Leaks and building insurance frequently asked questions

The purpose of this fact sheet is to answer some of the frequently asked questions leaseholders have about leaks.

Please note that this fact sheet is for guidance only. We recommend you also look at the fact sheet about buildings insurance and consult the Protector Insurance policy for full details of the exact cover and exclusions within the policy. We also recommend that you take independent advice on issues about your liability, the liability of other residents or the Council in relation to particular incidents. The examples given are for possible scenarios; in practice legal liability has to be established by considering the particular circumstances of the individual case.

What should I do if my property is damaged as a result of a leak from another property?

If the leak is from another property (tenanted or leasehold) you should first ask your neighbour to try to stop the leak. If the leak continues or if it is from a communal part of the building you should contact our repairs call centre on 0208 863 5611. We will try to contact the resident that lives in the property where the leak is coming from and ask them to stop the leak. If we cannot contact the resident, we have the authority to force entry into the property and carry out the work to stop the leak.

If the structure or fabric of your flat is damaged, you should make a claim under the building insurance policy to Protector Insurance. Please see the Building Insurance for Leaseholders section of the website for details of how to make a claim.

If your property is damaged by a leakage of water or from another cause originating from a different property, such as an upstairs flat, you will still need to submit a claim in your own name to Protector Insurance for the damage within your flat. It may be that Protector Insurance can secure a recovery of the cost of damage from the owners of the other property.

If your contents and personal belongings, such as carpets and furniture, are damaged you should make a claim on your contents insurance policy, as the building insurance does not cover your contents.

If you don’t have contents insurance and you feel that your neighbour is responsible, you can only make a claim against them if you can prove they have been negligent. This means that if the leak was an accident or you cannot prove it was the result of negligence then you will not be able to make a claim.

Is the Council responsible for damage from a leak to my flat caused by a Council tenant or a tenanted flat?

If a Council tenant causes damage to your flat, for example by an overflow from a sink or bath, the Council would not be responsible for repairing the damage. You should make a claim on the building insurance and your contents insurance as

necessary. If you think the leak has resulted from a problem in the tenanted flat which is the responsibility of the Council to fix, you should make a claim on your building and/or contents insurance. However, if you think the Council has been negligent, for example in not carrying out a repair within a reasonable time once it had been made aware of it, you can make a claim on the Council's own insurance. You should contact the Insurance Service for advice.

What if I cause damage to another leaseholder's property?

If you damage the structure/fabric of the property, the other leaseholder should make a claim on the building insurance.

If you damage their contents, the other leaseholder can claim on their own contents insurance. If their contents insurers think that you have been negligent, they may seek to recover costs from you.

Providing your property is not sub-let, in most instances any liability that may arise would be an occupier's liability, which may be covered by your own contents insurance. You should notify your contents insurers of any claim made against you, and also if you are sub-letting.

What if I cause damage to a tenanted property?

If you damage the structure/fabric of property owned by the Council and occupied by a tenant of the Council, it is the Council's responsibility to repair the property. We will recharge the cost to you if you have acted in a negligent manner.

If you damage the tenant's contents they can claim on their own contents insurance. If their contents insurers think that you have been negligent, they may seek to recover costs from you.

Providing your property is not sub-let, in most instances any liability that may arise would be an occupier's liability which may be covered by your contents insurance. You should notify your contents insurers of any claim made against you.

The policy issued by Protector Insurance includes, subject to certain conditions, cover for any proven liability you have as owner as opposed to occupier of the premises. See the next two sections for an outline of the difference in insurance terms between your liability as an owner and as an occupier.

What is "Owner's Liability" and what does it cover?

Your building insurance policy includes cover of up to £5,000,000 for any legal liability you have as the owner of your home to compensate others following an accident for bodily injury, including death or disease, or for loss or damage to property.

As an example, if you sub-let your flat and there was a leak that caused damage to the flat below, in most cases any such losses would be covered by the downstairs neighbour's own buildings and/or contents policies. Their insurers may look to make a recovery from you as the owner of the flat where the leak occurred if they consider

you have been negligent, for example if you had failed to carry out a repair within a reasonable time.

If the neighbour does not have any cover in place, they may wish to claim against the owner of the property above, who will then pass the claim to Protector Insurance for consideration under this policy.

Where you are living in the flat yourself, a claim is likely to be made to your contents insurers based on your occupiers' liability. Please see the next section for further details.

What is "Occupier's Liability" and what does it cover?

Generally speaking, when looking at the duty of care a homeowner has to others, the law takes the view that a person's responsibilities as occupier of a property will take priority over those as owner. The reason for this is someone living at a property can exercise a higher degree of control over the property in their capacity as occupier.

Both buildings policies and contents policies will usually include liability cover, with a buildings policy providing cover for owner's liability, while a contents policy provides liability for the occupier of the home.

If you are living in the flat, liability claims will often be passed to your contents insurer for consideration under the occupier's liability section of cover. For example, if you or a member of your family have let a bath overflow on a number of occasions, and your downstairs neighbour is seeking reimbursement of their uninsured costs in respect of damage to their building and/or contents, your contents insurance is most likely to provide you with cover for any claims made against you.