

The complaint

Mrs H and Mrs M complain that Advantage Insurance Company Limited unfairly declined a claim they made under their home insurance policy.

Advantage is the underwriter of this policy i.e. the insurer. Part of this complaint concerns the actions of its agents. As Advantage has accepted it is accountable for the actions of the agents, in my decision, any reference to Advantage includes the actions of the agents.

What happened

In August 2022, Mrs M advised Advantage that her mother (Mrs H) had moved out of the property insured with it. She told Advantage that the house was waiting to be sold but they were visiting it once a week. Advantage sent an acknowledgment saying that if Mrs H would like a quote to insure her new home, she should answer some questions which were in the email. It said she should let Advantage know when the sale of her property was completed, and she no longer required the insurance.

In December 2022, Mrs M visited the insured property and found an escape of water from a burst pipe had caused significant damage to it. So, she made a claim under the policy and arranged for a plumber to fix the pipe.

Advantage instructed a building specialist to deal with the claim. A surveyor visited to inspect the damage around three weeks after the claim was made.

Mrs M was told that costs for damaged contents and reinstatement works had been approved in early February 2023. However, in mid- March 2023, Advantage said it was declining the claim based on an exclusion that meant escape of water claims weren't covered if the property was unoccupied or unfurnished.

Mrs M and Mrs H raised a complaint with Advantage about the delay in progressing the claim and informing them that it wasn't covered. Advantage responded to their complaint on 30 March 2023. It said it wouldn't be upholding their complaint as it had been unable to evidence any errors on its part and it had followed the correct process.

In August 2023, Mrs M and Mrs H raised a further complaint with Advantage. They were unhappy with the outcome of the claim and delays in dealing with it.

Mrs M and Mrs H said the property condition had got worse in the three month period between them making their claim and Advantage saying it wasn't covered. The purchasers of the property had withdrawn their offer shortly after the claim was declined. They said that if they'd known from the outset the claim would be declined, they could have begun to arrange works themselves without the mould advancing to the extent it did and could potentially have negotiated with the purchasers with a view to progressing the sale. They'd had to pay for a kitchen and new carpeting out of their own pocket as well as give up their time to carry out repairs.

Mrs M and Mrs H were also unhappy that Advantage hadn't notified them in August 2022 that the policy might not have provided the level or type of cover most appropriate for them, once Mrs H wasn't permanently resident in the property.

Mrs M and Mrs H said they were still in some doubt as to the rationale for the denial of their claim. They said they had attended the property regularly and kept furniture there.

Advantage responded to Mrs M and Mrs H's second complaint on 23 October 2023. It maintained its position regarding the declinature of their claim. It said their concerns regarding delays with the claim had already been responded to in March 2023. It had investigated the delays from 30 March 2023, but as the claim was closed on 16 March 2023, there were no further delays in relation to the progress of the claim. It said the policy was taken out on 1 July 2022 through a comparison website. Mrs M and Mrs H would have accepted the contract and agreed to the terms and conditions of the policy to enable it to become active.

Mrs M and Mrs H remained unhappy and asked our service to consider their concerns. Our investigator thought part of their complaint should be upheld. She said she couldn't consider their concerns about the delays to the claim and the service received. These were addressed in Advantage's final response letter of 30 March 2023, which gave them six months to bring the complaint to our service. And they had brought it too late.

Our investigator thought Advantage should have taken steps to ensure Mrs H and Mrs M had the right level of cover in place when they'd informed it of the change in circumstances in August 2022. She also didn't think it was fair for Advantage to rely on the unoccupied and unfurnished exclusion to decline their claim.

Our investigator recommended Advantage pay the claim settlement for both buildings and contents with compensatory interest from the date the claim was declined until the date the settlement was paid. She also recommended it pay them £350 compensation for distress and inconvenience.

Mrs M and Mrs H accepted our investigator's outcome, but Advantage disagreed. It said it hadn't needed to do more in August 2022 because there was no information that confirmed the property would be unoccupied or unfurnished as defined under its policy conditions. So there was no reason to apply policy endorsements. It said if it had been made aware that the property would be unoccupied or unfurnished as defined by the conditions of the policy, then relevant policy endorsements would have been applied to safeguard the property when unoccupied – such as draining water tanks and heating the property.

