Housing Ombudsman Service

Guidance on complaints involving insurance issues

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Background

A number of situations can arise when dealing with complaints that also involve insurance claims. In most cases, this involves circumstances in which a resident is dissatisfied with the landlord's actions or inactions and is also claiming (or has been told to claim) compensation for damage to belongings / property or damage to their health.

This guidance explains the relevant terminology, sets out some key overriding principles and examines some of the most common scenarios, offering guidance as to what we consider to be fair and reasonable in such cases.

Terminology

The same set of circumstances and events can lead to both a formal complaint and an insurance claim. However, the issues being considered or determined, by whom, the scope of the respective investigations, the standards of proof required, and the terminology used are different in each case, as summarised below:

	Insurance Claim	**Formal Complaint**
Compensation is …	*Claimed*	*Asked* for / offered to
By the	*Claimant*	*Complainant*
Issue(s) to be determined	*Negligence*, *Breach of Duty*, *Liability*	*Service Failure, Maladministration*
Determined by	*Insurer, Courts*	*Landlord / Ombudsman*
With reference to	*Legislation, Public duty*	*Legislation, Service Standards*, *Policies & Procedures*
Resulting financial compensation covers …	Damaged Property / Belongings, Damage to Health, Loss of Income, Loss of Opportunity …	Redress for any identified service failure(s)

An investigation by an insurance company is different to a landlord's consideration of a formal complaint. An insurer determining an insurance claim has a narrower focus than a landlord's complaint investigation and is concerned solely with negligence and liability. In addition, insurers are not neutral or independent, are not concerned with fairness or proportionality and such investigations are adversarial rather than inquisitorial.

Furthermore, an insurance investigation is not concerned with identifying what went wrong, how things could be put right or what learning can be identified to improve a landlord's future service provision.

In this guidance 'a*t fault'* is used throughout as a neutral term to mean doing something wrong. This could be '*negligence*' if determined through an insurance claim or '*service failure*' if determined following a formal complaint investigation.

Landlord's position

Insurance protects a landlord's financial standing by the insurer paying compensation claims as opposed to this coming from the landlord's finances. So, when a complainant raises concerns, the outcome of which may be compensation, it is appropriate for a landlord to consider if the matter should be referred to its insurers to protect its financial resources. In such cases, the matter for this Service is whether it was 'fair in all the circumstances' for the landlord to have:

- Referred the complainant to their own insurer
- Referred the matter to the landlord's own insurer
- Not to have referred the matter to an insurer at all.

Overriding principles

The Dispute Resolution Principals (DRPs) are key for both landlords and this Service in considering what a reasonable and fair response to an insurance issue is - in particular '*be fair - treat people fairly and follow fair process*'.

The DRPs underpin the following insurance specific principles that inform the Ombudsman's view as to what is fair and reasonable when considering complaints involving insurance.

- An insurance claim should not restrict a complainant's ability to access a landlord's formal complaints procedure.

- A landlord should initially at least consider whether there is any evidence that it has been at fault for any claimed damage to a complainant's property / belongings and not refer complainant's straight to an insurer, although it may be appropriate for a landlord to notify its insurer of a potential claim.

- If a landlord accepts that it was / may have been at fault it may not be reasonable to ask complainants to claim on their own contents insurance policy as all claims made on a policy may affect the complainant's future premium and / or require then to pay an excess. However, if a complainant is unable to evidence the level of damages they are claiming, it may be reasonable for a landlord to ask that the complainant's insurer determine the claim.

- Complainants should be able to raise a formal complaint even if an insurance claim is also being made, particularly if a complainant has raised additional issues other than a request to be compensated for damaged belongings or damage to their health.

- In these circumstances, a landlord should clearly explain to complainants what issues can be considered through its formal complaints procedure and what can be progressed through its / the complainant's insurers. It should also appropriately signpost complainants for personal injury and / or any other insurance related claims.

