

## **The complaint**

A limited company, that I will refer to as T, complains about the decision of Aviva Insurance Limited to decline its commercial insurance property damage claim.

## **What happened**

The following is intended only as a brief summary. Additionally, for the sake of simplicity, I have just referred to T and Aviva, even though other parties have been involved in correspondence.

T owns and operates a number of care homes, and had an industry specific commercial insurance policy underwritten by Aviva insuring a couple of these. The policy provided cover for a number of areas of risk, including property damage. In December 2022, one of T's care homes suffered extensive water damage, apparently due to several burst pipes following freezing weather conditions.

T claimed for the cost of repairing this damage under the policy. But Aviva declined the claim. It said that the parts of the property where the damage occurred were unoccupied, and there was an exclusion relating to damage to the property caused by an escape of water when the premises are unoccupied.

The policy defined unoccupied as:

“Any building or portion of a building that is

- (1) not physically occupied by You or Your Employees during Your normal working hours  
and/or
- (2) not used for the purposes of The Business  
and/or
- (3) empty, vacant, disused, untenanted or unfurnished  
and/or
- (4) awaiting refurbishment, redevelopment, renovation or demolition  
for a period in excess of 45 consecutive days.”

T disagreed that the premises were unoccupied, and said that even though the wings of the building where the damage occurred didn't have any residents staying in them, they were used occasionally by staff and were open for all to access.

T brought its complaint about Aviva's decision to the Ombudsman Service. But our Investigator did not recommend it be upheld. He thought that Aviva had acted fairly and reasonably by considering the premises to be unoccupied and by applying the exclusion to the claim. He was also not persuaded that T could claim under other areas of the policy,

such as for accidental damage.

As T remained unsatisfied, its complaint 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.

Having done so, I am not upholding this complaint. I'll explain why.

As mentioned, the above is only a brief summary. T has made a number of arguments around whether it is appropriate to consider the premises unoccupied. And around the interpretation of the policy more generally. I have noted and thought about these, but I am going to focus my decision on what I consider to be the key issues.

The policy definition of unoccupied applies to any portion of the building. The property in question consists of a central 'hub' and four wings. The property was at about 30% capacity, and it is not disputed that there were no residents with their own accommodation situated within the areas where the damage occurred.

The dispute is over whether partial use of the wings, for example so that some staff could eat their lunch and that checks were done regularly in these areas, and the fact that these wings were open to staff and residents should they want to visit them means they were occupied for the purposes of the policy.

However, I do not agree with T that this minimal or potential use means these areas were not unoccupied. The purpose of the business is to provide care home accommodation. The areas in question were not being actively used for this purpose. No residents were housed within these areas. I also think it is notable that the heating in these wings had largely been turned off – and set to the frost setting. This indicates to me that there was no intention of using these areas for the purpose of the business at the time.

I appreciate T's arguments over whether the residents of the care home are technically "tenants", and I note the comparisons offered to a hotel with vacant rooms. However, I am not persuaded by either of these that the relevant portions of the property were not unoccupied. This is not a situation where only a couple of rooms within the relevant areas did not have occupants, as might be the case with a hotel. This is a situation where the whole wing was unoccupied.

Ultimately, I am persuaded that it was appropriate for Aviva to consider that portions of the premises were unoccupied. And as the damage occurred in these areas, I also consider it fair and reasonable for Aviva to apply the relevant exclusion to T's claim.

I also agree with our Investigator that there is no cover under any other area of the policy in the circumstances of the claim. It follows that I cannot fairly and reasonably ask Aviva to do anything more in relation to this complaint.

### **My final decision**

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask T to accept or reject my decision before 25 April 2024.

Sam Thomas  
**Ombudsman**