DRN-5139141

The complaint

Mr E complains about the service he received from Domestic & General Insurance Plc (D&G) under a protection policy for his washing machine.

References to D&G include their agents who administer policies and carry out services under policies.

What happened

Mr E had a protection policy for his washing machine with D&G. The policy was reinstated in February 2024 following an earlier complaint by Mr E to this Service. The policy covered the machine for accidental damage and breakdown.

Mr E had problems with his washing machine, with the machine being repaired twice after the policy was reinstated (and multiple times during the time of his previous policy). The two most recent repairs involved strengthening bars and shock absorbers in February 2024 and a replacement drum and shock absorbers in March 2024.

However, the same issue arose again a few days after the second repair (Mr E described it as poor draining and a grinding/ticking noise). Mr E thought the policy terms and conditions meant if D&G were unable to repair the machine, they would have to replace it. So, he requested the machine be replaced (April 2024). At the same time, he said the floor under the machine had been damaged by D&G's engineer, due to the regular moving of the machine in and out of the slot it was located. So, Mr E complained to D&G.

D&G didn't uphold the complaint. In their final response they referred to the engineer's visit on 27 March 2024, which repaired the machine, tested it and everything was working ok. Since the engineer damaged the floor, they would then consider the public liability insurance policy in place, which meant any damage would be covered under the repairer's (W's) insurance policy – not D&G.

Unhappy at the service from D&G, Mr E complained to this Service. He said he had a machine that didn't work correctly, needing regular engineer visits to maintain. His floor had been damaged by the continual sequence of engineer visits. Having continual repairs wasn't successfully repairing the machine. And his policy was with D&G, so any damage to the floor was their responsibility, including that by their contractor. So, it wasn't his responsibility to claim from the contractor for the damage.

Our investigator didn't uphold the complaint, concluding D&G acted in line with the policy terms and conditions. They'd carried out two repairs, replacing different parts and the investigator didn't think there was evidence to say the repairs had failed or were inappropriate. The policy terms and conditions gave D&G the option of authorising a repair, arranging a replacement, or paying the cost of a replacement appliance. Where they couldn't repair a machine, they would replace it.

Job records showed the machine was repaired in February 2024 (strengthening bars and shock absorbers) and in March 2024 (drum and shock absorbers). The records showed the

machine working after the repairs. D&G thought the issue might be due to how the machine was loaded and Mr E could arrange for a further repair if he still thought there were issues with the machine. The repair agent (W) could assess whether the machine was repairable. On the issue of damage to the floor, the terms and conditions provided for Mr E to make the machine accessible, and D&G wouldn't be liable for damage to any other property or possessions, so the investigator couldn't hold them responsible for any damage to the floor from it being moved for repairs. Nor was she persuaded the damage to the floor was the responsibility of D&G.

Mr E disagreed with the investigator's view and asked that an ombudsman review the complaint. He said there had been more than two repairs to the machine – not just the two referred to by the investigator – a total of 11 visits, of which 10 were for the same issue. Multiple parts were replaced multiple times, but the issue quickly returned each time. He thought this showed D&G couldn't repair the machine. He also said the floor was damaged by the engineers moving the machine in and out for repairs, the engineers using a protective pad to move the machine in and out on most occasions – but not all, which is when the damage occurred.

In my findings, on the issue of repairs to Mr E's machine, I concluded it was D&G's decision on what to do in the event of a breakdown. In this case, they had repaired the washing machine on multiple occasions. So, it is down to them, based on their engineers' assessment, on what course of action to take. Mr E said the number of repairs and the recurrence of what he believes is the same issue, means the machine can't be repaired properly, so should be replaced.

While I appreciated his view, the decision to replace a machine is D&G's – not Mr E's. As a Service, it isn't our role to assess claims or determine whether a machine should be repaired or replaced. And as the policy provides for unlimited repairs, that is a decision for D&G. In making the decision to repair a machine, I expected D&G to take account of the repair history and whether it would be sensible to keep repairing a machine, rather than replace it.

Taking all these points together, I concluded D&G acted in line with the policy terms and conditions in repairing Mr E's machine, rather than replacing it.

On the issue of the damage to the floor Mr E says was caused by the succession of repairs carried out on the machine, I looked at the policy terms and conditions and concluded that if damage to other property or possessions was caused by D&G (their engineer), then the policy would cover any such damage. Which I thought fair and reasonable.