Advantage said that following the initial report of the claim, it later became evident that the property was not occupied as reported by Mrs M. It provided a number of reasons why it felt the property was unoccupied and unfurnished. It said it had been unable to validate that the property was being stayed in overnight within a 30 day period with day to day activities being carried out at the property, such as bathing, cooking, eating and sleeping. It said the reasons for staying over at the property had been inconsistent and it was clear Mrs H had moved out by August, and the property was unoccupied.

Advantage also made some comments regarding the furniture in the property. It said the evidence demonstrated that the property was not furnished for normal living purposes.

Advantage said it had checked land registry data and this confirmed that Mrs H's flat purchase was completed the day before the policy was taken out. It said Mrs H and Mrs M should have disclosed at that time that the insured property was not Mrs H's main residence.

Our investigator asked Advantage for evidence to support its comments, but Advantage didn't respond despite being chased for this. So, the complaint has been passed 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've reached broadly the same conclusions as our investigator. I'll explain why.

Delays in progressing the claim

I can't look at all the complaints referred to me. The rules applying to this service say that – where a business doesn't agree – we can't look into a complaint if it's been referred to us more than six months after the business sends the complainant its final response letter, telling them they can refer their complaint to us. Unless, in the view of the Ombudsman, the failure to comply with the time limit was as a result of exceptional circumstances. This is Dispute Resolution rule 2.8.2 – and can be found online in the Financial Conduct Authority's (FCA's) handbook.

Advantage issued its final response to Mrs M and Mrs H's complaint about the delay in progressing their claim on 30 March 2023. In this letter, it advised them of their right to refer their complaint to the Financial Ombudsman Service. But it said they must do so within six months of the date of the email. It said if they did not refer their complaint in time, the Ombudsman would not have its permission to consider the complaint and would only be able to do so in very limited circumstances.

This meant Mrs M and Mrs H had until 30 September 2023 to refer their complaint to us. But they didn't do so until 10 October 2023. So, under the rules I must apply, the complaint has been referred to us too late.

I haven't been made aware of any exceptional circumstances that might have prevented them from bringing this complaint to us sooner and I can see that they corresponded with Advantage within this timeframe. So, I've not been able to consider the concerns Mrs M and Mrs H have raised about the delays in progressing their claim and the service they received from Advantage in my decision.

Decline of claim

In declining Mrs M and Mrs H's claim, Advantage has relied on a policy exclusion which says loss or damage for escape of water isn't covered *"while your home is unoccupied or unfurnished"*.

"Unoccupied" is defined as:

"Not lived in and not occupied overnight by you, your family, lodgers, tenants or a person authorised by you for more than 30 days in a row."

By lived in, we mean that day to day activities such as bathing, cooking, eating or sleeping are all carried out at the home."

"Unfurnished" is defined as:

"Has not contained enough furniture and furnishings for normal living purposes for more than 30 days in a row."

Advantage says Mrs M has given inconsistent information about the occupancy of the property. Our investigator has asked Advantage for some evidence to support this, such as emails and call recordings. However, Advantage hasn't provided anything further. So, I've based my decision on the information that's available to me.

Mrs M and Mrs H say they believe they notified Advantage of the change in circumstances in August 2022 via a website form, so they weren't able to provide a copy of what was sent.

Advantage has only provided a note from August 2022 which says:

"ph emailed to make us aware that they have moved, and house is waiting to be sold, but they are still visiting the property at least once a week."

Asked questions for new address if they wanted to do a coa, or asked to make us aware when insurance is no longer needed so policy can be cancelled."

Advantage says Mrs M confirmed during the claim that Mrs H was overseas from 2 November 2022 until the date of the event, and since returning had moved into assisted living accommodation. It says in a later call, Mrs M said Mrs H was moved into her assisted living accommodation in August 2022, which was four months before the event occurred.

Advantage says this shows it was not provided with consistent information and Mrs M had earlier attempted to lead it to believe Mrs H was staying at the insured property at the time of the event.

Advantage hasn't provided recordings of these calls so I don't know exactly what might have been said. But these statements don't appear to be contradictory. Mrs M and Mrs H had already informed Advantage that Mrs H had moved out in August 2022. There's nothing to suggest that Mrs M said Mrs H was staying in the property up until the point she went on holiday in November 2022.

