

The complaint

Mr O and Ms O complain that Lloyds Bank General Insurance Limited turned down their buildings insurance claim.

What happened

Mr O and Ms O previously held buildings insurance cover with Lloyds Bank which covered a second property.

On 18 October 2015, Mr O was contacted by the local authority and told that the property was occupied with vehicles on the site. Mr O went to the property but the people occupying it wouldn't leave. They left the property around two weeks later. There was extensive damage to the property, and contents were stolen or damaged.

Lloyds Bank considered a claim for malicious damage and theft, but then turned this down. It said the property hadn't been occupied in the 30 days before the loss, and therefore wasn't covered under the policy. Unhappy with this, Mr O and Ms O brought a complaint to the Financial Ombudsman Service.

Our investigator didn't recommend the complaint be upheld. He thought the available evidence supported that Mr O and Ms O hadn't been at the property in the 30-day period, and therefore it had been reasonable for Lloyds Bank to turn down the claim.

Mr O and Ms O didn't accept our investigator's findings, and so the matter has been passed to me for a decision.

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.

Both the contents section and buildings section of the policy terms cover malicious damage and theft. However, for both of these insured perils, the policy excludes loss or damage occurring after the property has been left unfurnished or unoccupied for more than 30 consecutive days.

The policy defines 'unfurnished' as '*not furnished for normal living purposes*'.

The policy doesn't define 'unoccupied'. Our usual approach when a word isn't defined is to use the normal and ordinary meaning. I think it's reasonable to say that unoccupied means not resided in. Though I agree with our investigator that since the word isn't defined, we should use the meaning that's most favourable to Mr O and Ms O. So I don't think they needed to have necessarily stayed overnight in the property for it to have been occupied.

Mr O and Ms O's representative has provided photos of the property before the damage, and I'm satisfied from these that the property was furnished.

I've therefore considered whether it was reasonable for Lloyds Bank to say the property had been unoccupied for more than 30 consecutive days before the loss.

Mr O was visited by Lloyds Bank's agent on 5 November 2015. The agent recorded on the visit notes that Mr O said he hadn't been to the property for approximately four to five weeks before he was contacted by the local authority. And that he usually went to the property every four weeks or so to check on it, but didn't have a set routine and the interval between visits would vary.

Lloyds Bank also took into account a council tax bill which shows that an additional premium was charged for the property (described as a 'long term empty premium') between April 2015 and March 2016. As I understand it, this premium is charged where a property has been empty for two years or more.

Lloyds Bank has also provided us with a water bill for the property. This shows that between 1 April 2015 and 30 September 2015, £15.65 was charged for water usage. Whilst I've noted Mr O and Ms O's representative's concerns about how Lloyds Bank obtained this bill, I understand Lloyds Bank previously issued a final response letter on this matter. In any event, I see no reason not to take it into account.

However, after Lloyds Bank told Mr O and Ms O that it thought the property had been unoccupied, Mr O wrote Lloyds Bank on 18 Dec 2015 and said he had last been at the property on 20 September 2015. He said the property was his second residence, and his time was split between his two properties. And that he visited the property on a monthly basis, sometimes twice a month.

I need to reach my decision on the balance of probabilities. In other words, what I consider is most likely to have happened in light of the available evidence and wider circumstances.

In relying on the unoccupied exclusion to turn down the claim, the onus is on Lloyds Bank to show it applies. On balance, I'm satisfied it has done so here. I think greater weight should be placed on the notes taken by Lloyds Bank's agent, as this conversation took place shortly after the loss. This supports that no one had resided at the property for four to five weeks. Although Mr O then said he was last at the property on 20 September 2015, he hasn't provided any evidence to support why he was able to confirm that exact date when he hadn't been able to do so previously.

The council tax and water bill also suggest that the property was not used frequently, and contradicts Mr O's explanation that he split his time between his two residences and visited the property once or twice a month. So, in the absence of evidence to support Mr O's testimony about his visit to the property on 20 September 2015, and based on the limited evidence available, I think it was reasonable for Lloyds Bank to apply the unoccupied exclusion.

Mr O and Ms O's representative says that movement was noted to have taken place at the property, and that the unoccupied exclusion doesn't apply to subsidence cover. However, Lloyds Bank has said that the exclusion does apply to subsidence.

I've looked at the policy terms dated September 2015, and as far as I can see, Mr O and Ms O's representative is correct - the unoccupied exclusion doesn't apply to subsidence cover. I don't know if Lloyds Bank is considering a different policy document, or if it has said this because it thinks the movement was caused by the malicious damage (I see Mr O and Ms O's representative acknowledged that movement could have been caused by the malicious damage, due to heavy vehicles being parked immediately adjacent to the property).

In any event, Lloyds Bank's claims decision was made in respect of the claim for malicious damage and theft. If Mr O and Ms O want Lloyds Bank to consider a separate claim for subsidence, I would suggest they contact Lloyds Bank directly about this. If Lloyds Bank can't resolve the matter, they may be able to bring a new complaint here.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O and Ms O to accept or reject my decision before 18 March 2024.

Chantelle Hurn-Ryan
Ombudsman