

The complaint

Mr J on behalf of the estate of Mrs H (“the estate”) complains that Gresham Insurance Company Limited (“Gresham”) unfairly declined a claim for an escape of water.

What happened

In January 2024 an escape of water due to a frozen pipe caused extensive damage to the estate’s property. A claim was made to Gresham to cover the cost of repairs. Mr J says Gresham declined the claim relying on an unoccupancy policy exclusion. He says the estate’s beneficiaries occupied the property for one week in every six. Mr J says this was to ensure the policy requirements were met. He says the terms aren’t specific on the number of days or frequency of occupation.

In its final complaint response Gresham says the property became unoccupied on 14 February 2023. It says the estate made contact to amend the cover in March 2023. Contents insurance was removed from the policy at this time. Gresham says the policy provided cover for the first 60 days the property was unoccupied. After that exclusions were in place for an escape of water due to freezing pipes. It says the property wasn’t occupied at the time the pipe froze resulting in the water damage. So, it maintained its decline decision.

Mr J didn’t think Gresham’s decision was fair and referred the matter to our service. Our investigator didn’t uphold the complaint. He says the unoccupancy clause was made clear in the policy documents that Gresham provided. He didn’t think Mr J had reasonably shown that the property was occupied. And so didn’t ask it to reconsider its decline decision.

Mr J didn’t accept our investigator’s findings. He asked for an ombudsman to consider the matter.

It 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’m not upholding this complaint. Let me explain.

It’s for the policyholder to show that they have suffered an insured loss. If they can then, generally speaking, the insurer should pay the claim. This is unless it can reasonably rely on a policy exclusion not to.

The estate’s policy does provide cover for an escape of water. I’ve thought about the exclusion Gresham relied on to decline the claim and whether this was fair.

The definition section of the policy booklet says:

“Unoccupied

Not lived in by you or anyone who has your permission or does not contain enough furniture for normal living purposes... 'Lived in' means that day-to-day activities eg bathing, cooking, eating and sleeping are regularly carried out in the home."

The renewal documents sent to the estate's executor on 22 April 2023 include the following information:

"Unoccupied period

You've confirmed that the property will be left unoccupied for more than 60 consecutive days...

..Clauses – Unoccupancy Exclusions

You have told us that you may leave the home unoccupied for over 60 days in a row. We will provide full cover as per the policy wording for the first 60 days in a row that the Home is Unoccupied. After the Home has been left unoccupied for more than 60 days in a row we will not cover loss or damage under the Contents Cover or Starter Contents Cover and (if covered) the Buildings Cover caused by: ... water freezing in or escaping from water tanks, pipes, equipment or fixed heating systems.."

I think these terms are clearly worded. After the first 60 days cover isn't provided for damage due to frozen pipes – if the property is unoccupied. The damage occurred in January 2024 so over eight months into the policy, and outside of the initial 60 days.

Gresham sent a surveyor to validate the claim. I've read the report that was provided. It says the property was flooded due to a compression fitting that had failed due to freezing weather conditions. The records say the surveyor discussed the claim with Gresham's underwriters. A repudiation letter was then sent. This says the property was unoccupied at the time the escape of water occurred. As a result, it says it was some time before the leak was stopped. The letter says at the time of the claim the executor for the estate advised he, and a relative, would alternate staying at the property, for one week in every six. The letter says this doesn't qualify as the property being 'lived in' under the unoccupancy clause.

The surveyor's report includes a number of photos of the property. It also contains a photo of a handwritten note that indicates the dates on which the executor and his relative were to stay at the property. The note says:

"Date staying at (property)

(Executor) – Sun 29th Nov – Sat 4 Nov 23

(Executor's relative) Mon 4th Dec – Sun 10 Dec 23

(Executor) – 28 Jan"

The days and dates don't tally when looking at the calendar for 2023. 29 November is a Wednesday not a Sunday. I think 4 November is meant to read 4 December. But this isn't a Saturday it's a Monday. The days and dates match for the relatives turn to stay at the property. But I don't find the handwritten note persuasive evidence to show the property was occupied.

We asked Mr J to provide utility bills to support his view that the property was being occupied. Two energy statements were provided showing the period from November 2023 up to the end of January 2024. The energy bills show very little usage, when considering what would be expected at an occupied property. As our investigator commented, the bills

are largely made up of standing charges. I would expect much higher energy use in an occupied property.

I've thought carefully about the definition of an occupied property set out in Gresham's policy booklet. It lists a number of activities that should be regularly carried out in the property, if it is to be considered occupied. These include bathing, cooking, eating, and sleeping. If the property was lived in for one week in every six, I don't think these activities can be said to have been 'regularly' carried out.

Having considered this evidence I don't think it's reasonably been shown that the property was occupied in accordance with the 'lived in' definition set out in the policy booklet.

I've thought about Mr J's comments that the policy terms aren't specific, and don't say how many days of occupancy are required. He contends that the light energy use at the property is reflective of it being occupied for several days in line with the explanation provided. But I don't agree that the level of occupancy he describes reasonably meets with the requirements of the policy.

It's common practice for insurers to treat an unoccupied property differently. There are increased risks associated with this. For example, an unoccupied property can be a target for thieves or vandals. Or as in this case, a burst pipe can continue leaking for a longer period causing more damage. So, I don't think the clause Gresham applied to the policy in April 2023 was unreasonable. This made clear that damage from an escape of water caused by a frozen pipe isn't covered where the property is unoccupied.

I've read an email the executor sent to Gresham dated 14 February 2024. He says it was his understanding, based on the information provided during the policy purchase, that periodic stays at the property would satisfy the requirements for occupancy. He also says that he disagrees with the underwriter's definition of occupied as he feels this is overly restrictive in these circumstances.

It's not our role to determine how an insurer assesses risk. Nor can we dictate the policy terms an insurer applies. I can, however, look to see that Gresham treated its policyholder fairly. But as discussed I think its unoccupancy clause was clear. The executor felt that one week in every six met the requirements for the property to be occupied. But I don't agree with this. I can't reasonably accept that regular activities of daily living took place when the property was only occupied for one week out of every six.

I asked Gresham how the executor for the estate had contacted it in March 2023 to amend the policy cover. It confirmed this was done over the phone and it provided a recording of the call. I've listened to this call. The executor is asked if anyone will be using the property as their main residence. The executor says no. He says that people will be popping in and out a couple of days each week. Gresham's agent explains that for the property to be occupied it must be used as a main residence. She says someone popping in for a couple of days a week doesn't meet the occupancy requirement. The agent explains full cover is provided for an unoccupied property for the first 60 days. After this period exclusions apply, which includes an escape of water. During the call the agent reiterates several times that exclusions will apply after the first 60 days of the amended policy. The executor doesn't query this.

Having listened to this call I think it was made clear to the executor that the property wouldn't meet the occupancy requirement. It was also made clear an escape of water is excluded from cover after the first 60 days.

In summary, although it's clearly unfortunate for the estate that cover isn't provided in these

circumstances, I don't think Gresham acted unfairly when it relied on its policy terms to decline this claim for the reasons it gave. So, I can't reasonably ask it to do any more.

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 the estate of Mrs H to accept or reject my decision before 25 December 2024.

Mike Waldron
Ombudsman