

## **The complaint**

Mr M complains about how Admiral Insurance (Gibraltar) Limited (Admiral), handled a claim under his home insurance policy for damage to his property from an escape of water.

Any reference to Admiral in this decision includes their agents.

## **What happened**

Mr M went abroad, leaving the UK on 22 November 2022, with the property unoccupied from 15 November 2022 (he stayed with family between the two dates). His partner visited the property on 21 January 2023 to check it but found water running out of the ceilings and across the floors. The water supply was turned off and the partner phoned Admiral the same day to tell them about the leak and the damage. Admiral raised a claim. A contractor fixed the leak the same day, finding it came from a frozen water feed pipe to the loft that had burst. Mr M returned to the UK on 23 January 2023 and made a separate claim online for repair of the damage. Repair work was begun.

Admiral appointed a loss adjuster (D) who visited the property on 8 February. In their Preliminary Report, dated 17 February, they noted the partner attended the property at least monthly while Mr M was away. The report also noted repair work had begun in most areas of the property, as there was damage to most rooms. However, D recorded concerns about what had happened, including Mr M engaging contractors to begin repair work almost immediately after discovery of the leak. The leak was reported as having been found on 21 January, when cold temperatures were no longer present. And Mr M wasn't sure when the property had been checked before the leak was discovered (no records of visits were kept).

Because of these concerns, Admiral appointed a second loss adjuster (Q) to assist with validating the claim. Q interviewed Mr M on 23 March 2023. In the interview Mr M said he'd left the UK on 22 November 2022. In a separate interview with his partner, they said illness meant they hadn't visited the property until 21 January 2023, when they discovered the leak.

Admiral also had concerns, including the date Mr M said the property had been unoccupied – when calling Admiral on 21 January 2023 it was stated to be from 15 November, but in the online claim the date was given as 22 November 2022 (the date Mr M left the UK). Admiral were concerned the date was provided after they advised (on the call first notifying the loss) the property had been left unoccupied for more than 60 days. They were also concerned at inconsistencies in the date and number from which the call notifying the loss was made and the information provided about the partner's visits to the property while unoccupied.

Because of their concerns, Admiral concluded Mr M deliberately provided misleading and false information in order to gain cover (by saying he was away from 22 November, which would have meant the property was unoccupied for 60 days, not the 67 days from 15 November). So, in July 2023, Admiral said they were repudiating the claim and considered Mr M breached several General Conditions of the policy, which entitled them to cancel the policy, which they did with effect from 21 January 2023. Because they considered Mr M had acted fraudulently, Admiral said they wouldn't refund any premiums.

Mr M then complained to Admiral, saying decline of his claim was unreasonable. He thought it likely a cold snap at the end of November and December 2022 was likely when the leak occurred. He was unhappy at having his honesty questioned and subject to investigation lasting five months. He'd tried to provide accurate information and respond to Admiral's concerns. He was also concerned about data leaks in respect of his claim.

Admiral didn't uphold the complaint. In their final response they referred to the differing dates about when the property was left unoccupied and when Mr M left the UK. They also referred to other inconsistencies including visits to the property by Mr M's partner. Admiral confirmed their decline of the claim and cancellation of the policy, referring to the exclusion from cover for properties unoccupied for more than 60 days and the General Conditions. On the issue of data leaks, Admiral said there was no evidence to support Mr M's claim.

Mr M then complained to this Service. He said it was unfair to decline his claim and cancel the policy as the property had only been left unoccupied for just over 60 days. Mr M said his pipes had most likely frozen and burst on a date within the 60 day period. He said Admiral hadn't considered when his partner visited the property, which they planned to do monthly. And they'd wrongly accused him of giving inaccurate information about the call to first notify the loss. Repairs to the damage had cost some £25,000 which he'd funded from savings. He wanted Admiral to offer a fair settlement of his claim, to mitigate the costs incurred.

Our investigator upheld the complaint in part in his initial view. He thought the property was unoccupied for more than 60 days, the exclusion where a property was unoccupied for more than 60 days was clear and the property hadn't been occupied during the period. So, Admiral acted fairly to decline Mr M's claim.

However, the investigator didn't think it reasonable for Admiral to cancel the policy. While they had concerns Mr M changed certain information during the claims process in order to validate his claim, he hadn't seen sufficient evidence to persuade him it was reasonable to cancel the policy and retain the premiums. He thought there was a genuine confusion on Mr M's part, rather than a specific intention to mislead. Without seeing the loss adjuster reports (which Admiral hadn't provided at the point the view was issued) he wasn't persuaded otherwise. To put things right, he thought Admiral should refund the retained premiums (with interest) and remove any record of the cancellation from internal or external databases.

