

## **The complaint**

The trustees of a trust I will refer to as G complain about the decision of QIC Europe Ltd to decline their commercial property insurance claim.

Mr M, the beneficiary of the trust, is acting in the complaint as a representative of G.

## **What happened**

The following is intended only as a brief summary of events. Additionally, whilst a number of individuals have been involved, I've largely just referred to Mr M, G and QIC.

G owns and rents out commercial property. It held an insurance policy underwritten by QIC. In July 2020, Mr M became aware of an issue at its property and upon investigating found the property vacant and that it had been recently used as a "cannabis farm". The property had suffered significant damage and a claim for this was made with QIC.

Ultimately, QIC declined the claim on the basis that the property was unoccupied at the time of the damage. QIC said that rent on the property had not been paid for five months, and G should have been aware that the premises were unoccupied. QIC said that it was a condition precedent of the policy that G was required to secure the unoccupied property and inspect it every 7 days, and to inform QIC of the unoccupied status of the premises. QIC said that G had not done this, and this had increased the risk of damage.

Mr M was unhappy with this. In part, he said that G had not been aware the tenant was no longer at the premises, due in part to the COVID-19 pandemic arising around the same time. Mr M pointed to government advice around tenants and rent at this time. So, Mr M did not consider it appropriate for QIC to rely on this condition to decline the policy.

Mr M referred the complaint about QIC's decision to the Financial Ombudsman Service, on G's behalf. However, our Investigator did not recommend it be upheld. He thought that QIC had acted reasonably by considering G should have been aware of the lack of rent being paid and to have queried this further at the time. He didn't think the Government guidance changed this. He also did not consider QIC had relaxed its requirements around unoccupancy.

Ultimately, he thought that, as G had failed to adhere to the conditions precedent, this had increased the risk of damage being caused. So, QIC had not acted inappropriately by declining the claim.

Mr M remained unsatisfied. He said that there was a valid tenancy agreement in place, so the property was not unoccupied as per the policy definition. And that as a tenant has the right to quiet enjoyment, G had no right to enter the premises before the damage was discovered.

As our Investigator was unable to resolve the complaint, it has been passed to me for a 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 am not upholding this complaint. I'll explain why.

Mr M has said that he does not consider the definition of "unoccupied" in the policy to have been met in the circumstances. This definition reads:

"Any Premises part of any Premises or Residential Unit or Commercial Unit that for a Period exceeding 60 consecutive days is:

- a) not occupied or;
- b) untenanted or;
- c) empty or no longer in use."

Mr M has said that as there was a valid tenancy agreement in place, the property was not untenanted. However, the other options in this definition would still be met. The policy does not require all of these – merely one. And the property was not occupied or in use by those who had a right to be there. I do not consider unauthorised occupation by a third party means the premises were not unoccupied.

Mr M has provided reasons why G did not become aware of the tenant not occupying the premises for several months. He has said that the government instructions meant that G would not have been able to evict the tenants, and that both the pandemic and rights of the tenant meant that visiting and entering the premises during this period was not possible.

However, I am not persuaded by these arguments. At the very least I would expect G to have tried to engage with the tenant to see whether there were any issues, either with payment or otherwise. And there is no evidence that this happened. Ultimately, given the lack of rental payments over the relevant duration, G ought reasonably to have investigated further and would then have discovered the unoccupancy.

The policy has clear requirements in relation to a property that is, or becomes, unoccupied. These conditions include securing the property and inspecting it every seven days. As it did not discover the unoccupancy when it ought reasonably to have, G did not carry out these actions. And I consider that the risk of damage to the property clearly increased. So, I think that QIC is entitled to rely on these conditions precedent to decline the claim.

## **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 G to accept or reject my decision before 13 December 2023.

Sam Thomas  
**Ombudsman**