

The complaint

I, a limited company, complains that Travelers Insurance Company Limited (“TICL”) has unfairly declined a claim under its Insurance and Risk Management for Property Owners policy, following a fire.

For ease of reading, I’ll refer to I as “Company I”. Any reference to Company I or TICL refers to respective agents or representatives.

What happened

The background of this complaint is well known between parties, so I’ve summarised events.

Company I owns a property that is insured by TICL. And in 2020, Company I reported a fire to the property following an arson attack.

TICL investigated and said the fire was started within an unsecured extension of the main premises, which spread across the building. It said the outermost rear door to this extension was not secured at all, and the inner rear door between the extension and main property had been forced and temporarily boarded the day before.

Following this it declined the claim, saying policy endorsements had not been complied with.

- An endorsement under the policy said if the property was unoccupied for a period of more than thirty consecutive days – then certain security measures would need to be in place – including all external doors to be fitted with good quality locks. It said Company I’s property was not occupied. And as such these security requirements were required. As the outermost rear door was unlocked, it allowed unrestricted access to the individuals who started the fire. So, the endorsement not being met was material to the claim.
- The endorsement required Company I to ensure fire alarms were connected unless otherwise agreed by TICL in writing. As well as requirements to ensure they were functional. And this hadn’t happened as no fire alarm was connected. It said there was evidence of a fire alarm system with a “break glass” panel – yet it had not been agreed with TICL that it wasn’t in full working order. Again, it said this was material to the fire.

Company I disagreed, arguing the property was sufficiently occupied, and there was no requirement in the policy terms stating it needed to be slept in.

Company I brought the matter to this Service. One of our Investigators looked into what happened and upheld the complaint, saying:

- Company I had provided visitation logs that showed the property was visited within 30 days of the loss, and visited approximately once a fortnight. And in the absence of the policy defining “unoccupied”, he was satisfied the level of visitation was sufficient to class the property as occupied. As a result, the endorsements TICL sought to rely on wouldn’t apply.

- The endorsement related to fire precautions only applied to existing devices installed at the property. And while the property had a historic fire alarm in place – this was from over 30 years before. Therefore, it wasn't reasonable for TICL to class these as an alarm system.

So, the Investigator concluded neither endorsement could be relied upon. And he directed TICL to accept and settle the claim. TICL disagreed, asking this Service to reconsider it said:

- It had given numerous reasons why the claim had been declined. And that Company I had declared the property was not occupied since its purchase several years prior to the fire.
- In the absence of a specific definition, a standard dictionary definition should apply – and here unoccupied would include “*empty, with no one living there or using it.*”
- The Investigator's view acknowledged the property was being visited once every fortnight. But there was a condition under the policy that required the property to be “*...inspected thoroughly internally and externally at least once every seven days.*”

Company I also provided further submissions.

- This included photos of the fire alarm in question and commentary around it which it said showed the fire alarm system was obsolete, in a dilapidated condition and incapable of being repaired. It also provided other photos of the wiring of the system which it said showed whatever it had been connected to within the ceiling had been long removed at the point Company I purchased the property. And photos of the fire system's control panel which suggested it had been decommissioned around 2012.
- It provided emails from 2017 when the policy was first taken out, where it says the broker acknowledged to TICL that the property had “no alarm” and TICL accepted the risk on this basis.
- It said the policy endorsement related to fire installations TICL has sought to rely on would only apply to devices already in place, and not a requirement to install such devices if they weren't present.

So, the matter was passed to me for an Ombudsman's decision. I issued my provisional decision on 31 October 2023 outlining why I didn't intend to uphold the complaint. I've included an extract of this below.

“In this case TICL has sought to rely on a range of different reasons to decline cover. Given the informal nature of this Service, I will focus on what I consider to be the most relevant. And simply, if I am persuaded that it has applied any of these endorsements or exclusions fairly and reasonably then the others will fall away.

I'll begin by looking at the first of the endorsements TICL has quoted. I've included an extract of this below which states:

“...Damage in respect of any Building or any property within such Building which is unoccupied for a period of more than thirty consecutive dates [sic] other than Damage caused by ...[lists various causes]... subject to the following Special Condition:

Special Condition - *The Named Insured or its Agent shall ensure that*

(a) such unoccupied buildings are secured against illegal entry and all external doors and accessible external windows are fitted with good quality

locks

(b) all services other than limited services required for security guards fire and burglar alarms shall be disconnected unless otherwise agreed by the Company in writing...

(g) the Business Premises shall be inspected thoroughly internally and externally at least once every seven days (or at a frequency agreed by the Company in writing) by the Named Insured or a responsible person appointed by the Named Insured and a record maintained of such inspection and any defects rectified without delay"

And it is the above conditions (a), (b), and (g) that TICL has discussed when declining this claim. To enable any of these conditions to apply, I must first consider whether Company I's property was unoccupied for a period of more than thirty consecutive days.