D&G said any damage to the floor by the engineer would fall under public liability policy of the contractor (W). With the clear implication that any such damage wouldn't be their (D&G's) responsibility. However, I didn't agree. Mr E's policy (contract of insurance) was with D&G – not any contractor D&G used to provide services under the policy. In doing so the engineers (W) were acting as the agents of D&G under the policy. So, I concluded it fair and reasonable D&G would be responsible for any damage caused by their engineer(s).

Having reached this conclusion, I looked at the specific circumstances of the case. Mr E says the engineer(s) caused damage to his flooring. D&G hadn't specifically considered (or accepted) their engineer causing the damage and whether they should be responsible for any such damage. They couldn't use the exclusion for damage to other property or possessions to decline responsibility (liability) for any such damage. Nor, seek to say the damage would be the responsibility of the contractor, not them.

Mr E maintained the damage to his flooring was caused by the engineer(s). However, I hadn't seen any evidence to support this beyond his assertion it was the case. The job

records from the two visits after the policy was reinstated made no mention of damage to the flooring. Nor had I seen any evidence from D&G or the engineer(s) on whether they damaged the flooring, or D&G asking the engineer(s) whether they caused any damage.

Given these factors, on the evidence and information available, I couldn't reasonably conclude the engineer(s) damaged the flooring in the way described by Mr E, without D&G having the opportunity to consider the claim from Mr E and formally responding to it. I concluded D&G should consider this aspect of Mr E's complaint under the terms and conditions of the policy.

Because I reached different conclusions to those of our investigator, I issued a provisional decision to give both parties the opportunity to consider matters further. This set out below.

What I've provisionally decided – and why

My role here is to decide whether D&G have acted fairly towards Mr E.

The two main issues in Mr E's complaint are, firstly, the multiple repairs to his machine, both under his previous policy and (two repairs) under his reinstated policy. He thinks this means the machine cannot be repaired and so, under the terms of the policy, should be replaced. D&G say they've repaired the machine and it was working ok after the repairs. They also say Mr E can arrange for further repairs (which I understand, from correspondence with this Service during the investigation of his complaint, subsequently took place).

The second main issue is that Mr E says the multiple repair visits have damaged the floor, which he says was the result of engineers moving the machine in and out of its slot. He says protective pads were used to move the machine on most occasions – but not all, which is when the damage occurred. D&G say, in their final response, that any damage to the floor caused by their engineer(s) would need to be considered under the repairer's (W's) public liability policy and therefore something Mr E should take up with W.

On the first issue, there were two repairs after Mr E's policy was reinstated (and he refers to multiple repairs under his previous policy). Looking at the policy terms and conditions covering repairs, they state the policy covers 'unlimited repairs' (the welcome letter for the policy). So, there's no numerical limit to how many repairs can be made to the appliance. The same section of the welcome letter refers to 'a replacement if it [the appliance] can't be fixed. The detailed policy terms and conditions, under a heading What this policy covers and sub-heading Breakdown (after the manufacturer's guarantee) state:

> *"If your appliance suffers a mechanical or electrical breakdown after the end of the manufacturer's parts and labour guarantee period, we will (at our option) authorise a repair, arrange a replacement or pay the cost of a replacement appliance."*

What this means is it's D&G's decision on what to do in the event of a breakdown. In this case, they have repaired the washing machine on multiple occasions (twice after the reinstatement of the policy in February 2024). So, it is down to them, based on their engineers' assessment of the breakdown (or fault) on what course of action to take. If they decide a machine either cannot be repaired (for example, if replacement parts aren't available) or would be too costly to repair (beyond economical repair) then they can replace the machine or pay for a replacement. Wording to this effect is also included in the Insurance Product Information Document (IPID).

Mr E says the number of repairs and the recurrence of what he says is the same issue, means the machine can't be repaired properly, so should be replaced (by D&G). While I appreciate why he thinks this, the decision to replace a machine is D&G's – not Mr E's. The

most recent repair in March 2024 records the machine being tested and working ok. That was based on the engineer's assessment that a repair was possible (he ordered parts and then returned to fit them). As a Service, it isn't our role to assess claims or, in this case, determine whether a machine should be repaired or replaced. And as the policy provides for unlimited repairs, then that is a decision for D&G to make. In making the decision to repair a machine, I would expect D&G to take account of the repair history, in terms of whether it would be sensible to repair a machine (or keep repairing it) rather than replace it.

