

The complaint

Miss M complains that Fortegra Europe Insurance Company Ltd (Fortegra) declined a claim made under her furniture warranty.

Where I've referred to Fortegra, this also includes any agents acting on their behalf.

What happened

Miss M purchased a recliner sofa, and alongside this, a five-year furniture warranty underwritten by Fortegra.

Miss M contacted Fortegra to make a claim for an issue with the sofa reclining mechanism. Fortegra declined the claim as they said the policy didn't cover recliner mechanisms.

As Miss M remained unhappy, she approached the Financial Ombudsman Service.

One of our investigators looked into things and upheld the complaint. She said that the policy terms outlined there was cover for recliner mechanisms, so she recommended Fortegra accept the claim. She also recommended Fortegra pay £100 compensation.

Fortegra agreed to pay the recommended compensation. However, they didn't agree to accept the claim as they said the claim decision overall was correct, and for additional reasons to what they'd said before.

As an agreement couldn't be reached the case was passed to me for a final decision.

Fortegra provided different policy terms at a late stage in the process. I was also minded to make a different direction and redress award to our investigator. So, I issued a provisional decision, to let both parties know what I was minded to conclude before reaching my final decision.

What I provisionally decided – and why

In my provisional decision, I said:

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint."

Fortegra has continually changed the reasons for declining Miss M's claim, including providing some reasons to this service which they haven't presented to Miss M. Recently, after the investigator issued her assessment and whilst the case was waiting for review by an ombudsman, Fortegra also advised this service they had provided us with the incorrect policy terms previously and supplied a different version.

Due to the lack of clarity around the policy terms and cover, I've requested documents from both the administrator and Fortegra, as each party directed this service to the other party. But despite this, the information provided is still unclear surrounding which policy Miss M actually has. However, taking into account both sets of policy terms I've been provided, it does appear that Miss M has some cover for recliner mechanisms either way, regardless which terms are actually correct.

So, to take the late addition of different policy terms into account, along with the various reasons Fortegra says the claim isn't covered, I'm issuing a provisional decision to outline my initial thoughts before reaching my final decision. I also intend to make a different direction and redress award in my final decision to that recommended by our investigator.

Miss M initially reported:

"Suddenly unable to recline sofa, think there is a faulty wire as repositioning the wire made the sofa work again for a short while then its [sic] stopped again."

Fortegra declined Miss M's claim at the outset on the basis they said this issue was caused by a recliner fault, which they said wasn't covered by Miss M's policy.

However, the Insurance Product Information Document (IPID) Miss M and Fortegra both initially provided this service outlined Miss M's policy covered:

- "Motion Coverage (from years 3-5)*
- ✓ Mechanism failure (including headrest)*
- ✓ Electrical failure of control box, transformers and motor*
- ✓ Wire breakages and cuts*
- ✓ Breakage, jamming or failure of the handle or switches"*

And the terms say:

"Motion Furniture - when relating to recliner, sofa bed and headrest mechanisms this means breaking or bending of the mechanisms, reclining motor, cabling, transformer, handles or switches."

And:

"SECTION 3 – WHAT IS COVERED

...

e. Years 3-5, from the end date of the 2-year manufacturer or DFS guarantee: motion furniture faults including recliner mechanisms and sofa bed mechanisms."

Therefore, it does seem that Miss M's policy covers, in principle, recliner mechanisms. Consequently, it doesn't appear it was reasonable for Fortegra to simply decline the claim on the basis recliner mechanisms aren't covered at all.

However, when the case came to this service, Fortegra gave different reasons for declining the claim. Rather than the policy not covering recliner mechanisms at all, they instead said:

"According to the terms of her policy, only certain types of accidental damage and staining are covered, along with specific mechanical faults from years 3 to 5 after the manufacturers guarantee expires. However, recliner mechanisms including wiring issues are explicitly excluded from the coverage during the initial years"

Fortegra then said that it had been two years, eight months, and eleven days since the policy started, so they said the above section of cover didn't apply. Fortegra also said that the policy doesn't cover gradual wear and tear either, and that was the cause of the issue. So, rather than the policy not covering recliner faults at all, Fortegra said that this part of the policy hadn't started yet instead. However, I don't agree with Fortegra's position here.