Within Company I's submissions it has been clear that at the time of the fire, no one was living at the property, nor sleeping in it. It said this was due to the property being semi-derelict and awaiting redevelopment. It said its agents would visit for a few hours at a time usually once a week.

The policy does not provide a definition for occupied or unoccupied or variations of these terms. So, without a special meaning within the policy, I'll revert to the term's everyday meaning, and refer to a dictionary definition. I've reviewed several dictionary definitions and a similar theme across these includes reference to a building without occupants.

Given Company I's own statement, I think it's evident the property was not occupied – and visits to check on its condition as have been described in this case – would not persuade me otherwise.

Company I has pointed to a published document from this Service from 2004 which it has quoted as this Service's "*published and settled approach*", including an extract that says:

"so long as the insured property was visited on a reasonably frequent basis, then it was 'occupied', even though the policyholder was not sleeping there every night."

This quote followed a discussion regarding household policies – which Company A's policy is not. Furthermore, for completeness, the follow-on sentence that Company I has chosen to omit states:

"It is important to stress, however, that we look at the facts of each case on their own merits, rather than applying a strict rule."

So, I want to be clear, in the facts of this case there appears to be no dispute that the property was awaiting renovation at the time of the fire, and therefore its attendance was limited only to Company I's agents checking its condition – that is to say no one was sleeping there at all. I don't consider this reasonably amounts to occupation, and as a result I'm satisfied TICL's conclusion that it was unoccupied for the purposes of the property is accurate and fair.

Company I has discussed at this point that TICL would've been aware of its position

and plans to renovate the property from inception when agreeing to insure its property. I take this on board, but TICL is not attempting to say no cover will apply if the property is unoccupied, simply that additional conditions will apply as a result. So, this doesn't change my mind.

For these reasons I'm satisfied the conditions under the respective endorsement do apply to Company I's claim. I'll now consider these in turn.

Condition (a) required such unoccupied buildings to be secured against illegal entry and all external doors and accessible external windows are fitted with good quality locks.

In this instance, it isn't disputed that the entry which the intruders used was the outermost rear door. And that this door, was not secured with a good quality lock at the time.

So, on its face, it appears that the condition has not been met. And that this access was relevant to the claim and the fire itself as it was the entry point that intruders used. I've gone on to consider whether TICL has applied this fairly and reasonably in the circumstances.

Company I submits that the property had previously been sufficiently secure as the policy requires. But it says two days before the fire one of its agents discovered the outside door had been prised open and windows nearby broken. Company I says immediate steps were taken to secure the site but due to timing they had been unable to obtain all appropriate materials to complete the repair – but had completed some repairs by affixing boarding.

Company I says this shows it acted reasonably to keep the property secure both by regular attendance, as well as acting quickly to re-secure the property.

Within its submissions to this Service, TICL has quoted evidence from the forensic reports which suggests the innermost door had included a good quality mortice lock that the fire brigade had removed. This suggests to me the intruders were unable to access the main property previously when confronted with this door and lock.

If I consider the several days before the fire when individuals first attempted to break-in, and the outer door was damaged – I've been given little by Company I to demonstrate the outermost door was sufficiently secured with a good quality lock as the condition required. While I acknowledge there's no dispute that Company I's agent did affix boarding – this simply doesn't meet the condition. And so, in the circumstances and the evidence provided to date, I'm not satisfied it is fair or reasonable for me to direct TICL to act beyond its policy condition that has been breached.

There are other conditions that TICL has sought to rely on. As well as a previously lengthy back and forth between parties related to another endorsement related to the quality of the fire alarm system. And while I have also considered these within my review of this complaint, I do not feel it would be necessary to explore these further as I'm currently satisfied TICL fairly declined this claim in line with its policy terms."

I gave both parties until 14 November 2023 to provide any further comments or evidence, and this time has now passed.

Company I disagreed, stating:

- The policy Company I has includes cover for several different sites. And the relevant endorsement for this property states:

*“...Damage in respect of any Building or any property within such Building which is unoccupied for a period of more than thirty consecutive dates [sic] **other than Damage caused by fire lightning explosion aircraft or other aerial devices or articles dropped therefrom or Subsidence as detailed** [reference to another endorsement] **subject to the following Special Condition.**” [Company I’s emphasis]*

Company I made reference to another property under its same schedule, with a similar endorsement but which had no such exception for fire, lightning etc. As a result, it said the endorsement TICL was seeking to rely on does not apply to the claim in question as it was caused by fire.