- In some circumstances, it may be appropriate for a landlord to delay the formal complaints process if a claim on its insurance policy is also being considered. This is because it is possible that any admission or acceptance by the landlord of being at fault could invalidate any claim being processed by its insurer.

- If a complainant is dissatisfied with the decision of an insurer it may still be appropriate for the landlord to raise and respond to a formal complaint in order to establish if there has been any service failure (as opposed to negligence) and whether compensation is appropriate in accordance with its complaints and compensation procedures.

- Similarly, if an insurer has determined that a landlord is not liable to pay a complainant compensation, it may still be appropriate for this service to investigate and determine whether there has been any service failure or maladministration. Furthermore, it may be fair and proportionate for this service to order compensation to the value of any damaged property / belongings as redress in such cases where service failure or maladministration has been determined.

Appendix 1 – Insurance types

There are two types of insurance that may be encountered in housing complaints:

- *Property insurance* – where the financial interest is in the property and having to replace it if lost or damaged. Contents insurance and buildings insurance are both types of property insurance.
- *Liability insurance* (as held by landlords) – where the financial interest is in the landlord's financial resources and relates to the money that would have to be paid from its own finances if negligence was established.

These are explained in further detail below:

Contents insurance

Contents insurance covers the moveable items and semi-permanent fixtures in a property (such as furniture and appliances) against loss or damage caused by fire, theft or escape of water ('the perils'). Only the person who owned or was legally responsible for the household contents may claim under such a policy. Contents policies could be held by tenants or leaseholders.

Buildings insurance

Buildings insurance covers the building (often defined as the structure and foundations) and permanent fixtures on land against damage caused by the perils. Only a person who has the legal interest in the property may claim on the policy. Buildings polices are usually taken out by landlords but can be claimed on by leaseholders, who pay towards it and have a legal interest in the property. As tenants do not have a legal interest in their property they cannot hold or claim directly on a buildings policy.

Liability insurance

Liability insurance covers the legal liability of the policyholder, for example where a resident (tenant or leaseholder) believes a landlord has been negligent and caused damage to household contents and the resident has no contents insurance.

If a resident establishes that a landlord is legally liable for damage, the landlord's liability insurer will seek to resolve the landlord's liability by paying compensation that would otherwise have been paid through the courts.

If the insurer accepts the claim it can agree a settlement with the resident that resolves all legal claims arising out of the incident. This would tend to cover:

- The cost of alternative accommodation
- Quantifiable loss (special damages - this could include the cost of replacing household contents or the cost of alternative accommodation which the claimant has paid)
- Unquantifiable loss (general damages – like 'pain and suffering / loss of amenity' in personal injury cases or 'distress and inconvenience' in property damage cases).

Such claims will not cover:

- General displeasure upset or ‘sentimental value’
- Ex gratia payments
- Trouble and upset.

Block policies

Block policies are usually held by landlords to cover blocks of flats and can be both:

- A buildings policy; and
- A legal liability policy.

Block policies will tend to cover damage / loss caused to the building and the common parts as well as any legal liability of the landlord where their actions / inactions have caused damage to third parties.

Leaseholders also have a beneficial interest such policies as they will pay towards it and if their flat (leasehold) is damaged by a peril they may make a claim under the policy.

However, tenants who consider a landlord to be responsible for causing damage in their home have no rights to claim *directly* under such policies. Instead, theirs would be a legal liability claim and as such, the landlord would have to refer the claim to its own insurer.

Appendix 2 – Common scenarios

A useful scenario to consider is where there has been damage to a complainant’s possessions from an escape of water. The variations of this scenario in terms of tenure, source of the leak and the appropriate option for seeking redress for the damaged belongings are examined below.

In such cases it is important to consider:

1) Who was responsible for the part of the property where the leak originated (the landlord if from a tenanted flat or a communal space, or leaseholder). This is the person that bears the risk of any accidental damage.
2) Was someone responsible for causing the leak because of an action (causing damage) or an omission (the party responsible for the repair failing to repair it in line with its obligations).

