

The complaint

Mrs P has complained that U K Insurance Limited trading as Direct Line (UKI) hasn't recovered her policy excess from a third-party insurer after her property was damaged by an escape of water from a property above hers.

What happened

The details of this complaint are well known to both parties, so I will not repeat them again in full detail here. But to briefly summarise, Mrs P's property was damaged by an escape of water from her upstairs neighbour's washing machine. Her neighbour provided her with a letter accepting liability for the damage, and the contact details for their home insurance provider. Mrs P provided this information to UKI – her home insurance provider.

Mrs P is unhappy because UKI has been unable to get the third-party insurer to accept liability for the damage. This means the claim has been recorded on her policy, she's had to pay an excess fee and her no claims discount and premiums have been impacted.

One of our investigators looked into Mrs P's complaint, but she didn't think it should be upheld. She said UKI had attempted to get the third-party insurer to accept liability, but it had refused to do so. She said UKI explained it didn't have sufficient evidence to prove negligence on the part of the neighbour and so they wouldn't be able to make a successful recovery, and she agreed UKI's position on this was reasonable.

Mrs P didn't accept our investigator's opinion. So, as no agreement has been reached, the complaint has been passed to me to decide.

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, while I appreciate it will come as a disappointment to Mrs P, I agree with the outcome reached by our investigator. I'll explain why.

Firstly, I'm only able to consider the actions of UKI, not the third-party insurer. But I should point out that insurers are entitled to accept or defend claims on behalf of their policyholders – so it's not unusual that the third-party insurer defended the claim even after Mrs P's neighbour accepted liability.

The third-party insurer has refused to accept liability on the grounds that it says its policyholder wasn't negligent – and UKI agrees that it's unable to evidence negligence on the part of the neighbour. This is because they say the escape of water was an accident and couldn't reasonably have been foreseen or prevented.

UKI says that if the neighbour had been aware the washing machine was leaking and took no action, they might have been able to evidence negligence and so attempt to recover Mrs P's policy excess. But that isn't what happened. It says the neighbour took action promptly when notified about the leak.

I should explain here that it's not for me to decide whether Mrs P's neighbour was legally negligent – only a court can decide that. What I'm considering is whether UKI has acted fairly and reasonably in deciding that it wouldn't be able to provide sufficient evidence of negligence to the third-party insurer.

I do appreciate Mrs P says there were several previous leaks from the neighbour's washing machine. But this alone doesn't persuade me that UKI could have proven the neighbour was negligent. I say this because if there were four separately identifiable leaks, then it follows there must also have been repairs which remedied each leak. This suggests that the neighbour took reasonable action at each stage to prevent further damage – which doesn't support that they were negligent.

From everything I've seen, I think UKI's conclusions are reasonable in the circumstances. I agree that there is insufficient evidence to support that the neighbour could have foreseen or prevented the damage from the leak in question yet failed to do so. And so, I can't see how UKI would be able to sufficiently prove negligence to the third-party insurer in order to recover its costs or Mrs P's excess.

In these circumstances, I think it was fair and reasonable for UKI to abandon attempts at recovery and to keep the claim recorded on Mrs P's policy. I appreciate this means Mrs P has lost her no claims discount and that her renewal premiums have increased. But I think this represents an accurate record of what happened as Mrs P has ultimately made a claim on her policy, for the damage caused by the escape of water, and UKI has been unable to recover its costs.

My final decision

For the reasons I've explained above, I don't uphold Mrs P's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 20 June 2024.

Adam Golding
Ombudsman