

## The complaint

Mr and Mrs S complained that their claim for accidental damage was unfairly declined by Domestic & General Insurance Plc (“D&G”) under their accidental damage insurance policy.

## What happened

After Mr and Mrs S’ freezer broke down in December 2019, they purchased a 12-month Repair and Care Plan from one provider, along with a separate accidental damage insurance policy provided by D&G. An engineer attended and completed a repair under the plan.

The freezer failed again in August 2021. So, Mr and Mrs S bought another Repair and Care plan, which also had accidental damage benefits provided by D&G. Another engineer attended. Mr and Mrs S said the engineer advised *“the damage had been caused by a mistake the previous engineer had made [in January 2020]...by over gassing the freezer”*.

Mr and Mrs S were advised the freezer wasn’t repairable, so they have asked D&G to either repair it (if it’s possible) or replace the freezer. Mr and Mrs S said they made a claim for *“accidental damage”* under the policy. They want D&G to refund £186 which they say was the cost of the ineffective first repair and want to be compensated for their distress and inconvenience. Mr and Mrs S also complained about the general poor level of customer service and communication provided by D&G during the claim.

D&G said *“the claim is that [the appointed contractor under the Repair Plan] has caused damage to the appliance during a repair in January 2020, this falls under the repair agencies public liability claims, which your D&G policy does not cover and therefore will not intervene in. This is a matter that you would need raise directly with [the appointed contractor]. The fact that the claim is a public liability claim that lays directly with the repair agents is the core reason this complaint has not been upheld, however in support of this, I have taken in consideration the timeframe of approximately 19 months between this repair occurring in January 2020 and the claim being raised in August 2021 that the engineer caused damage to the appliance during the repair in January 2020. During this 19-month period the appliance was not under any cover and considered to the best of our knowledge to be in working order following the repair that took place in January 2020; there are no records within this 19-month period that indicate any issues with appliance following the repair quality of the repair completed in January 2020”*.

Mr and Mrs S raised two complaints, one in respect to the quality of the initial repair. This was considered by a different ombudsman. This complaint focused on D&G’s actions and in particular, its decision to decline the claim by Mr and Mrs S for accidental damage.

Our investigator decided to uphold the complaint. She thought D&G’s level of service had failed Mr and Mrs S, so awarded £100 in compensation for the distress and inconvenience caused. However, she didn’t think Mr and Mrs S had a valid claim for accidental damage, but she thought the issue was more of poor workmanship – so she didn’t uphold this part of the complaint. Mr and Mrs S disagreed, so the complaint has been referred to an ombudsman.

## **My provisional decision**

I issued a provisional decision on this on 29 June 2022. I said:

*“For clarity, I want to remind both parties that a decision has already been issued by our service regarding the first complaint on the quality of the initial repair, which had nothing to do with D&G. The decision set out that our service can’t consider or investigate the initial repair that was carried out in January 2020 by the engineer under the Repair Plan. That’s because the repair wasn’t a regulated activity at the time, as defined by the DISP rules set out by the Financial Conduct Authority (FCA). Therefore, my decision here only considers Mr and Mrs S’s claim for accidental damage against D&G and the customer service it provided.*

*D&G accepted the investigator’s view, which said its general service fell below the standards it thinks is acceptable and it agreed to pay £100 compensation for distress and inconvenience. Also, Mr and Mrs S didn’t disagree or make any further comments in respect to this part of the investigator’s view. Therefore, I won’t consider this point any further and I support the recommendation from the investigator to uphold this part of the complaint.*

*Mr and Mrs S made a claim for accidental damage under the policy and they’ve made a detailed argument as to why they think the claim should be considered under this policy.*

*I have checked the policy to understand what it allows for accidental damage – it states: “if your product is repaired during the initial repair under the maintenance & support plan, then this policy will provide cover for your repaired product against accidental damage”. The policy then sets out its remedy under the policy if accidental damage is proven. The policy defines accidental damage as “physical damage as a result of a sudden cause that means the product is no longer in good working order”.*

*D&G didn’t consider the claim under accidental damage, although I did note it did raise some concerns about the time-period (18-19 months) that passed between the initial repair and the second engineer visit. So, I have considered whether I think this was fair for D&G not to consider accidental damage.*

*Mr and Mrs S said D&G needed to consider two factors - the sudden cause of the damage and the product no longer been in working order.*

*In respect to sudden cause, Mr and Mrs S said “the action of the engineer in over gassing the unit was a single act and therefore a sudden cause. We accept that at the time on 15 01 2020, nobody was aware of the damage that had been caused, but the undisputable fact which all parties agree upon, is that that single act, the sudden cause of over gassing the unit did result in damage.”*

*In respect to the product no longer being in working order, Mr and Mrs S said “we do recall that the second engineer commented that the freezer was not freezing to the level it should and this was because of the over gassing and the failure to auto defrost. He verbally indicated that if nothing was done, i.e., the unit was not replaced, the temperature would continue to diminish, and it would not be safe to store food within. Yes, it is accepted that the unit operated in some fashion until 08 08 21, but the build-up of ice and the resulting failure to auto defrost resulted in the unit not working as efficiently as it should. The freezer was no longer in the same working order as a properly functioning unit. The unit had been damaged. It was only a question of time before total failure would have occurred because of the over gassing. It should also be remembered that in 08 08 2020 when the damage was first noticed, we had no inkling or idea that the over freezing was somehow related to the repair undertaken on 15 01 2020. We simply thought that the auto defrost function had failed and need to be repaired and that is why we took out a subsequent repair plan. Little did we know*

