

## **The complaint**

Mr R complains through his representative, L, that Tesco Underwriting Limited has failed to provide an adequate settlement in respect of his claim. This was for accidental damage to an underground pipe connected to his septic tank.

## **What happened**

Mr R reported a claim to Tesco in October 2020. He had noticed that his toilets and sinks at his property were draining slowly. Contractors were appointed by L to investigate the cause and it was discovered that a pipe leading from his septic tank to a drainage field on nearby land (not part of Mr R's property) had likely been crushed causing a blockage and not allowing the tank to drain properly. It was thought that the farmer who owned the land had driven his tractor over the pipe.

Tesco initially declined the claim as it said that the pipe was not part of the insured property, being on someone else's land. Mr R made a complaint to the Financial Ombudsman Service. As a result, my Ombudsman colleague found that the service pipe was part of the septic tank system (which is on Mr R's land) and thus fell to be considered by Tesco under the terms and conditions of the policy.

Tesco made an offer of settlement. It said its drainage specialists had been unable to investigate this further because of policy liability considerations, but following the Ombudsman's decision, investigations were now necessary to find out why the pipework had failed. This would require appropriate excavations on the neighbour's land which would require the express permission, and consent of the landowner. Tesco said that this process may, however, become complicated and time consuming, and potentially require legal intervention.

Tesco said that as the septic tank is still functioning, the policy will only consider any damage found to have been caused accidentally to the pipework located beneath the neighbour's field, and the reasonable repair costs. It assessed this to be £7,858.94 (excluding VAT). This allowed for the cost of installing a new drainage field on Mr R's land.

L produced the results of percolation tests carried out by its contractor. This established that it wasn't viable to install a new drainage field on Mr R's land. The contractor proposed that a new sewage treatment plant be installed on Mr R's land with discharge to a nearby watercourse. The cost would be £19,720.53 plus VAT. Tesco rejected this as it would amount to considerable betterment. It didn't oppose the findings of the percolation tests, as its expert considered it was likely that the drainage field was sited on the adjoining land because it wasn't possible to install one on Mr R's land.

After further review by the Financial Ombudsman Service, our Investigator said that Tesco's proposed repair wouldn't be a lasting and effective repair, so it should pay a cash settlement equivalent to Mr R's costs for the installation of a new drainage system.

Tesco said that the cause of the damage to the pipe in the neighbouring field had never been established and that the settlement was offered without admission of policy liability. It

further said that the proposals put forward by L didn't assist with establishing that accidental damage had occurred.

The matter has been referred to me for further consideration.

### **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.

In reviewing this matter, I have had regard to the decision made by my Ombudsman colleague when considering Tesco's initial decline of the claim. I bear in mind that both parties are bound by that decision. I think it has been established that the pipe was blocked and was likely to have been crushed, which amounts in my view to accidental damage. Whilst I recognise that the *exact* cause of that hasn't been established, I don't think that's necessary. The Ombudsman required Tesco to consider Mr R's claim in line with the *other* policy terms and conditions i.e., the accidental damage claim was to be considered subject to what other policy terms and conditions might say.

So, it's not open to Tesco in my view to say it doesn't admit liability. The issue that falls to be resolved is the amount to be paid in settlement of the claim.

Tesco's offer allows for the installation of a new drainage field on Mr R's land. However, I think it's already been established, following the results of the percolation tests, that that is not possible. And I note that Tesco has accepted the results of the percolation test.

The alternative, without installing a new sewage water treatment plant, would be to repair the damaged pipe and allow for the sewage to flow as before into the drainage field on the neighbouring land. However, I don't think that's practical because:

- As Tesco has pointed out, it would require express consent of the adjoining landowner which could become complex and involve legal costs.
- If the damage was caused by the farmer's use of the land there'd be no guarantee that repairing the pipe would resolve the claim.
- I've seen no evidence the existing drainage field is fit for purpose, within current regulations (and carrying out tests again would involve the consent of the landowner).
- Tesco has recognised these difficulties by its proposal to have a new drainage field installed on Mr R's land. But the tests show that this is not a workable option.
- In its claims notes Tesco's contractors indicate that because of the change in the regulations since the septic tank was installed that given that it would be reasonable to expect Mr R to be able carry out the work on his own land, the installation of the sewage treatment plant would be the only option.

So, whilst I recognise that Tesco regards the settlement proposed as betterment, I think, in order to carry out an effective and lasting repair in line with current regulations, it should pay the costs put forward by L for the repair as a cash settlement, together with interest\* (if paid).

### **Putting things right**

- Tesco should pay to Mr R a cash settlement of the full costs of having the repairs carried out to his septic tank system including the installation of a new sewage treatment plant. If

paid, Mr R should produce the necessary invoice(s).

- It should pay VAT on production of the invoice(s).
- If paid, it should further add simple interest\* to the settlement at 8% per year from the date Mr R paid any such invoices until reimbursement.

\*HM Revenue & Customs may require Tesco to deduct tax from any award of interest. It must give Mr R a certificate showing how much tax has been taken off if he asks for one.

### **My final decision**

I uphold the complaint and require Tesco Underwriting Limited to provide the remedy set out under “Putting things right” above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr R to accept or reject my decision before 13 April 2023.

Ray Lawley  
**Ombudsman**