

The complaint

Mr and Mrs K are complaining that they have had to pay for repairs to pipework which they wouldn't have had to had Hiscox Insurance Company Limited installed a "LeakBot" as agreed in a previous claim they made on their commercial property insurance policy.

Mr K has largely represented both himself and Mrs K throughout this complaint.

What happened

The facts of this complaint are well known to all parties, so I won't set them out in detail again. But, in short, Mr and Mrs K were notified of a leak in their shower room which was causing damage. So they claimed for the damage on their commercial property insurance policy. It was later discovered the damage was to the pipework which needed replacing and Hiscox said this wasn't covered under the terms of the policy. Hiscox also set out that this work needed to be completed before the consequential damage could be rectified.

Mr K arranged to have the pipework replaced, but he complained to Hiscox that it had agreed to install a "LeakBot" in a previous claim they'd made the year before. And they said the terms and conditions of the LeakBot contract specified that the LeakBot provider would have paid for the work he'd paid for. So he wanted Hiscox to refund what he paid and also to remove the claim from his record.

Hiscox didn't agree with Mr K. It said there wasn't anything to show it had agreed to install the LeakBot, so it didn't agree it had done anything wrong. But it also set out that the LeakBot contract covers scenarios where the leak can be identified in one visit. It set out that it didn't cover trace and access and it highlighted numerous visits had been required to rectify the issue. So it didn't think the LeakBot contract would have covered Mr and Mrs K's losses even if one had been installed.

Our investigator upheld this complaint. He said this Service had already considered in a different complaint whether Hiscox should have installed the LeakBot and he said an ombudsman had decided it should have done. He was also satisfied that the LeakBot contract would have covered Mr and Mrs K's losses. So he thought Hiscox should refund what Mr and Mrs K had paid, plus 8% simple interest. He also thought it should pay them £200 in compensation for the distress and inconvenience this matter had caused them. But he thought that Mr and Mrs K would have always had to make a claim on the insurance policy, so he didn't think Hiscox needed to remove the claim from their record.

Hiscox didn't agree with the investigator and asked for an ombudsman to review the complaint. Mr and Mrs K also set out that they still think the claim should be removed from their record.

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.

I've decided to uphold this complaint and I'll now explain why.

This Service has already considered Mr and Mrs K's complaint that Hiscox didn't install the LeakBot. And an ombudsman has decided that it should have done. So the issue for me to decide now is whether Mr and Mrs K have since lost out because the LeakBot wasn't installed.

I've looked at the terms of the LeakBot contract and they specify:

"10. Creating Access and Reinstatement – Upon arrival at your property, the engineer will attempt to locate the leak relating to your home's cold water system. If direct access is not available, for instance if there are floor tiles or floorboards in the way, the engineer will need to create access. If you want our engineer to do this, you will be asked to confirm it in writing while the engineer is at your property. We will endeavour to provide the Service without causing unnecessary damage to your property: [LeakBot provider] will not be liable for any damage which may be caused to the property, its contents, fixtures, fittings, floorings or sanitary ware. We will fill any holes and leave the surface level but will not replace the original surface or construction. Any redecoration or repair of damage that may be needed following our work is your responsibility. If you do not want our engineer to create access, they will be unable to progress your job until you have arranged for access to be made.

11. Once the engineer has detected the leak and carried out the repair you will then have two options if reinstatement works are required:

- *Make a claim on your home insurance policy if your policy covers reinstatement work and proceed with making a claim should this be covered, or*
- *Arrange and pay for the reinstatement work yourself."*

As a starting point it's clear that the LeakBot contract doesn't cover trace and access or any consequential damage arising from the leak or any damage caused by accessing the leak. This means that Mr and Mrs K were always going to have to make a claim on their commercial insurance policy to pay to access the damaged pipework and then to rectify the consequential damage. So, it follows, that I can't reasonably require Hiscox to remove this claim from their records.

However, I do note Hiscox's comments that the LeakBot contract wasn't designed to cover this scenario. It says the contract allows for one free engineer visit on a "find and fix" service, which it thinks covers where the engineer can easily find, access and fix the leak all in one visit, with no further remedial work or visits being required. It maintains that, given the extent of the work required and the number of visits required, it wouldn't have been possible to resolve this on one visit. I also note it's highlighted that the process sets out that, where trace and access is required, the LeakBot engineer will inform Hiscox that trace and access is required.

I recognise and have considered Hiscox's comments, but I'm particularly minded by what the terms of the LeakBot contract set out. I haven't seen anywhere in the contract that sets out Mr and Mrs K were only entitled to one visit. It sets out that they can only make one claim in a 12 months period, but this doesn't set out that this is limited to one individual engineer visit.

As I said above, the contract doesn't cover the cost of accessing the cause of the leak. So, where the leak is not immediately accessible, Mr and Mrs K have to pay for this first. And it seems to me that they have three options in this event:

1. Pay the LeakBot engineer privately to create access;

2. Arrange for their own private contractor to create access; or
3. Claim on their Hiscox commercial insurance policy.

I think the term Hiscox has referred to where trace and access is required refers to the scenario where the consumer doesn't want to pay for the cost of trace and access themselves and chooses option (3). But crucially they don't *have* to use Hiscox.

Had Hiscox installed the LeakBot as part of the previous claim, Mr and Mrs K could have made use of the LeakBot contract. Had they been able to do so, they would have had to arrange trace and access and they would have required Hiscox to do this under the terms of their insurance policy. But, I think they would have then been covered for the repair work that was required to the pipes that Mr and Mrs K had to pay to fix themselves. And Hiscox hasn't given me anything to make me think the repairs wouldn't have been covered. So, it follows that I think Hiscox should refund the amount Mr and Mrs K paid to fix the leak.

I also think Mr and Mrs K have suffered a lot of distress and inconvenience in this matter. They have had to source their own contractor to carry out the repairs, pay for the cost themselves and had to spend a lot of time and effort to resolve this complaint. So I think it should pay Mr and Mrs K £200 in compensation for the distress and inconvenience they've suffered.

My final decision

For the reasons I've set out above, it's my final decision that I uphold this complaint and I require Hiscox Insurance Company Limited to:

1. Refund amount Mr and Mrs K paid to fix the leak. It should add 8% simple interest per year from when Mr and Mrs K paid it until they get it back. If Hiscox thinks that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr and Mrs K how much it's taken off. It should also give them a tax deduction certificate if they ask for one, so they can reclaim the tax if appropriate.
2. Pay Mr and Mrs K £200 in compensation for the distress and inconvenience this matter has caused them.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs K to accept or reject my decision before 23 December 2023.

Guy Mitchell

Ombudsman