*at that time! In light of the above, we maintain that the damage correctly falls for consideration under the accidental damage definition as detailed in the policy”.*

*Firstly, I think Mr and Mrs S satisfied part of the requirement on the policy – they had an initial repair carried out on the Repair and Care Plan. So, it follows the D&G policy “will provide cover for your repaired product against accidental damage”.*

*I then find Mr and Mrs S’ argument persuasive – D&G’s own notes show that the second engineer confirmed that the over gassing of the freezer had caused it to deteriorate to a point it was unrepairable. I think the gassing of the freezer was a single and sudden act and did lead to the physical damage of the freezer. This has been confirmed by an expert engineer. I don’t think the engineer meant to break the freezer, so I think his actions were accidental.*

*I don’t think the decline of the freezer over a long period is relevant, as the definition only refers to the cause of the damage being sudden. I appreciate D&G said it hadn’t seen any records of the freezer for 19 months. However, the policy doesn’t say Mr and Mrs S need to provide records. Also, D&G hasn’t provided any expert reports to what has already been provided by the engineer to provide an alternate explanation of what had happened. Therefore, I don’t think D&G has been fair in not considering the claim under accidental damage. I think Mr and Mrs S has shown that it has met the conditions of the policy and the freezer was damaged accidentally. The policy doesn’t state who or how the accidental damage must occur. Therefore, I intend to uphold this complaint. I intend for D&G to consider the claim under accidental damage.*

*Mr and Mrs S have already bought a replacement freezer as theirs didn’t work. So, I intend that D&G pay the claim, unless the remaining policy terms and conditions apply any other exclusions. I intend for D&G to add on 8% simple interest to the settlement (from the date of the claim to the date settlement is paid) as Mr and Mrs S have been without the money for this period.*

*The D&G policy is an insurance policy for accidental damage only, it’s only in place to indemnify Mr and Mrs S for the damage. If Mr and Mrs S have since been successful in a claim against the organisation responsible for the initial repair then this would invalidate my decision – as Mr and Mrs S aren’t able to benefit from this situation. The D&G policy should only be used to put Mr and Mrs S back in the position they would’ve been in if the repair had been carried out properly”.*

## **Responses to my provisional decision**

*Mr and Mrs S accepted my provisional decision. They added “in respect of claim settlement, the policy calls for repair or replacement, or if replacement is not possible, vouchers from a retailer chosen by the insurers will be issued in lieu. I trust you agree that in this instance, due to the procrastination of D&G none of these settlement options are viable. We had to replace the freezer without delay, and we have no use for vouchers from any retailer chosen by these insurers. In light of this we would ask the Ombudsman to consider our plight and the question of quantum and payment in his final decision. We consider that in these circumstances, a single cash payment to reflect the settlement terms of the policy is the only pragmatic option”.*

*D&G didn’t agree with my provisional decision. It said “the appliance worked for 19 months after the initial repair which indicates to me a successful repair. We would consider accidental damage to be something that happens to the appliance ‘in the moment’ as a result of a sudden action like, dropping something on the glass shelf or breaking off the freezer door flap. This was an issue with a compressor which is not a visible or accessible*

*part of the appliance that the consumer would be able to tamper with or touch. Thus, it can't be damaged by accident as defined in the terms".*

### **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.

D&G has explained in further detail what it thinks accidental damage is and has said it doesn't think the damage was accidentally caused by the first engineer. However, as I explained in my decision, I think the damage falls within the definition of accidental damage set out in the policy. If D&G wanted to narrow this definition further, it should've done this in the terms and conditions. I think the testimony from the second engineer indicates the damage wasn't caused by Mr and Mrs S but by the first engineer. Given neither party has provided any new information, I see no reason to change my provisional decision.

Mr and Mrs S have indicated they would like the settlement in cash – this was my intention as they have already had the expense of buying a new freezer. For clarity I have made this clear in my final decision.

### **My final decision**

My final decision is I uphold this complaint, I require Domestic & General Insurance Plc to:

- Pay the claim in cash, unless the remaining policy terms and conditions apply any other exclusions
- Add on 8% simple interest\* to the settlement (from the date of the claim to the date settlement is paid)
- Pay £100\*\* compensation – for distress and inconvenience.

\*HM Revenue and Customs requires Domestic & General Insurance Plc to take off tax from this interest. D&G must give a certificate showing how much tax it's taken off it if Mr and Mrs S asks for one.

\*\*Domestic & General Insurance Plc must pay the compensation within 28 days of the date on which we tell it that Mr and Mrs S accepts my final decision. If it pays later than this it must also pay interest on the compensation from the date of my final decision to the date of payment at 8% a year simple.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S and Mr S to accept or reject my decision before 1 August 2022.

Pete Averill  
**Ombudsman**