

## **complaint**

Mr P and Mr B are unhappy that The New India Assurance Company Limited won't pay their full claim under their Shops and Restaurants Policy for water damage to their restaurant. They are represented by a loss assessor, Mr L.

## **background**

In October 2016 Mr P and Mr B suffered damage to the basement area of their restaurant due to a blockage in the main sewer. The blockage was cleared by the water company and Mr P and Mr B made a claim to New India. They submitted a quote for repairs of the buildings under the Fixtures and Fittings cover of the policy. After inspecting the premises New India assessed that the fittings in the basement and the ground floor should be valued at £85,000. This equated to the figure for plant and machinery in the business's annual accounts for 2015. Under the policy there was only £20,000 cover. It assessed the costs to repair/renew the fixtures and fittings at £10,640. This was after deduction of the parts of the quote which in its view related to the buildings and so were the Landlord's responsibility.

It applied averaging to the policy which meant that the claim was reduced by the percentage the claim was underinsured. For the fixtures and fittings this meant a reduction to £2,503.65 which is what it offered in respect of the claim. It said it would consider an increase if Mr P and Mr B were able to show how much they had spent on fixtures and fittings or produce the lease to show which items were the tenant's responsibility. They produced a letter from the landlord explaining that they took over the premises as a shell and "*carried out all the fixtures and fittings and decoration*" But they couldn't produce evidence of the amount spent nor of the lease. And New India didn't think Mr P and Mr B had offered sufficient evidence for it to increase the amount offered.

On referral to this service our investigator didn't think the complaint should be upheld. She thought that New India had acted reasonably in the absence of any further proof of the claim from Mr P and Mr B.

Mr L objected. He said that New India hadn't shown an itemised breakdown of its calculation for the amount at risk, and that Mr P and Mr B had shown ample evidence to show they fitted out the restaurant and are legally liable for all fixtures and fittings.

The matter has been passed to me for further consideration.

## **my findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

### *valuation of tenants' fixtures and fittings*

Mr P and Mr B have a quote for just over £37,000 for the repairs to the building. New India has assessed that just £10,640 of that is the tenants' responsibility. The rest it assesses is for repairs to the buildings like replacing walls, ceilings and flooring. Mr P and Mr B have been asked to produce either an asset register or the lease to show that they were responsible for the items deemed to be part of the building rather than their fixtures and fittings. They couldn't do so. We asked for a copy of the lease but the only document I've seen is a licence to assign, which doesn't detail any responsibilities.

Mr P and Mr B were also asked for evidence of the amounts they had spent but again were unable to provide any. Considering that this only goes back to 2012 and a considerable amount was spent between 2014 and 2015, I think they should be able to produce some evidence. Particularly as they would need this information for tax purposes. I don't think the undated letter from the Landlord is sufficient to show what parts of the building the tenants might have been responsible for.

So New India has assessed the value at risk for fixtures and fittings at £85,000 as this is the amount set for plant and machinery in the business's accounts. Mr L says this is just a figure for accounting purposes and that New India should be able to independently verify this. But I think, in the absence of any other evidence, that the figure in the accounts should be taken as a reasonable assessment of the value at risk. New India says its loss adjusters visited the premises and assessed that this was a reasonable figure for all the fixtures and fittings in the basement and ground floor. I've seen the assessed list and it appears to reasonably separate out the landlord's as opposed to the tenants' liability to me. But if Mr P and Mr B want to put forward a different figure it's up to them to produce evidence of it.

I think the assessment of the value at risk and the value of the claim for the fixtures and fittings is reasonable.

### *underinsurance*

It is for the policy holder to prove their claim and the value of it. The cover in the policy is under the Contents section and is for "*fixtures fittings and interior decorations*." There is no cover under "*Tenant's Improvements*". The amount covered is £20,000. The policy was bought through a broker and according to the proposal form that was the amount of cover requested.

As I've said, Mr P and Mr B clearly asked for cover of £20,000. This was against the value at risk of £85,000. If the sum insured is less than the value of the property covered, the policy allows for any claim to be reduced proportionately. So where the amount of cover is, as here, less than a quarter of the value at risk, it was fair for New India to pay less than a quarter of its assessed value of the claim.

### *overall*

I think that, in the absence of further evidence from Mr P and Mr B, New India has reasonably assessed their claim and the amount it will pay out.

**my final decision**

I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P and Mr B to accept or reject my decision before 7 December 2019.

Ray Lawley  
**ombudsman**