On the issue of data breaches, the investigator hadn't seen any evidence to support Mr M's view. And even if there were, it was unlikely to have any bearing on Admiral's decision to decline the claim. If Mr M wanted to pursue his concerns, he should refer them to the Information Commissioner's Office (ICO).

Mr M responded to the investigator's initial view to say he was having difficulty obtaining alternative cover due to the cancellation of his policy by Admiral. Admiral provided further information, including the first notification of loss call and the loss adjuster reports.

The investigator issued a further view, maintaining his original conclusions. He thought while Mr M provided two dates for the property being unoccupied, he was asked two different questions, so he didn't provide false information. When interviewed by the loss adjusters he'd correctly answered the date he left the UK (22 November 2022). He wasn't asked the date from which the property was unoccupied. And Mr M making a second claim rather than re-opening the first claim (which had been logged as notification and closed) was an innocent act. While Admiral had concerns about the purposes for which he was out of the UK and the locations, the investigator didn't think this relevant to the claims assessment process, as it was clear Mr M was abroad for an extended period. So, it was unfair for Admiral to rely on fraud exclusions to cancel the policy.

Admiral disagreed with the investigator's further view, providing additional information they said supported their decision to cancel the policy. They requested an Ombudsman review the complaint.

### **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.

My role here is to decide whether Admiral have acted fairly towards Mr M.

The two key issues in Mr M's complaint are, firstly, whether Admiral acted fairly in declining the claim for damage to the property from the escape of water, on the basis the property had been unoccupied for more than 60 days. The second issue is whether it was fair for Admiral to cancel the policy, on the grounds Mr M breached the General Conditions relating to fraud. There's also a third issue, relating to what Mr M says were data leaks.

Looking at the first issue, while I note neither Mr M nor Admiral have challenged the investigator's view Admiral acted fairly in declining Mr M's claim on the grounds of the 60 day unoccupancy exclusion, I've considered the issue afresh.

I've first looked at what the policy documents say. The exclusion for properties unoccupied for more than 60 days is included in the Policy Document as well as the Insurance Product Information Document (IPID) which sets out the key features of the policy. The IPID includes the following statement under a heading *What is not insured?*:

***"X Empty homes: Loss or damage under many sections of your policy if your home is unfurnished or is left unoccupied for more than 60 days."***

The Policy Document sets out the following definition of 'unoccupied':

***"When your home has not been lived in by you or any member of your family for longer than the 'Days unoccupied limit' shown in your Home Policy Schedule. By 'lived in' we mean that you or any member of your family has slept in the home overnight and regularly carried out day-to-day activities such as cleaning, cooking and bathing. If the home is unoccupied for more than the number of days shown in your policy documents. We consider your home to have been unoccupied from the first day"***

There's also a requirement in the Policy Document, under a section headed *Keeping your policy up to date*, and a sub-heading *1. Please tell us about the following beforehand*:

- ***"If your home will be unoccupied for longer than the 'Days unoccupied limit' shown in your policy documents"***

Looking at the Policy Schedule it sets out a 'Days unoccupied limit' of 60 days.

Taking these points together, I think it reasonable to conclude Mr M should have been aware that cover wouldn't apply after 60 days of unoccupancy. From what I've seen the property was unoccupied from 15 November 2022 (though Mr M didn't leave the UK until 22 November 2022). While Mr M's partner planned to visit the property monthly to check on it, it appears this didn't happen until 21 January 2023 due to illness. In any event, there's no evidence to suggest the property was lived in or the regular activities referred to in the above definition were carried out.

Given the definition above refers to a property being unoccupied from the first day, then including 15 November as the first day, the period to 21 January 2023 would mean 67 days (if 21 January 2023 is considered the first date from when the property was re-occupied).

As Mr M didn't return to the UK until 23 January 2023, it's arguable the property wasn't 'occupied' until that date, as his partner only visited on 21 January 2023 to check on the property. Either way the period the property can reasonably be considered unoccupied is more than the 60 day limit. And I've seen no evidence Mr M told Admiral beforehand his property was going to be unoccupied for more than 60 days.

As the exclusion is clear and the property was unoccupied for more than 60 days, then I've concluded Admiral acted fairly and reasonably in applying the exclusion to decline the claim.

