage item(s). This is in keeping with most insurance policies.*

*Fortegra has stated that the cash settlement is based on "anticipated costs incurred to us the insurer and is not a negotiable figure". But it hasn't provided evidence to show it would have received a 50% discount if it were to repair or replace the damaged sofas. So, I'm not persuaded that halving the re-selection value is fair here.*

*Fortegra hasn't provided any evidence to show the repair costs it would incur if it were to arrange for repair of the sofa by one of its preferred suppliers. And that may be because it doesn't have a preferred supplier that deals with repairs. However, it's provided a further explanation of the discount it would receive in replacing the sofas, which is helpful.*

*Fortegra has stated that, as it no longer works with the sofa manufacturer, it is "unable to provide any further evidence other than a trade agreement, meaning that a 30% discount is received". And it's provided evidence of that agreement to our service.*

*Based on the evidence I've seen, I'm satisfied that it would be fair for Fortegra to offer a cash settlement that took into account a 30% reduction from the re-selection figure. This means the cash settlement should be £1,391.88 in keeping with the 30% discount it would receive if it were to replace the sofas.*

*For the reasons outlined, I'm minded to conclude that, in the event that Mr T wishes to keep his sofas and arrange for the repair himself, it would be fair that Fortegra cash settle this claim by paying him £1,391.88.*

*Our investigator recommended that Fortegra pay Mr T £100 in compensation for the delay he experienced in the progression of his claim as a result of his claim being partially repudiated and the impact this would have had on him. I'm pleased to see that Fortegra has agreed with our investigator's compensation assessment here. It accepts this is fair.*

*Having thought about the impact all this is bound to have had on Mr T, I'm minded to conclude that I'm satisfied that compensation of £100 is an amount that fairly reflects the trouble and upset Mr T would have been caused as a result of what happened. It's in line with awards our service has made in similar circumstances and it's what I would have suggested had no offer been made. So, I'm not intending to require Fortegra to increase the amount recommended by our investigator.*

*In conclusion, I'm minded to uphold this complaint in relation to the cash settlement offered to Mr T. And I'm intending to direct that Fortegra resolves this complaint by paying Mr T either £1,988.40 as a re-selection value or, in the alternative, £1,391.88 as a cash settlement which reflects the 30% discount it would receive from its preferred supplier. Mr T is kindly requested to confirm his preference in response to this provisional decision."*

In my provisional decision I invited both parties to respond with any additional information they wanted me to consider before I made my final decision, which is our service's last word on the matter.

Mr T didn't respond to my provisional decision. When Fortegra responded it stated that it thought the settlement offer it had made to cash settle Mr T's claim was fair. It said a reduction of 50% was appropriate and it referred to it having discretion under the policy.

Fortegra didn't specifically explain why the information it had provided to our service in August 2024, which had referred to a 30% discount being received from its preferred supplier, was incorrect or inapplicable to this case. Instead it stated that, at the time of Mr T's claim, there was an older policy with a trade agreement in place which offered a 50% discount. Fortegra has not provided evidence of that agreement despite having been asked for it on a number of occasions by our investigator and having had the opportunity to provide it in response to this provisional decision.

In response to my provisional decision, Fortegra also explained that the costs of previous repairs should be deducted from the total cost of the damaged sofas in line with the principles of an indemnity policy. This argument had already been raised in submissions to our service and accepted by me in my provisional decision.

Finally, Fortegra also provided its calculation of how it had reached its cash settlement offer of £994.20, which I had already seen when I drafted the provisional decision.

### **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'd like to say at the outset that Fortegra was afforded 14 days within which to present any additional evidence about the discount it would have received from its preferred supplier in particular in response to my provisional decision. So, if it felt there was evidence of this agreement that our service hadn't seen, Fortegra was able to share proof of the agreement with us prior to my final decision being issued. But it hasn't done so. It therefore follows that I can only base my final decision on the available evidence.

As I've already mentioned, our investigator asked Fortegra on several occasions to provide evidence showing how it calculated the cost of repair or replacement. However, Fortegra stated that the reduced cash is given at its discretion.

In my provisional decision, I acknowledged that the policy terms refer to discretion, which is a comment that Fortegra has made again in response to my provisional decision. But I had also explained that I was satisfied that the way in which the policy was drafted meant that discretion here applied to Fortegra having the choice of cash settling the claim as an alternative to repairing or replacing an item.

I stated, in my provisional decision, that I was persuaded the policy clearly provided for the cash settlement to be limited to the cost Fortegra would incur if it were to repair or replace the damage item, which is in keeping with most insurance policies.

Fortegra still hasn't provided evidence to show it would have received a 50% discount if it were to repair or replace the damaged sofas. So, I remain persuaded that halving the re-selection value is unfair here.

In August 2024, Fortegra stated that, as it no longer works with the sofa manufacturer, it is *"unable to provide any further evidence other than a trade agreement, meaning that a 30% discount is received"* if the sofas were replaced. And it provided evidence of that agreement to our service.

This trade agreement shared with us is the only evidence of a discount that I've seen. In view of this, and because of the absence of any other trade agreement, I remain satisfied that it would be fair for Fortegra to offer a cash settlement that takes into account a 30% reduction from the re-selection figure. This means that a fair and reasonable cash settlement would be £1,391.88 in keeping with the 30% discount Fortegra would receive if it were to replace the sofas.

I'm sorry to disappoint Fortegra but it hasn't presented any new arguments or evidence that persuade me that I should depart from my provisional decision. I remain persuaded that the settlement I provisionally directed is fair in the overall circumstances.

### **Putting things right**

For the reasons outlined, I remain persuaded this complaint should be upheld. Fortegra should resolve Mr T's complaint by paying him either £1,988.40 as a re-selection value or, in the alternative, £1,391.88 as a cash settlement, as he prefers. Fortegra should liaise with Mr T to ascertain his preferred settlement as he hasn't confirmed this to our service. Fortegra should also pay Mr T £100 in compensation for the delay he experienced in the progression of his claim as a result of his claim being partially repudiated and the impact this would have had on him. I remain persuaded this is fair in the overall circumstances

### **My final decision**

My final decision is that I uphold this complaint. Fortegra Europe Insurance Company Ltd is required to settle this complaint by paying Mr T either £1,988.40 as a re-selection value or, in the alternative, £1,391.88 as a cash settlement, as he prefers. It should also pay Mr T £100 in compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 10 December 2024.

Julie Mitchell  
**Ombudsman**