

The complaint

E, a firm of loss assessors, complains on behalf of Mr R and Mrs R, directors of P, a company, that U K Insurance Limited trading as NIG Insurance (UKI) has declined a claim for water damage to its let property as it says it had been unoccupied for the preceding 35 days.

What happened

The property, a flat, was bought in P's name at auction on 25 July 2021. The property was insured under a block policy. Mr R employed a decorator who he said attended the property on a frequent basis to carry out redecoration and laying of flooring, with a view to letting it out. On 9 September Mr R attended the property and discovered the water had been turned off. Several taps were turned on and off but it transpired that the water for the whole block had been turned off. On 11 September Mr R was advised by the Council that there had been a leak in the flat and the fire brigade had had to attend to turn off the water.

Some damage was done to the flat. Mr R made a claim to UKI who appointed a loss adjuster to attend. They were advised that the property had been attended on a near daily basis by the decorator and Mr R had also frequently attended. An unmade bed was found, presumed for use by the decorator and the property was sparsely furnished and "was found in a part decorated state". The loss adjuster reported back that (in their view) the new owner would be entitled to refurbish before occupying, whether as an owner occupier or letting, and it was not unreasonable over a period of more than 35 days.

UKI declined the claim. – it believed the property had been unoccupied for the previous 35 days and that it was therefore entitled to apply an exclusion to the escape of water cover.

E objected on P's behalf. They pointed out that the decorator had been attending on a near daily basis, and further that the exclusion didn't appear in the wording of the policy given to them.

On referral to the Financial Ombudsman Service, our Investigator said that they were satisfied that the property had been in use by the decorator and didn't think the repudiation was fair or in line with the policy terms.

Mr R supplied further information, including evidence of his payments for having parked at a nearby car park for a number of days in July, August and September, and some receipts. He supplied details of the decorator's attendance and of the work they did. He couldn't supply a schedule of works or evidence of any payment to the decorator.

UKI was still not satisfied with the evidence – it pointed out that the toilet was not usable so it felt that the decorator couldn't have been staying overnight. It was also not satisfied with the evidence and pointed out that parking nearby didn't mean Mr R was visiting the property. It further said that the fact that the fire brigade had to break in to turn the water off was an indication that the property wasn't being visited regularly.

The matter has been passed 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.

Firstly in respect of the exclusion not being in the policy, I'm satisfied that it was in the up to date policy terms. As this was a block policy, P didn't have any choice as to the terms of the policy, so was bound by them.

E has supplied evidence of when P bought the property. From the limited number of photos I have seen it's reasonable to believe the property needed refurbishing before being let.

The property was covered for an escape of water, but this cover was subject to an exclusion for:

"Loss and damage occurring after the individually leased unit has been unoccupied for more than 35 consecutive days."

And *"unoccupied"* is defined as *"vacant, empty, untenanted or not in use."*

Mr R has supplied a timeline of the decorator's visits to the property and what they did on those days. Though this wasn't fully on a daily basis, the decorator did attend for 13 separate days from 31 July to 5 September. Mr R has supplied evidence of his having parked at a car park which is 5 minutes' walk away on 10 separate dates between 28 July and 9 September (different dates from the decorator's). He says he was there on other days but using a free parking space. Whilst this isn't firm actual evidence of Mr R's, or the decorator's presence at the property, having considered the loss adjuster's report, they don't seem to doubt that decoration has taken place (and would have been in a position to report back to UKI if they were in doubt about the matter).

So I think E has produced persuasive evidence that the property was being regularly visited. In light of the fact that there wasn't a usable toilet at the property I doubt that the decorator stayed the night, but I bear in mind the property is right in the middle of a town centre. The property, from the photos was sparsely furnished with all the kitchen appliances in place.

UKI had indicated that it was willing to consider that the property was occupied if it had evidence of the decorator and/or Mr R visiting regularly. It has pointed out that the property had to be broken into by the fire brigade, but Mr R or the decorator didn't necessarily have to be there every minute of every day. And this might have been because the property had only recently changed hands.

Mr R's evidence shows that he parked nearby on a number of days, including the 6, 8 and 9 September, the latter date being two days before the leak. Whilst UKI speculates that Mr R could have been visiting other properties, I think it reasonable to say that it's most likely that having just bought the property and being in the midst of refurbishing it, he was visiting it. And that the property was not vacant, empty, or not in use. It was at that stage untenanted but I (and the loss adjuster) have already said that it was reasonable to allow the property to be refurbished.

If a property is covered for an escape of water, it is necessary for the policyholder to be able to report any such loss as soon as possible, to mitigate any damage. That is why the escape of water (and other perils in the policy) is subject to the exclusion for unoccupancy. But here the evidence is that Mr R was there at least two days before the leak was discovered.

I've noted that in his complaint form, Mr R has asked for payment of his assessor's fees.

However we wouldn't normally award such fees where the use of an assessor isn't necessary, which I don't think it was in this case. It's up to Mr R and Mrs R who they chose to make their complaint for him, but I won't make an award for those fees to be paid. I've noted that the Investigator didn't recommend any such award and E accepted their view on P's behalf.

Putting things right

I think that UKI should now consider the claim, without applying the exclusion for unoccupancy, subject to the remaining terms and conditions of the policy.

My final decision

I uphold the complaint and require U K Insurance Limited trading as NIG Insurance to provide the remedy set out under "Putting things right" above.

Under the rules of the Financial Ombudsman Service, I'm required to ask P to accept or reject my decision before 2 June 2023.

Ray Lawley
Ombudsman