

The complaint

Mrs M complains that Domestic & General Insurance Plc (D&G) refused to accept liability for the loss of her games console while in transit after she sent it for repair under her insurance policy.

What happened

Mrs M has insurance specifically for her games console, D&G is the insurer. She made a claim on the policy as the games console had been accidentally damaged. D&G accepted the claim.

D&G contacted its repair agent (a business which I'll refer to as R) who referred the repair to another business (which I'll refer to as N). D&G says N contacted Mrs M and provided her with instructions on how to pack the games console and N arranged collection by a business I'll refer to as U.

U collected the package from Mrs M. When she contacted D&G for an update R told D&G the games console arrived at N the day after U collected it from Mrs M. However, N had rejected the delivery as it said the games console hadn't been packaged properly. The games console was due to be returned to Mrs M but, before it could be, the games console was lost and U threw away the empty package.

D&G's final response letter to Mrs M said she hadn't packaged the games console in accordance with N's packaging guidelines. N's warranty and repair policies said it didn't accept liability for products not packed in accordance with those guidelines. D&G's policy didn't cover any third-party claims. D&G said that meant it wasn't responsible for the lost games console.

Mrs M complained to us. She said she was told to pack the games console into packaging with her name and address inside. She'd put the item in a bubble wrap brown envelope with tape on the folding part and the package was collected by U. Mrs M said the games console was insured by D&G and she wants a replacement.

During our investigation D&G told our Investigator it hadn't instructed U so U wasn't its agent and D&G wasn't responsible for U losing the games console. It also said its policy didn't cover loss.

Our Investigator considered that Mrs M had claimed on her insurance policy with D&G to cover the accidental damage to the games console, which D&G had accepted. Any other party involved in the claim was doing so on D&G's behalf as its agent, which included N and U. Although Mrs M sent the games console in a bubble wrapped envelope, rather than a box as required by N's package guidelines, our Investigator thought the loss didn't happen only because of how Mrs M had packed the item. She recommended that D&G replace the lost games console and pay Mrs M £100 compensation for the distress and inconvenience caused by its handling of the claim.

D&G disagrees and wants an Ombudsman's decision. In summary it said:

- It had no contact with N and U so they were not acting on its behalf. There were numerous cases where we'd agreed that independent couriers who hadn't been sent by D&G were responsible for the collection and delivery of packages, not D&G.
- The likelihood of the games console being lost was much greater because it was poorly packaged. N's package guidelines recommended packaging consoles in a box, not an envelope, as it was safer in a box.

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 need to decide whether D&G fairly and reasonably refused to accept liability for the loss of Mrs M's games console during her claim on its policy.

There are some circumstances where we might say that a courier for an item under a claim wasn't acting as an insurer's agent. But I decide each complaint on its individual circumstances.

In this case, in the course of an accepted claim, D&G referred the repair of the games console to its acknowledged agent R. R, in its capacity as D&G's agent, outsourced the repair to N who used U as its courier. I think in these particular circumstances I can reasonably consider that liability for U's actions in relation to this claim does trace back to D&G. That's regardless of whether D&G had direct contact with N or U or whether N would provide D&G with the package guidelines email it says it sent to Mrs M.

I accept Mrs M didn't package the games console in line with N's packaging guidelines, albeit I've not seen any evidence that Mrs M was sent those guidelines. But I don't agree with D&G that the likelihood of the games console being lost was much greater as it was packed in an envelope rather than a box. For the games console not to be in the envelope it appears that someone at N or U opened and didn't properly reseal the envelope while it was in their care. I think it's just as likely the loss could have happened if someone had opened and not properly resealed a box.

I also don't agree with D&G's suggestion that the games console was poorly packaged by Mrs M. D&G's policy terms say:

'Offsite repairs

All offsite repairs will be carried out away from your home. We will arrange for collection or send you packaging, a returns form and a prepaid protective envelope for you to send us your product...'

I think it's highly likely that the 'protective envelope' D&G supplies for offsite repair is, or is similar to, the bubble wrap brown envelope Mrs M used for her games console. So if a protective envelope is good enough packaging for an item when D&G directly arranges an item's return I don't think D&G can reasonably say that Mrs M using a protective envelope means the games console was poorly packaged.

As D&G chose to refer the repair for the games console under this claim to R, who outsourced that job to N, D&G have focused on N's packaging guidelines requirements. But given that Mrs M met the package requirements under D&G's policy, against which she

made the claim, it's not fair for D&G to use Mrs M not meeting the strict requirements of N's packaging guidelines as a reason not to accept liability for the loss.

D&G has referred to an exclusion in its policy as another reason for not accepting responsibility for the lost games console:

'The following are excluded from the policy, and we will not pay for claims which relate to or arise from:

Third party issues

- *Damage during delivery, installation or transportation of the product by a third party not under our instruction'.*

But in this case there was no damage during delivery by a third party not under D&G's instruction. The games console was lost by U, not damaged. I've explained above why I think D&G was responsible for U's actions relating to this claim.

D&G has also referred to the following wording in the Insurance Product Information Document:

'What is not insured?

loss, cosmetic damage, neglect or deliberate damage'

But D&G hasn't referred to any clause of the policy to support that a loss of an insured item in these circumstances is excluded. It isn't clear to me that such a loss is excluded by the policy wording. I don't think D&G has provided enough evidence that the policy doesn't cover loss in these circumstances.

Overall I think the fair and reasonable outcome of this complaint is for D&G to provide Mrs M with a replacement games console of the type that was lost.

I think D&G has caused Mrs M inconvenience and upset due to how its handled this claim. D&G hasn't commented on our Investigator's recommendation that it pay Mrs M £100 compensation for the distress and inconvenience it caused. I'm satisfied £100 compensation is a reasonable amount.

My final decision

I uphold this complaint and require Domestic & General Insurance Plc to:

- Provide Mrs M with a replacement games console of the type that was lost, and
- Pay Mrs M £100 compensation for the distress and inconvenience it caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 29 April 2025.

Nicola Sisk
Ombudsman