The terms say that the faults with the recliner mechanisms cover applies in years three to five of the five-year policy, and from the end of the manufacturer two-year guarantee. So, it is from when years zero to one, and one to two – the manufacturer guarantee period - ends. By Fortegra's own calculation of how long the cover had been in force, this section of cover would have been operative when the claim was made, and again, that isn't a reason to fairly decline the claim either.

I also don't agree with Fortegra's assertion that the cause of the issue was usage and wear and tear. Fortegra didn't inspect the furniture or identify the fault. Miss M simply said how she thought it might have happened (which included accidentally damaging the mechanism when moving the furniture), and Fortegra has then deemed it wear and tear without any evidence to support that.

When our investigator upheld the complaint, outlining broadly the same as I've mentioned above, Fortegra responded with a different reason why they said the claim shouldn't be covered:

"Regarding the claim in question, after a thorough reinvestigation, we refer to Section 4.21 of our policy, which states that claims will not be covered if the damage results from:

21. structural faults from general, everyday use of the furniture (i.e. not as a result of an accident) with regards to the frame, springs, feet and legs;

Since the damage did not result from a single incident and considering that the furniture is over two years old, it is evident that this falls under the above policy exclusion."

However, as pointed out to Fortegra by our investigator, this exclusion isn't relevant to the claim being made, as this exclusion relates to the frame, springs, feet and legs not recliner mechanisms.

So, considering the terms relied on and referred to by Fortegra above, I don't think they've fairly declined the claim for the various reasons I've outlined.

Fortegra very recently advised this service that they had provided us with the incorrect policy terms previously and provided a new set. The IPID provided with the new set of terms differed to that provided previously by both Fortegra and Miss M (which was the same). Rather than Motion Coverage as I outlined above, it instead said cover included:

“Recliner coverage (if available and can only be purchased with an upholstery plan)

- Mechanism failure (inc. headrest)*
- Electrical failure of control box, transformers and motor*
- Wire breakages and cuts*
- Breakage, jamming or failure of handle or switches”*

And:

“Sofacare Plus if purchased - Recliner and headrest mechanisms top-up - in this Plan this means breaking or bending of the recliner or headrest mechanisms, reclining motor, cabling, transformer, handle or switch.”

And:

“SECTION 3 - WHAT IS COVERED

The cost of repair in the event of a sudden and unintentional incident resulting in a stain, rip, puncture, scuff, scratch, chip or burn, or recliner mechanism fault according to the coverage purchased.”

Given the lack of clarity around which were the correct and relevant terms and documents, I asked Fortegra for a copy of the actual insurance certificate issued, so I could establish exactly what policy cover Miss M had. Disappointingly, Fortegra said they couldn't provide this, and simply referred me to a policy screen shot, which said the cover was:

“Fabric Protection Plus (dry) Dfs”

This differs in name to both of the sets of documents provided by Fortegra (and/or Miss M) previously.

But, as the original documents provided by Fortegra had the same IPID which was provided separately by Miss M, I'm persuaded on balance that this was most likely the policy coverage in place, rather than the new terms supplied. And therefore, as I've outlined above, I don't think Fortegra has fairly declined the claim based on the reasons they gave to Miss M, and/or the additional different reasons they later gave to this service.

Having said that, even if I was persuaded the most recent documents provided by Fortegra were the correct ones, the policy still provides cover for recliner mechanism faults, and within the year the claim was made. So, either way, whichever policy is correct, Miss M has a potential claim for Fortegra to consider whether the policy covers the issue reported.

Our investigator recommended Fortegra “accept” Miss M's claim. However, I'm not minded to follow that same direction in my final decision. I'll explain why.

Whilst Miss M does appear to have cover for recliner mechanisms (regardless which policy terms apply), there are still exclusions, which might still mean the claim isn't covered. But Fortegra hasn't inspected the furniture, and Miss M isn't an expert in furniture fault identification, so quite reasonably isn't able to diagnose what has caused the issue she reported. So, there isn't enough at this stage for me to say the claim is definitely covered even accepting that there is some cover for recliner mechanisms.

Therefore, rather than directing Fortegra to accept the claim, if my final decision remains the same as my provisional decision, I intend to direct Fortegra to inspect the furniture and reconsider the claim in line with the remaining policy terms. If after reconsidering the claim Fortegra then still declines it, Miss M would be free to raise a new complaint about the new claim decision and the reasons/exclusions that Fortegra relied on to do so.

