

## **The complaint**

Miss D complains that Lloyds Bank General Insurance Limited (“Lloyds”) declined to recover an escape of water claim that originated in her neighbour’s property, under her home buildings insurance policy.

## **What happened**

A bedroom in Miss D’s property was damaged due to a leak that originated in the flat above. When alerted to the issue the neighbour arranged for a plumber to fix the leak. Miss D says she isn’t at fault for the leak and the damage it caused. She says it’s not fair that this is recorded as a claim against her policy and that she has to pay her policy excess. Miss D says Lloyds should pursue its costs from her neighbour.

In its final complaint response Lloyds says the damage caused wasn’t Miss D’s fault. But it says that her neighbour hadn’t acted negligently. The neighbour had arranged for the leak to be fixed when made aware of the issue. It says it can’t pursue the neighbour for recovery of the claim costs as they weren’t at fault either. Lloyds says Miss D’s policy excess is payable as a claim has been registered against her policy.

Miss D didn’t think Lloyds had treated her fairly and referred the matter to our service. Our investigator didn’t uphold her complaint. She says Lloyds’s policy terms allow it to settle any claims and legal disputes on Miss D’s behalf. This means it can decide not to take action to recover its costs if it doesn’t think it will be successful. She says Miss D’s policy requires an excess payment of £500 to be paid in the event of a claim. So, she didn’t think Lloyds had treated her unfairly.

Miss D didn’t accept our investigator’s findings and asked for an ombudsman to consider her complaint.

It 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 I’m not upholding Miss D’s complaint. I’m sorry to disappoint her but I’ll explain why I think my decision is fair.

I’ve read Miss D’s policy terms and conditions to understand what’s expected of Lloyds in these circumstances. I’ve copied the relevant excerpts below:

*“You must let us defend or settle any legal disputes or claims on your behalf. You also must let us take legal action in your name and help us to take legal action if we ask you to.”*

This is a common term used in insurance contracts. It means that it’s for Lloyds to decide how best to settle any claim and whether it should take action to recover its costs. This

doesn't mean it can do anything it wants. It must still treat Miss D fairly. I've focused on whether it did that here.

The claim records show that Lloyds considered the possibility of recovering its costs from Miss D's neighbour. The notes say that it doesn't have an automatic right to seek recovery of its claim cost. Rather it must show that the neighbour is liable for the leak and the subsequent damage it caused. It says that as the leak was unforeseen, and this was a one-off incident, it can't hold the neighbour liable for the claim costs.

I can see from the records that Miss D's neighbour is said to have arranged for the leak to be fixed shortly after the issue was highlighted. Aviva didn't think the neighbour had acted negligently in light of this. The notes say that Miss D could decide to pursue her neighbour for the cost of the damage. But that the principles of making a recovery will be the same.

Having considered this information, I don't think Lloyds treated Miss D unfairly. It accepted her claim and is liable for the costs involved. Attempts to recover its costs are likely to result in further legal expenses. If the chances of a successful recovery are low it makes sense that Lloyds didn't want to pursue this. Based on what I've read there is little chance of the business successfully recovering its claim costs from Miss D's neighbour. So, I don't think Lloyds treated her unfairly.

I can understand Miss D's frustration that the claim will go against her policy when she isn't at fault for the leak or the damage this caused. But how a claim is recorded reflects whether the insurer has incurred costs or not. Clearly Miss D isn't responsible for her neighbour's plumbing. But she has made a claim against her own policy. This has resulted in a cost for Lloyds, which it is unable to recover. I don't think the business acted unfairly in how the claim was recorded.

Similarly, Miss D's policy requires her to pay the first £500 of any claim. This is referred to as the policy excess. It's essentially an uninsured loss, which Miss D is responsible for paying in the event of a claim. Again, I can understand her frustration, but her policy excesses are clearly set out in her policy schedule. In the event of a claim due to 'leaking water' the policy excess is £500. So, although I'm sorry Miss D is liable to pay this amount, Lloyds hasn't treated her unfairly.

I can see that Miss D raised concerns about Lloyds's complaint handling. However, complaint handling in itself isn't a service that's regulated by the Financial Conduct Authority (FCA). So, I can't comment further on that here.

Having considered all of this I don't think Lloyds treated Miss D unfairly when it relied on its policy terms and decided not to attempt recovery of its claim costs. So, I can't reasonably ask it to do anymore.

### **My final decision**

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss D to accept or reject my decision before 30 March 2025.

Mike Waldron  
**Ombudsman**