

The complaint

Mrs J complains that Fortegra Europe Insurance Company Ltd (FEI) declined a claim on her Guaranteed Asset Protection (GAP) policy.

What happened

Mrs J took out a GAP policy with FEI in January 2023. In November 2024 she was involved in an accident and logged a claim with her motor insurer (MI). The claim was accepted and the car was deemed a total loss by her MI. Mrs J then raised a claim with FEI under the GAP policy. FEI declined the claim as they didn't think Mrs J met the terms and conditions of the policy. Mrs J was unhappy and raised a complaint. FEI didn't uphold the complaint as they didn't think they'd done anything wrong. Still unhappy, Mrs J brought the complaint to this service.

Our investigator upheld the complaint. They didn't think it was fair for FEI to rely on the terms and conditions. FEI appealed. They said the terms were clear and they hadn't been met. As no agreement could be reached, the complaint has been passed to me to make a final 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.

When considering complaints such as this, I need to consider the relevant law, rules and industry guidelines. The relevant rules, set up by the Financial Conduct Authority, say that an insurer must deal with a claim promptly and fairly, and not unreasonably decline it. So, I've thought about whether FEI acted in line with these requirements when it declined Mrs J's claim.

Having done so, and whilst I appreciate it'll come as a disappointment to FEI, I've reached the same outcome as our investigator.

At the outset I acknowledge that I've summarised her complaint in far less detail than Mrs J has, and in my own words. I'm not going to respond to every single point made. No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here. The rules that govern the Financial Ombudsman Service allow me to do this as it's an informal dispute resolution service. If there's something I've not mentioned, it isn't because I've overlooked it. I'm satisfied I don't need to comment on every individual point to be able to reach an outcome in line with my statutory remit.

As a starting point, it's important to understand what the policy terms and conditions say. They set out the following:

“What is covered

Cover

This Policy provides cover up to the Claims Limit on the Policy Schedule where the Insured Vehicle is the subject of a Total Loss from the Comprehensive Motor Insurance within the Territorial Limits.”

The policy defines total loss as:

“The actual or constructive total loss of the Insured Vehicle as a result of accidental or malicious damage, fire, theft or flood damage, as deemed by the Comprehensive Motor Insurance provider on terms that the Insured Vehicle becomes the property of the Comprehensive Motor Insurance provider.”

I think the terms are clear. FEI has said that as Mrs J retained the salvage of her vehicle, it didn't become the property of Mrs J's MI. Strictly speaking, I agree that didn't happen here, because Mrs J retained the salvage. So, on a strict application of the terms, FEI can decline the claim.

However, a strict application of the terms doesn't always produce the fairest outcome in all the circumstances. So, I need to consider whether Mrs J retaining the salvage has made a difference to FEI.

FEI hasn't set out what difference Mrs J retaining the salvage has made and what detriment this would cause to them in paying the claim. By retaining the salvage, Mrs J has reduced the amount her MI has paid her. This would likely have an impact on the amount FEI may need to pay, should a strict application of the terms be applied on the benefit payable.

I believe the policy is designed to cover a gap between either what Mrs J paid for the car or what's left on any finance agreements for the car and what her MI has paid out for the car. I don't find it fair to say that because Mrs J retained the salvage, she shouldn't be entitled to any benefit at all. But at the same time, I don't think it's fair for FEI to pay more than they would have done had Mrs J not retained it.

So, to put things right, I think FEI should settle Mrs J's claim, but instead of basing the settlement on its definition of insured value in the policy, it should use what Mrs J's MI valued her car at prior to making a deduction of the salvage value. I also think FEI should pay interest on the settlement due to Mrs J being without the funds.

Putting things right

To put things right, FEI should do the following:

- Settle the claim based on the valuation placed on Mrs J's car by her MI prior to making a deduction of the salvage value.
- Pay 8% simple interest* from the date of claim decline, to the date of payment.

* If FEI considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mrs J how much it has taken off. It should also give Mrs J a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

For the reasons I've explained above, I uphold this complaint and direct Fortegra Europe Insurance Company Ltd to put things right by doing as I've said above, if they haven't already done so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs J to accept or reject my decision before 3 December 2025.

Anthony Mullins
Ombudsman