Advantage has noted Mrs M's husband informing it of the escape of water incident on 21 December 2022. This note says: *"Wife has been staying at the property at the weekend only so the property is habited."*

Advantage says that in a telephone call Mrs M's partner confirmed Mrs M had regularly visited the property and had stayed over *"once or twice"*, which wasn't consistent with other reports that she stayed over every week. However, it hasn't provided us with a recording of this call.

Advantage says it was provided with inconsistent reasons for Mrs M staying at the property every week, one report said that they were packing and staying over, and another report suggested they were staying over to see friends. It's also suggested that it's unlikely Mrs M would have stayed at the property overnight every weekend because her family address was only 25 minutes away.

Again, I haven't been provided with evidence to show me exactly what might have been said. However, I think it's plausible that Mrs M may have stayed at the property for more than one reason. And I'm not persuaded that the close proximity of her home to the property is evidence that she gave inaccurate information about staying there.

Advantage has also argued that the property met its definition of *"unfurnished"* at the time of the escape of water event.

Mrs M says the day after they made the claim, she sought permission from Advantage to remove water-logged carpets which was agreed to, providing they were kept for an assessor to inspect. She says she and her husband returned to the house and moved the damaged furniture into the garden and garage and took up the carpets that were saturated with water. They also emptied the fridge and freezer of food and drinks, so they would not rot as there was no power.

Advantage has commented that the images the surveyor took showed no furnishings within the property, other than a bedframe which was dismantled and being stored with a table and two mattresses in one of the bedrooms, an empty bookshelf and two fold-up chairs. It was also referenced in the surveyor's report that the fridge and cupboards were empty at that time.

However, Advantage's surveyor didn't visit until three weeks after the escape of water event. I don't find it surprising that there was no longer food in the fridge and cupboards by this point, particularly as there was no electricity and the property was damp. Advantage has accepted that a dining room table, chairs and beds remained in the property. This means there was sufficient furniture for eating and sleeping. So, I'm not persuaded that the property met the policy's definition of '*unfurnished*' when the escape of water happened.

Advantage has recently suggested that Mrs H and Mrs M gave inaccurate information when they took out the policy in July 2022. But they haven't provided evidence to show that they did or that this made a difference to the policy being provided to them.

I'm not persuaded from what I've seen that Mrs H or Mrs M have attempted to mislead Advantage regarding the occupancy or furnishing of the property. I appreciate Mrs H hadn't stayed at the property for more than 30 days when the escape of water happened. But Mrs M says she'd been regularly staying overnight at the property and Advantage hasn't provided sufficient evidence to refute this. So, I don't think it was fair or reasonable for Advantage to have declined the claim.

I understand that some repairs have been carried out, but Mrs M and Mrs H haven't been able to complete the remainder due to insufficient funds. Under the circumstances, I think the best way forward would be for Advantage to pay them a cash settlement for the buildings and contents, in line with the initial scope of works and the policy's terms and conditions. It should also add interest at 8% simple per year from the date the claim was declined until the date the claim is settled to compensate them for the time they have been without these funds.

It was no doubt upsetting for Mrs M and Mrs H for their claim to be turned down. They had the inconvenience of arranging repairs themselves and the frustration of not being able to afford to complete these when they've been trying to sell the property. So, I think it would be fair for Advantage to pay them the £350 our investigator has recommended.

Putting things right

Advantage should:

- Pay Mrs M and Mrs H the claim settlement reached for both buildings and contents during the claim review process and
- Add interest to the above at 8% simple per year* from the date the claim was declined until the date the settlement is paid and

- Pay Mrs M and Mrs H £350 for distress and inconvenience.

*If Advantage considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mrs M and Mrs H how much it's taken off. It should also give Mrs M and Mrs H a tax deduction certificate if they ask for one, so they can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

For the reasons I've explained, I uphold Mrs H and Mrs M's complaint and direct Advantage Insurance Company Limited to put things right by doing as I've said above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H and Mrs M to accept or reject my decision before 28 June 2024.

Anne Muscroft
Ombudsman