

The complaint

Mrs D complains on behalf of limited company “N” about The New India Assurance Company Limited’s decision to decline a claim for contents following an escape of water at N’s commercial premises.

What happened

Following a leak at N’s premises in June 2020, Mrs D made a claim to New India for the damage caused. Loss adjusters were brought in to assess the damage and validate the claim. A settlement of £5,581.43 was offered for damaged contents in September 2020.

In 2021, Mrs D submitted a list of final contents, requesting that they be added to the claim. New India declined the claim for the additional contents, saying a condition of the policy, requiring immediate action to be taken to minimise loss or damage, hadn’t been complied with. It says the contents were left in damp conditions and this caused them to deteriorate.

Mrs D disagreed with New India’s decision and complained. New India maintained its position, saying the insured hadn’t taken reasonable steps to comply with its contractual obligations in respect of mitigating and minimising the loss. Mrs D remained unhappy with New India’s response, so she referred the complaint to this service.

Our investigator considered the complaint and recommended it be upheld. He said that from the information available to him, he was of the view that Mrs D had acted as quickly as she could to remove items from the property to prevent further damage occurring. And for the inconvenience caused by the poor service, including a failure to clearly and properly respond to Mrs D’s complaint, our investigator also recommended New India pay £150 compensation.

New India disagreed with our investigator’s assessment, saying the additional contents were only identified 8 months after the loss and weren’t inspected by the loss adjuster. It also didn’t agree with the level of compensation recommended, and said although there was some confusion, a final response letter was issued in relation to the complaint.

Because New India didn’t agree with our investigator’s recommendation, the complaint has now come 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 upholding the complaint in line with our investigator’s recommendations. I’ll explain why.

I’ve considered carefully New India’s position and the policy condition it’s referred to when declining the claim for the additional contents. This says:

“Immediate action must be taken to minimise loss and avoid interruption or interference with the Business and to prevent further loss damage or bodily injury”.

I can appreciate why New India has based its declinature of the claim for additional contents on this general policy condition. However, looking at the timeline of events and the numerous emails between the parties, I can see in several emails during November 2020 to New India in which it was specifically asked to arrange storage for items, or stipulate where in the policy this was excluded from cover. I don't think New India was as clear as it could've been when responding to those emails.

I've also seen a report from December 2020 which states that the insured *“did provide estimates for the storage of the contents which is required in order for them to be able to strip out the property and complete the repairs. Insurers have declined cover for this”.*

Taking into account everything I've seen, I consider that the delay in agreeing storage arrangements for the earlier claimed items caused issues with access and this contributed directly to the delay in identifying further items damaged due to the leak. A further email to New India from the claims handlers regarding the additional items says *“they were all damaged by the water during the initial incident... Not as a result of moisture but direct water contact.”* And I've not seen enough evidence to persuade me that this isn't the case or that the contents were left in damp conditions which led to their deterioration. Everything I've seen suggests the additional items were affected by the initial escape of water, such as the electrical items stored beneath the stage or in the basement – many of which were described as being full of water and beyond economical repair.

So I don't agree, from reading the above-mentioned emails and the loss adjuster's reports, that Mrs D was solely responsible for delaying the storage of contents or that she failed to identify and remove the further items in a timely manner. As the reports state: *“The property has a large amount of contents that require to be put into safe storage to facilitate the proposed building repairs”.* This also indicates to me that New India would've been aware that the need for storage of the items was crucial to prevent further damage and enable repairs to go ahead.

A separate complaint about the issue of storage was considered by this service and our investigator recommended New India pay £350 compensation for failing to progress matters in light of the fact that memorabilia had to be removed into storage before proper access could be gained and repairs could be progressed. Our investigator also said in that complaint that although storage wasn't covered by the policy, he didn't feel New India's position had been helpful – and as New India was responsible for carrying out a lasting and effective repair, it should've realised the importance of memorabilia needing to go into storage before this could be done. And it therefore would've been fair and reasonable for it to offer to help with this to progress matters, and in order to carry out a lasting and effective repair.

In light of the above, I'm satisfied in this case that although it was the insured's responsibility to mitigate its losses, New India could've adopted a more helpful approach to enable it to place items in storage more quickly. And that the access issues caused by this delay, in turn caused a delay in identifying additional items that needed to be removed. I'm also not satisfied that N failed to mitigate its losses because I'm not persuaded that items were left to deteriorate in damp conditions, when it's likely those items were damaged by the initial leak.

A new final response letter wasn't issued in a clear and timely manner by New India, regarding N's complaint about the additional contents claim. Mrs D brought a new complaint about this matter to this service in October 2021 but the final response about those issues is dated May 2022, some 7 months later. And although I cannot award compensation for

distress to a company, as it isn't a natural person that can experience distress, I am able to award compensation for inconvenience caused to N, as I consider the time spent by Mrs D in pursuing the issue of storage costs and the claim for the additional contents would've diverted her attention away from normal day to day activities including business activities.

So, taking everything into account, I agree with our investigator and I'll now require New India to pay the recommended compensation and deal with the claim for the additional contents, in line with the remaining policy terms. Given the issue of underinsurance, Mrs D should be aware that any settlement for the additional contents may also be subject to an average (ie. a reduction due to the underinsurance).

Putting things right

The New India Assurance Company Limited must now:

- Deal with the claim for additional contents raised in 2021, in line with the remaining policy terms and conditions.
- Pay £150 to N for the inconvenience caused.

My final decision

My final decision is that I uphold this complaint and I direct The New India Assurance Company Limited to put things right as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask N to accept or reject my decision before 19 February 2023.

Ifrah Malik
Ombudsman