Following on from this, insurance may be relevant in terms of covering the responsible party’s costs in putting right any damage caused but the key matter to consider initially is who was responsible.

Accidental damage

In some cases, a leak that gave rise to damage may have been accidental – that is where it has been established that no one was at fault (by causing or contributing to the leak or failing to do something they should have to stop it).

In such a scenario where an accidental leak was from a tenanted property, the landlord is obliged to respond to a report of a leak (it must be given notice) within a ‘reasonable time’. Although this period is not specified by law, target times given within tenancy agreements, tenant handbooks or repairs policies give a strong indication of what is considered to be a reasonable time.

A landlord only becomes responsible for any damage caused by the leak to its tenants and third parties if it fails to carry out its repairing obligation within a reasonable time. For example, even if water from a burst pipe that was the landlord’s responsibility caused significant damage to third party properties and belongings, the landlord would not be responsible for any third-party damage so long as it responded and completed an appropriate repair within a reasonable time.

Similarly, if an accidental leak is from a leasehold property, the leaseholder is likely to be responsible for any damage caused by the leak to third parties if they have failed to fulfil their repairing obligations as set out in their lease or been proved to have been negligent in any other regard.

In both cases, if either the landlord or the leaseholder fails in their respective repairing obligations in response to an accidental leak, they become responsible for the cost of putting right any damage caused by the leak from the point at which their failure to comply with their obligation started.

Although the responsible party may subsequently involve their insurers in covering the cost of doing so, this is at their discretion and the key responsibility is on the responsible party to repair and put right any damage caused by the leak to third parties’ properties and / or belongings.

In this regard, whilst home contents insurance policies may not include cover for third party liability, a number of specialist ‘leaseholder’ insurance policies do. In addition, in some cases a landlord’s buildings insurance may also cover leaseholders for third party damage.

However, if a landlord or leaseholder responds to an accidental leak and repairs it in accordance with its respective repairing obligations, they are unlikely to be responsible for any third-party damage. In such cases, it would be for the complainant to claim for any damage to their belongings on their own contents insurance policy and they would not have any other options for seeking redress for their damaged belongings should they not have such cover in place.

Non-accidental damage

If the landlord accepts that it may have been at fault or contributed to the cause of a leak, it may not be appropriate to ask a complainant to claim on own their own contents insurance policy. The landlord, as the responsible party, should either put right any damage caused to its tenanted or leasehold properties by the leak and / or facilitate a claim on its own insurance policy for any damaged belongings.

If the landlord disputes that it has been at fault, it is reasonable for it to follow its policy for such claims and either refer a complainant to their own contents insurance

policy or to the landlord's own insurers. This is because an insurance claim will establish negligence and / or liability to pay.

However, as already outlined in the overriding principles, even if liability to pay for a complainant's damaged belongings has been denied following an insurance claim, it may still be appropriate for a landlord (and subsequently this Service) to investigate the circumstances of the leak to determine if there was any service failure and whether any compensation is appropriate or reasonable.

Personal injury

If a complainant claims that theirs or their family's health has been adversely affected by a landlord's actions or inactions – only a court can make a legally binding decision as to whether the landlord is liable to pay damages.

As such it is appropriate for a landlord to refer such a claim to its insurers or to advise complainants to make a personal injury claim or seek independent legal advice.

However, we would still expect a landlord to investigate and respond to any dissatisfaction with other issues not related to the alleged damage to health as a formal complaint.

It is also important to distinguish between *stress* and *distress*. Stress is a medical condition and any claim that a landlord's actions or inactions have caused a complainant stress should be dealt with as above as a personal injury claim outside of the complaints process.

However, distress (along with inconvenience, annoyance and nuisance) is not a medical condition and a landlord should investigate and respond to reports that its actions or inactions have caused distress to a complainant as a formal complaint.