

## The complaint

Mr A complains that Fortegra Europe Insurance Company Ltd declined a claim he made on his Guaranteed Asset Protection (GAP) insurance policy.

## What happened

Mr A holds a GAP policy with Fortegra. After his vehicle was involved in an accident and written off by his motor insurer, who I'll call M, he made a claim on his GAP policy.

Fortegra declined Mr A's claim. It said the policy only provided cover when his vehicle was deemed a total loss and becomes the property of his insurer. It said in this case, Mr A (via a relative) decided to retain the salvage of his vehicle. It therefore said there was no cover provided.

Mr A didn't think this was fair and complained. But Fortegra didn't change its stance. So, Mr A brought his complaint to us.

Our Investigator recommended it be upheld. They said they weren't persuaded the term was made clear to Mr A. And in any event they didn't see how the vehicle being kept by Mr A made any difference. They recommended Fortegra reconsider Mr A's claim and pay him £200 compensation.

Mr A agreed to that assessment. Fortegra didn't and asked for an Ombudsman's decision.

I issued a provisional decision which said I was thinking of upholding the complaint. I said:

- *"The terms of this policy are clear. Fortegra say in order for cover to apply Mr A's car must be considered a total loss.*
- *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."*
- *Strictly speaking, that didn't happen here. Mr A's car didn't become his insurer, M's property, because he retained the salvage.*
- *So, on a strict application of the term, Fortegra can decline the claim.*
- *But a strict application of the term doesn't always produce the fairest outcome in all the circumstances. Here, I need to consider whether Mr A keeping the salvage has made any difference to Fortegra.*
- *Fortegra didn't set out what difference it made. Our Investigator didn't think it had made any. But I disagree.*
- *Looking at the terms the policy says the benefit provided will either be to pay a return*

*to invoice gap or pay a financial shortfall gap, whichever is the greater. In both these benefits, the "Insured Value" is a key component of calculating the settlement.*

- The policy defines Insured Value as "The greater of the Glass's Guide Retail Transacted Value at the Date of Loss or the amount You receive under the Comprehensive Motor Insurance in respect of the Insured Vehicle, as a result of a Total Loss."*
- Usually, an insurer such as M will settle a total loss claim based on a number of guides, not just Glass's. That may at times lead to the insurer settling the claim for a higher amount than Glass's. And the higher the insurer settles the claim at, the less Fortegra has to pay on this policy.*
- When an insurer lets its policyholder keep the salvage, the insurer usually deducts an amount off the total loss settlement equal to the value of that salvage (or what it would have received for the salvage as part of its commercial arrangements with its salvage brokers)*
- So, by keeping the salvage, Mr A is decreasing the amount his insurer M pays him, and therefore that will likely have a direct impact on the amount Fortegra may need to pay, if following a strict application of that definition.*
- That's because by deducting the amount it pays, to account for Mr A keeping the salvage, his insurer M's payout will likely be less than the Glass's guide figure.*
- Asking Fortegra to then pay a settlement based on that Glass's guide figure I don't think would produce a fair outcome either. Because that would leave Mr A in a place of betterment – he'd essentially be paying nothing to keep the salvage – which is not something the policy is intended to do.*
- I'm of the opinion the policy is designed to cover a gap between either what Mr A paid for the car or what's left remaining on any finance for the car and what his insurer paid out on the car.*
- I don't find it fair to say that because Mr A kept the salvage he shouldn't be entitled to any benefit at all. But at the same time I don't think it's fair Fortegra pay any more that it would have done had Mr A not kept it.*
- So, to put things right I think Fortegra should settle Mr A's claim, but instead of basing its settlement on its definition of Insured value, it should use what M valued Mr A's car at, before it made the deduction of the salvage value. That, I consider to be the fairest outcome in this case.*
- Our Investigator recommended Fortegra pay £200 compensation to Mr A for the distress and inconvenience caused by the decline of his claim. That's not something I intend to require Fortegra to pay. That's because although I think the claim should be paid on a fair and reasonable basis, I can't fairly say Fortegra acted outside of its terms and conditions."*

Mr A didn't say whether he agreed or not. Fortegra let us know it disagreed. It maintained it was entitled to decline the claim based on the terms of the policy.

### **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 see no reason to depart from the reasoning or outcome set out in my provisional decision above.

I appreciate Fortegra's point that the policy allows it to decline the claim, but I've answered above why I don't think that produces a fair outcome in the circumstances of this complaint.

I've considered what Fortegra has said about a policyholder being in a place of betterment, but I'm not persuaded that's the case here. But more importantly, as set out above, I can't see how the suggested outcome prejudices Fortegra. I'm not requiring it to pay anymore for this claim that it would have done had Mr A not kept his car.

### **Putting things right**

So, having considered everything to put things right Fortegra needs to settle Mr A's claim in line with the remaining terms and conditions of the policy on the basis that the insured value is the amount his insurer M valued his car at prior to the deduction made for the salvage retention. 8% simple interest per annum should be added to this payment. Interest should be calculated from the date Fortegra declined the claim, to the date it makes this payment.

### **My final decision**

For the reasons set out above, my final decision is that I uphold this complaint. I require Fortegra Europe Insurance Company Ltd to take the action set out in the "Putting things right" section above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 14 July 2025.

Joe Thornley  
**Ombudsman**