I've then turned to the second issue, Admiral's cancellation of the policy due to what they say were breaches of various General Conditions, including those relating to fraud. In their final response, Admiral refer to the following General Conditions, for which I've set out the key elements below:

### ***General conditions of your Home Insurance cover***

#### ***1. Your duties***

*The cover in this policy is valid as long as:*

- You and your family have kept to all the terms and conditions of the policy, and*
- The information you gave at the start of your policy or renewal (as shown in the policy documents), or when making a claim, is true and complete.*

#### ***2. Claims procedure***

*If you or your family are involved in any type of claim or loss, you must:*

- tell us about the matter within 48 hours of you discovering it*
- give us all the information we reasonably need about the claim, including a crime reference number or loss report number (if appropriate)...*

#### ***4. Cancelling your policy***

*Our cancellation rights*

*We can cancel cover at any time, by sending seven days' notice in writing to your last known address, if:*

- we discover that you have intentionally given us false, incomplete, exaggerated, or misleading information.*

#### ***9. Fraud and misrepresentation***

*You must always answer our questions honestly and provide true and accurate information. If you, any other insured person, or anyone acting on your behalf, provides:*

- False, incomplete, exaggerated, or misleading information, or*
- False, altered, forged or stolen documents,*

*We will do one or more of the following things.*

- *Cancel your policy immediately*
- *Declare your policy void*
- *Refuse to pay any claim or pay only part of a claim*
- *Keep the premium you have paid*
- *Recover any costs from you or any other insured person*
- *Cancel or void any other...policies you are connected with"*

I've then considered the reasons Admiral say they believe Mr M breached the General Conditions, leading them to cancel the policy and retain the premiums. I've considered the specific points made by Admiral, so I won't set them all out in detail here. From what I've seen the main ones are:

- The difference in date provided in respect of when the property was unoccupied.
- Lack of accurate information provided to D and Q, including the date of unoccupancy.
- Inconsistencies in the details of the call made to Admiral first notifying the loss.
- Contradictions regarding Mr M's version of events.
- Omission of information that would have been detrimental to Mr M's claim.

In considering these points, I've listened to the call recording when Mr M's partner first contacted Admiral on 21 January 2023. While the call was made by Mr M's partner, Mr M can be heard on the call – which initially was made to the Home Emergency Team, given the discovery of the leak. The partner checks with Mr M about the specific date from which the property was unoccupied, to which Mr M confirms it was 15 November 2022, a week before he left the UK. The call handler checks to policy and says they can't provide help because the policy (the home emergency section) doesn't provide cover where a property is unoccupied for more than 30 days. The partner accepts this and asks whether the damage would be covered under the buildings and contents section of the policy. The call handler ends the call and tries to transfer the partner and Mr M to the Buildings and Contents team.

I haven't been provided with the call recording with the Buildings and Contents Team, but from references made to it, it appears the same information was provided about the dates of property unoccupancy, at which point the call handler refers to the 60-day unoccupancy exclusion for the buildings and contents section of the policy. The claim is recorded as for notification and Mr M is to call back. But he made a separate claim online shortly afterwards (he maintains because the initial claim had been closed). I haven't been provided with the specifics of the claim made online – including the question asked to which Mr M answered 22 November 2022. So, it isn't possible to say whether he'd been asked when the property became unoccupied (as opposed to when he left the UK). But as I've noted, both dates were clearly stated in the initial call to Admiral's Home Emergency Team.

Looking at Admiral's claim notes (May 2023), they indicate the property was unoccupied for more than 60 days whether the date of unoccupancy was taken as 15 November 2022 or 22 November 2022 (as the first day of unoccupancy is either of those dates) Using the latter date, the unoccupancy is 61 days (or 63 days if taken to the date Mr M returned to the UK, 23 January 2023). Given my earlier observations on this issue when considering the decline of the claim, then Mr M putting down 22 November 2022 as the date he left the UK when making his online claim shouldn't have made any difference to the assessment of his claim, as the period of unoccupancy was more than 60 days in either case. It's not clear why this doesn't seem to have occurred to Admiral before the record in the claim notes in May 2023.

And it was made clear in the first notification of loss call (to the home emergency team) that the property was unoccupied from 15 November 2022 and Mr M left the UK on 22 November 2022. So, Mr M putting the latter date on his online claim was simply reflecting what Admiral

had already been told about the date he left the UK, and he was being consistent in what he'd told Admiral.