I've also noted D&G say they would arrange a further appointment if Mr E continues to have issues. Which I think is fair.

Taking all these points together, I've concluded D&G acted in line with the policy terms and conditions in repairing Mr E's machine, rather than replacing it.

Turning to the second issue, the damage to the floor Mr E says was caused by the succession of repairs carried out on the machine, I've again looked at what the policy terms and conditions provide for. Under a heading Exclusions, the policy states the following (my emphasis]:

> *"We shall not be liable for:…*
>
> - *Damage to any other property or possessions, **unless it is our fault**;…"*

I think the meaning of the wording is such as to exclude damage, for example, from a breakdown, fault, or leak from (in this case) a washing machine. That is more likely to be something which would fall under a home insurance policy (such as an escape of water). However, I think the reference to 'unless it is our fault' can reasonably be interpreted to mean that if damage to other property or possessions is caused by D&G (their engineer), then the policy would cover any such damage. Which I think is fair and reasonable.

In their final response, D&G say that any damage to the floor by the engineer would fall under public liability policy of the contractor (W). With the clear implication that any such damage wouldn't be their (D&G's) responsibility. However, I don't agree. Mr E's policy (contract of insurance) is with D&G – not any contractor D&G use to provide services under the policy, including attending appointments and carrying out repairs. In doing so the engineers (W) are acting as the agents of D&G under the policy.

So, I think it fair and reasonable that D&G would be responsible for any damage to other property (in this case, Mr E says the damage is to the flooring) caused by their engineer(s). In that situation, I'd expect D&G to then seek to recover any costs incurred in settling a claim for damage from their contractor – it wouldn't be for Mr E to have to make a claim against the contractor.

Having reached this conclusion, I've looked at the specific circumstances of the case. Mr E says the engineer(s) caused damage to his flooring from moving the machine in and out of the slot in which it was situated. D&G have, in their final response, simply referred to the public liability of their contractor – they haven't specifically considered (or accepted) their engineer causing the damage and – as I've noted from the policy term above – whether they should be responsible for any such damage. They cannot use the exclusion for damage to other property or possessions to decline responsibility (liability) for any such damage. Nor, seek to say the damage would be the responsibility of the contractor, not them.

I've also considered the issue of whether it was Mr E's responsibility to make the washing machine accessible for the engineer(s). The policy terms and conditions refer to this under a heading Your responsibilities which state:

> *"You must arrange any work required to make your appliance accessible and compliant with all relevant safety standards and safe to work on (as determined by our engineer). We will not do any work where these standards are not met)."*

Looking at the wording, in the specific circumstances of this case, the question of accessibility seems to be whether it would be Mr E's responsibility to move the washing machine out of its slot to enable the engineer(s) to work on it (and then move it back when the work was completed). Or whether it would be the responsibility of the engineer(s).

I've thought about this carefully, and concluded it isn't unreasonable for Mr E to expect the engineer(s) to move the machine out for access to carry out repairs and back again on completion – he refers to engineers usually using protective pads to do so. And if the engineer(s) didn't think it reasonable to do so, they would have asked Mr E to move the machine. I've not seen any evidence to indicate this was the case.

Mr E maintains the damage to his flooring was caused by the engineer(s). However, I've seen no evidence to support this beyond his assertion that was the case. For example, photographs or video(s) of the damaged floor. The job records from the two visits after the policy was reinstated don't make any mention of damage to the flooring on either occasion. Nor have I seen any evidence from D&G or the engineer(s) on whether they damaged the flooring, or D&G asking the engineer(s) whether they caused any damage.

Given these factors, on the evidence and information available, I can't reasonably conclude the engineer(s) damaged the flooring in the way described by Mr E, without D&G having the opportunity to consider the claim from Mr E and formally responding to it.

But as I've concluded D&G can't fairly say Mr E should make a claim against the contractor (W). then I think to put things right they should consider this aspect of Mr E's complaint (claim) under the terms and conditions of the policy, specifically the exclusion for damage to other property and possessions unless caused by D&G.