Our investigator also recommended that Fortegra should pay Miss M £100 compensation, which Fortegra agreed to. But I don't think that's enough.

As can be seen from the above, Fortegra has been unclear about policy coverage and continued giving different reasons why the claim shouldn't be covered, none of which I think were reasonable or correct at this stage. And I can understand Miss M's frustration with the service she's received, as her claim has been declined from the outset unfairly and she's had to pursue a complaint all the way through this service, when Fortegra should simply have assessed the furniture from the outset in line with the policy terms and cover.

Unless anything changes as a result of the responses to my provisional decision, I intend to direct Fortegra to pay Miss M £200 compensation (rather than £100) for the distress and inconvenience they've caused her."

So, I was minded to uphold the complaint and to direct Fortegra to inspect Miss M's furniture and reconsider the claim in line with the remaining terms, and to pay Miss M £200 compensation.

The responses to my provisional decision

Miss M responded and said she accepted the provisional decision.

Fortegra responded and said they'd spoken to the administrator. And after doing so, they said they'd attached the correct policy terms and outlined Miss M didn't purchase additional recliner cover.

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.

And I've thought carefully about the provisional decision I reached, and the responses to it. Having done so, my final decision and direction remains the same as my provisional decision.

As I outlined in my provisional decision, Fortegra has given various different reasons for declining the claim, at different points. This includes reasons which they hadn't actually presented to Miss M. I addressed these reasons in my provisional decision and my view on those remains the same. I also outlined that Fortegra had said that the incorrect policy terms had been provided to this service early in the process, and they'd provided an alternative version whilst the case was awaiting final decision. I commented on both of those terms and conditions in my provisional decision.

In response to my provisional decision, Fortegra said that having spoken to the administrator, they'd now attached the correct set of terms and Miss M hadn't purchased the additional recliner cover. However, these are actually the same terms and IPID that Fortegra has already provided this service (late in the process). Therefore, I have already seen these, and commented on them, in my provisional decision. And I'm still not persuaded Fortegra has demonstrated the later set provided are the terms and conditions in force. And nothing provided in response to the provisional decision has changed that. It is also disappointing that Fortegra, the insurer here, still appears not to know which terms were actually in place and is unable to evidence which were with any certainty either.

As the original documents provided by Fortegra had the same IPID which was provided separately by Miss M, I'm persuaded, on balance, that this was most likely the policy coverage in place. And of course, it isn't fair to apply policy terms which are completely different to those given when the policy was sold, if the policyholder has never had sight of these terms, or been made aware the cover is completely different to the documents they were provided. So, I think it's fair and reasonable here to apply the terms originally provided by Fortegra and Miss M to her claim, which includes cover for *Motion coverage (from years 3-5)*. I also outlined in my provisional decision why I thought this part of the cover was operative, based on the terms and when that would've come into force during the policy duration.

I'll also highlight here that the terms Fortegra is now saying applies has July 2019 as the version listed on it. Whereas the documents Miss M and Fortegra initially provided have a policy version date of February 2021. Miss M purchased her furniture in April 2021, so this policy would have been available at that time. This also persuades me, on balance, that this was most likely the policy in force, and consequently that it would be fair and reasonable to consider Miss M's claim against those terms.

I also outlined in my provisional decision that those terms do still have exclusions, which *might* still mean the claim isn't covered in any event. But Fortegra hasn't inspected the furniture and Miss M isn't an expert in furniture fault identification, so quite reasonably isn't able to diagnose what has caused the issue she reported. So, I'll be directing Fortegra to inspect the furniture and reconsider the claim in line with the remaining policy terms. And if after reconsidering the claim Fortegra then still declines it, Miss M would be free to raise a new complaint about the new claim decision and the reasons/exclusions that Fortegra relied on to do so.

I'll also be directing Fortegra to pay a total of £200 compensation for the reasons outlined in my provisional decision, as nothing has been provided in response to my provisional decision which has changed my view on that.

My final decision

It's my final decision that I uphold this complaint and direct Fortegra Europe Insurance Company Ltd to:

- Inspect the furniture and reconsider the claim in line with the remaining policy terms which were provided by Miss M and Fortegra
- Pay Miss M £200 compensation

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 5 September 2025.

Callum Milne
Ombudsman