- Company I also provided further detail around the site’s security, arguing the property was secure prior to the initial break-in. It said the lock on the annex door did not work but was screwed shut prior to the initial break-in with wooden batons across part of the door. It said these wooden batons were forced and glass within the window was broken during the initial break-in, and the main door to the property was also forced.

Following the initial break-in, Company I stated the wooden batons were replaced and fitted within tamper proof screws. And that these were forced during the arson attack. It said the inner door that did have a secure lock had been also forced, so a lack of a lock on the external door was immaterial to the loss in this case.

Company I restated its position that it had taken all reasonable steps to mitigate security between the initial loss and the arson attack. And that it was the extent of the boarding on the inner door – following the initial break-in – that led to the intruders to resort to fire, having forced the outer door as they had previously.

- The endorsement related to fire alarms shouldn’t apply – providing evidence of discussions between its broker and the insurer of the existing fire system present at the property prior to the insurance being taken out. So, it said TICL was aware of the lack of fire alarms and system present at the property, and it wouldn’t be fair for it to apply this endorsement as this only related to systems already present.

So, the matter has been passed back to me to consider for a final 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’m still satisfied that TICL has fairly declined this claim, and I’m not upholding the complaint. I’ll explain why. I’ll answer Company I’s most recent points in turn.

The endorsement

Company I has argued the endorsement related to security does not apply to incidents of fire, lightning, explosion, amongst others. So, I will repeat the relevant terms here for the avoidance of any doubt. The policy wording, under exclusions states:

“The insurance provided under this Property Damage Section does not cover”

This goes on to list out a number of exclusions. The endorsement in question within the policy schedule, replaces exclusion 10 for this property, and says:

“10. Damage in respect of any Building or any property within such Building which is unoccupied for a period of more than thirty consecutive dates other than Damage caused by fire lightning explosion aircraft or other aerial devices or articles dropped therefrom or Subsidence as detailed in [other endorsement] subject to the following Special Condition”

The relevant special conditions have been listed within my provisional decision above. So, I won't repeat these again here.

Having read over these terms carefully, I don't agree with Company I's interpretation. I'm satisfied the endorsement makes clear that damage *is covered* if an unoccupied building is damaged by fire AND the special conditions are met. So here, cover still turns on those conditions.

The break-in and mitigation on Company I's part

In line with the above, I'm still satisfied the special conditions apply to this claim. The one most disputed here is:

“(a) such unoccupied buildings are secured against illegal entry and all external doors and accessible external windows are fitted with good quality locks

Company I has been explicitly clear that the external door was not fitted with a good quality lock in line with the above terms – prior to the initial break-in. And that it had wooden batons to secure the door. And following the break-in and the repairs Company I carried out, it refitted wooden batons.

So, in both instances, prior to the initial break-in and the later arson attack, it is evident to me that the external door in question was not fitted with a good quality lock. And this was in breach of the security endorsement on its policy.

As outlined in my provisional decision, it's evident this access was relevant to the claim and the fire itself as it was the point of entry that intruders used.

I've thought again about the circumstances described around this, to determine whether TICL has applied this fairly and reasonably in the circumstances.

Company I has argued that during the initial break-in, the intruders broke through both the external door that had the batons securing it, as well as the internal door that had been fitted with a mortice lock. So, it says the external door's lack of a lock would've not been material to the initial break-in as the intruders made it through both types of secured door.

I take on board the argument Company I has made here, but I disagree that this shows the lack of a good quality lock was immaterial to the loss. Had the intruders accessed the property using a different route that was unrelated to a door that didn't comply with the terms, I might agree, but here it's evident the access was gained through the door that did not comply. So, I think TICL is fair to consider this as material to the loss.

Company I argues the extent of the boarding of the internal door and the security this provided, following the initial break-in, may be the reason the intruders resorted to arson. This satisfies me that the security of the external door was material to the loss again, as they were only able to access the internal door after breaching the external door. I understand

Company I may feel the intruders would've made their way through regardless. But simply, Company I's security did not comply with this endorsement – the external door was not fitted with a good quality lock as required – and I'm satisfied this was material to the loss.

I've taken on board what Company I have said about the steps it took to mitigate any breach of security. But these haven't changed my mind.

So, in this instance, I am not directing TICL to act beyond its policy condition that has been breached as I do not believe there is a fair and reasonable reason to do so.

Other endorsements and terms relied upon by TICL

Company I and TICL have had long exchanges about other terms TICL sought to rely on to decline this claim.

I've taken all of these points on board, but given I'm already satisfied TICL has fairly declined the claim, I do not feel it is necessary or productive to discuss the others any further as it will not impact the outcome of the claim.

My final decision

For all of the above reasons, I'm not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Company I to accept or reject my decision before 9 January 2023.

Jack Baldry
Ombudsman