My provisional decision

For the reasons set out above, my provisional decision is that I uphold Mr E's complaint in part. I intend to require Domestic & General Insurance Plc to:

- *Assess Mr E's claim for damage to his flooring in line with the policy terms and conditions.*

Mr E responded to make two main points. First, the policy provided for a replacement machine where D&G couldn't repair it. Mr E considered the number of repairs was clear evidence D&G couldn't repair the machine, particularly where repairs replaced the same parts previously replaced (or reinstalled parts previously installed incorrectly). He said the longest time the machine had worked after a repair was two weeks. Mr E also referred to publicly available guidance from this Service about effective and lasting repairs.
Second, on the damage to the floor, Mr E said he was sure he included images of the damage when making his complaint to this Service (he had done to D&G). He would definitely do so once a final decision had been issued.

D&G also responded to the provisional decision, to disagree with the decision. They said they'd established the damage wasn't caused by their action or those of their engineers. The complaint brought to them by Mr E was that he wanted his machine replaced because of the multiple repairs – he didn't ask D&G to assess the alleged damage to his flooring. If he wanted to do so then they would treat it as a separate complaint and investigate accordingly.

After doing so and issuing a final decision, if Mr E wished to pursue the matter further, he could approach this Service.

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.

My role here is to decide whether D&G have acted fairly towards Mr E.

I've considered the points made by Mr E and D&G in response to my provisional decision. On the points raised by Mr E, I've looked at both main points in turn.

On the first point, the number of repairs by D&G meant they couldn't repair the machine, so they should replace it, I've considered this again. As part of considering Mr E's complaint, D&G provided details of the repair history of the machine since the policy was reinstated in February 2024, following an earlier, separate complaint to this Service. The repair history records two repairs, in February 2024 and March 2024, as set out above. At the time of D&G's final response in May 2024, they said they contacted the repair agent and they said they had had no further contact from Mr E since the second repair.

So, I can't conclude this sequence of events indicates the machine couldn't be repaired and should therefore be replaced. And as I said in my provisional decision, it would be for D&G, based on the advice and opinion of their repair agent and engineers, to determine if the machine could no longer be repaired effectively (or would be uneconomic to do so). I appreciate Mr E doesn't agree, but I haven't seen any further evidence to persuade me to change my provisional conclusion.

On the damage to his flooring, he says he is sure he included images of damage to the floor when making his complaint to this Service (and he provided it to D&G). But having reviewed again the evidence and information he supplied to this Service, I cannot see any such evidence (and nor was it included as part of his response to the provisional decision). In any event, it wouldn't change my provisional conclusion that it is for D&G to assess the damage Mr E says was caused to the flooring. That being the case, it would be – as Mr E acknowledges – for him to provide the evidence [again] to D&G following my final decision.

On the points raised by D&G, their final response issued in May 2024 in response to Mr E's complaint includes reference to Mr E's complaint, including the following statement:

- *"You are also not happy that during your washing machine repair appointment your floor was damaged by the engineer."*

So, it isn't the case Mr E hadn't asked D&G to assess the damage he says was caused by an engineer to his floor. The final response then states the following under the heading *My findings*:

- *"Since the engineer damaged the floor, we will then consider a public liability insurance policy in place, this means that on the rare occasion that accidental damage is caused by an engineer this damage is covered under the repairer's insurance policy."*

Looking at this statement, it suggests at least some acceptance of damage to the floor – it doesn't say, as D&G now contend, they'd established the damage wasn't caused by them or their engineers.

The final response also says any damage would need to be considered under the public liability insurance policy of the repairer. That is, it wouldn't be the responsibility of D&G. However, my provisional decision concluded it was unreasonable of D&G to say they weren't responsible for any damage, and that the wording of the exclusion set out in the provisional decision meant D&G couldn't exclude liability for damage they – or their agents, in this case the engineers – had caused. D&G haven't challenged this aspect of the provisional decision.

So, I haven't changed my provisional conclusion that D&G should assess the damage Mr E says was caused to his flooring by the engineer, in line with the policy terms and conditions.

My final decision

For the reasons set out above, my final decision is that I uphold Mr E's complaint in part. I require Domestic & General Insurance Plc to:

- Assess Mr E's claim for damage to his flooring in line with the policy terms and conditions.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 17 December 2024.

Paul King
Ombudsman