So, I've concluded different dates were provided, but in respect of two separate events – the date the property was unoccupied (15 November 2022) and the date Mr M left the UK (22 November 2022). So, the two dates weren't from when the property was unoccupied. The call recording to Admiral on 21 January 2023 makes this clear.

I've also seen the witness statement made by Mr M to Q in March 2023. In it, he confirms he left the UK on 22 November 2022, was made aware of the leak by his partner on 21 January 2023 and listened in to the initial notification of loss call. The statement also notes the intention was for his partner to visit/stay at the property during the time Mr M was away but goes on to explain the reasons why this didn't happen, until the visit on 21 January 2023 – which I've noted Q say is understandable and don't doubt the version of events described.

The statement also confirms Mr M returned to the UK on 23 January 2023. While the statement doesn't mention the property being unoccupied from 15 November, this date was already known to Admiral from the first notification of loss call (as was Mr M leaving the UK on 22 November 2022).

So, I don't think the absence of mention of the date from which the property was unoccupied (Admiral's second point above) changes the fact Admiral were aware of it – and meant the 60 day exclusion for an unoccupied property would apply, to decline the claim.

Similarly, looking at Q's preliminary report, it refers to Mr M's partner visiting the property to discover the leak as well as Mr M asking his partner to notify the leak to Admiral (which the subsequent call recording confirms) and Mr M's return to the UK on 23 January 2023. The report also refers to the need to make further enquiries about Mr M's overseas trip - though it's not clear why this was necessary for the purposes of assessing the claim, given the key issue was the property being unoccupied for more than 60 days due to Mr M being overseas.

And the partner not visiting the property (as had been planned) would have meant the property wasn't lived in during the period, so the 60-day unoccupancy exclusion would still have applied. The report also seems to be unaware of the initial call to Admiral having taken place on 21 January 2023, nor that notification of the claim on 21 January 2023 would – under the terms of the policy – been outside the 60-day limit whether measured from 15 November 2022 or 22 November 2022. The report also mistakenly refers to the possibility the incident wasn't discovered until 23 February 2023.

On the point about inconsistencies in the details of the call made to Admiral first notifying the loss, I'm not persuaded this is clearly relevant to assessment of the claim. The more relevant point is that a call was made and what the contents of the call were, as I've set out above. As I've listened to the call recording, there's no dispute a call was made, and Admiral were therefore aware of it and the information provided (both by them and by Mr M and his partner). The location and number from which the call were made seem to me to be incidental and secondary to the call contents.

On the points about contradictions regarding Mr M's version of events and omission of information that would have been detrimental to the claim, as I've set out above Admiral were aware from the outset of the key information used by them to decline the claim. Namely the dates from which the property was unoccupied and left the UK; the date the loss was discovered and first notified to Admiral; and the date Mr M returned to the UK. Which would have made them aware (as the call handler picked up in the first notification of loss) the 60-day exclusion for unoccupied properties had been breached.

So, I've concluded any subsequent inconsistencies or omissions there may have been wouldn't have been likely to change the outcome of the claim, nor the grounds of the decline.

Taking all these points together, I've concluded that while Admiral acted fairly and reasonably in declining Mr M's claim, they haven't acted fairly and reasonably in cancelling the policy and retaining the premiums.

Having reached this conclusion, I've considered what Admiral should do to put things right. At this point, I don't think reinstating the policy is a practical option. But as Admiral unfairly cancelled the policy (including retaining the premiums) they should remove all record of the cancellation from internal and external databases. They should also refund Mr M the retained premiums when the policy was cancelled and pay interest, at a rate of 8% simple, from the date they cancelled the policy to the date they refund the retained premiums to Mr M.

On the issue of data leaks, I've not seen what Mr M is specifically referring to, or evidence to support his view. But in any event, [alleged] data protection breaches aren't something that fall within the remit of this Service to consider or determine whether there's been a breach of the relevant legislation and regulations. That would be a matter for the appropriate authority, which would be the ICO. So, if Mr M has concerns, he should approach the ICO.

### **My final decision**

For the reasons set out above, my final decision is that I uphold Mr M's complaint in part. I require Admiral Insurance (Gibraltar) Limited to:

- Remove all record of the cancellation from internal and external databases.
- Refund the premiums they retained when they cancelled the policy.
- Pay interest on the refunded premiums, at a rate of 8% simple, from the date they cancelled the policy to the date they refund the retained premiums to Mr M.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 22 April 2024.

Paul King  
**Ombudsman**