

Don't get caught out...

if you own property.



Whilst we aim to arrange your policy to give you a suitable level of insurance protection, it is an indisputable fact that insurance policies do not cover every eventuality.

It is also well known that insurance policies can be subject to quite onerous terms and conditions, which if breached, could leave the unsuspecting policyholder without cover at the time they need it most. It is therefore vital that you are aware of your policy terms and conditions, and comply with them at all times.

This document is not a comprehensive guide to all such terms and conditions, but it aims to highlight some of the most common issues that face policyholders.

Average

Property insurance policies are subject to the Condition of Average, which stipulates that if you do not set your cover at the amount to fully replace the property in the event of Damage, any claim will be reduced in proportion to the level of underinsurance. If a building that would cost £1.5m to reinstate is only insured for £1m (two thirds), any claim will be reduced in direct proportion – the insurer will only pay £500,000 in respect of Damage costing £750,000 and the policyholder will be required to make up the shortfall.

A building should be insured for the full rebuilding cost, which includes additional costs such as the cost of demolition, site clearance and all professional fees. It is extremely unlikely that the rebuilding cost will be the same as the property value, and a sum insured should not be based on the purchase price or market value of the building.

Contents and equipment should be insured for the full replacement value as new, and not for their written down value as second hand goods.

Loss of Income

You must insure your Loss of future income for the full amount that the business could potentially lose in the event of an incident. You must also ensure that cover is in place for a suitable Indemnity Period, which is the time following an incident that it will take for the property to be rebuilt and the tenant to return.

Whilst most leases stipulate the rental income for the property and also the indemnity period for which you should insure loss of rent, you should consider whether these figures would be sufficient to protect your business in the event of major damage.

Disclosure of Information / Fair Presentation

One of the major areas of dispute can occur where the insurer believes that a policyholder has not given them a true or complete picture of the risk.

This allows the Insurer to treat the policy as if it has never been in force on the basis of “non-disclosure of material facts”. We are pleased to say that this particularly onerous position was changed by the introduction of the Insurance Act 2015, which became law in August 2016.

The act aims to make the balance between policyholder and insurer more equal by requiring the policyholder to make a “fair presentation” of the risk, and provided this is done, the onus is transferred to the insurer to ask for any additional information which it believes may be material to its underwriting.

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In order to be classed as a fair presentation, the policyholder must include all relevant information that it ought to know following a reasonable search of the information available to it.

As well as the actual “physical” risk being insured, insurers wish to know about the “moral” risk of a policyholder – this could relate to financial matters such as CCJs, liquidations or bankruptcies; criminal charges or convictions; or regulatory problems including investigations or enforcement action by the authorities.

If you suffer any accidents or incidents which could result in a claim, even if one is not pursued, these may be material to the insurance and must be disclosed.

All insurance policies can be avoided if there is fraud when the cover is placed, or in the event of a claim – this could include items such as deliberate misinformation at the time cover is placed to fictitious losses or exaggerations on genuine losses.

Reasonable Care

All policies have a requirement for the policyholder to take all reasonable steps to protect their property, and to prevent any damage or accidents.

As a rule of thumb, you should act as if you were not insured and take whatever measures you would if the loss was payable by you and not an insurer. Insurers will not pay claims where a policyholder is reckless with their property on the basis that “it doesn’t matter because it’s insured.”

Say Nothing!

If you are in the unfortunate situation where a claim may be made against you, it is important that you do not discuss the matter with the claimant or enter into any correspondence prior to speaking to the insurer.

In no circumstances should you ever admit liability for an incident. Your insurer may feel that its position has been prejudiced by entering into correspondence and refuse to deal with the claim on your behalf.

If you are put on the spot, you should listen to what has been said, but politely respond to say you will not be able to comment until the circumstances have been fully investigated.

Unoccupied Buildings

Insurers have great concerns when buildings (or parts of buildings) are not occupied, as they are far more susceptible to Damage. Whilst the risk of Arson, Theft and Vandalism is increased, there is also the potential for other losses to be far worse than if they were in an occupied building.

Storm Damage and Escape of Water are the most obvious, as if unchecked even for a few days, there could be a huge amount of damage.

Your policy is likely to contain an “Empty Buildings Condition” and it is important that you are aware of the exact requirements of this. Whilst every policy is worded slightly differently, they all have similar housekeeping requirements that should reduce the likelihood of any loss, or reduce the size of any loss that may occur.

A point often overlooked is that whilst a Landlord may not define a building as being unoccupied if it is under lease and earning rent, the insurer will treat any building which is not in use as being empty. In such circumstances, it is likely to be a condition of the lease that the tenant complies with all insurance requirements.

Examples of the types of measures that must be adhered to are as follows –

- The building is to be kept fully secured at all points of access
- The letterbox and other openings to be sealed to prevent combustible items being introduced to the building
- All waste and unfixed combustible items to be removed from the building and surrounding areas
- The water system to be disconnected and drained, and if possible, the valves padlocked to prevent the supply being turned back on

- The gas and electricity to be disconnected, other than the power to any alarm systems which must remain operational
- The building to be fully inspected both internally and externally on a weekly basis to check that there have been no incidents of damage

Whilst we appreciate there is a cost to implementing such measures, other than the weekly inspections which will be ongoing, compliance with the others will only need to be done when the building becomes vacant, and there should be no further expenditure irrespective of the length of unoccupancy.

We hope this gives you some guidance relating to common insurance pitfalls and would be happy to discuss any aspects of the above with you as part of your insurance arrangements.

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