

Home Buildings and Contents – Liability Insurance for Consumers



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This Factsheet examines the liability insurance that is available to consumers under a conventional home buildings and/or contents cover. It contains surprises. It also points to the need for an urgent overhaul to the way that most home insurance policies are worded.

Buildings Insurance

The liability insurance under a domestic buildings policy will normally be described as below:

We will pay...for any one claim or series of claims arising from any one event... that you or your family become legally liable to pay as compensation... occurring during the period of insurance in respect of accidental:

- *death, bodily injury or illness of any person who is not an employee of either you or your family*
- *damage to material property not belonging to or in the custody or control of you or your family or domestic staff **arising from:***

a) your ownership (but not occupation) of the buildings...

Note the section at the end – the emphasis is ours. We comment on this below.

Contents Insurance

This will contain similar liability cover to that described in the buildings policy except that it will close with the following words:

***Arising from:
the occupation of the home
(but not its ownership)***

Also included under a contents policy will be Personal Liability cover not arising from occupation of the property. This would include claims arising from ordinary personal liabilities that typically arise while the Insured and their family are away from the home and will usually include liabilities arising from the use of pedal cycles.



It is therefore noted that:

- The **buildings** policy only provides **Property Owner's** Liability cover, and
- The **contents** policy only provides **Occupier's** Liability cover, along with Personal Liability cover

The Problem

The liability cover required by the policyholder is not always provided by the obvious policy. Have a look at these examples:

1. A roof tile blows off the roof and hits a passing pedestrian.
One would naturally assume this relates to a property owner's liability and therefore covered under the buildings policy. Not so. This sort of claim would invariably represent an occupier's liability and is, therefore, the province of a contents policy.
2. Your client receives a subrogation claim from the insurers of the next-door property. It seems your client's tree roots have caused damage totalling £250,000.
Again, it would be natural to advise the client that they should look to their buildings insurers to defend and, if necessary, pay this third-party claim. But that would be wrong. The liability here, as far as it exists, would represent an occupier's liability and, again, a matter for a contents policy.

What is the cause of this paradox?

Almost all liability claims relating to property are brought under one of the following Acts:

Occupiers' Liability Act 1957

Occupiers' Liability Act 1984

The two Acts apply concurrently: both address the common law duty an occupier of property has to visitors, with the 1984 Act addressing the duty owed to trespassers.

On the basis that a claim being brought against a homeowner and/or occupier will be brought under one of the above Acts, it follows that the insurance required to defend and/or pay such claims is Occupier's Liability – and that is normally only found as part of a home contents insurance.

The need for change

The distinction between owner's and occupier's liability might not present a problem when a policyholder insures both buildings and contents, especially when the cover is obtained under the one policy. But not all occupiers choose to insure their contents, whether on grounds of affordability or perhaps because they place insufficient value of their contents. For whatever reason, a homeowner or occupier who is insured under a traditionally worded policy will, effectively, have no liability cover at all if there is no contents insurance.

The traditional format of cover to be found in most home insurance policies has remained unchanged since the 1950s and it is convention that has led to the two types of liability cover being divided between buildings and contents cover. There is no need for the old format to be continued. Indeed, some modern policy forms no longer contain the paradox and so the problem of no insurance is not likely to arise with:

- Policies specifically designed for let properties
- Property Owner policies
- Commercial policies
- Blocks of flats
- Some high-net-worth policies

If policies designed for high-net-worth individuals can dispense with the artificial divide we see no reason why all home policies cannot be harmonised so that inadvertent non-insurance can be avoided.

What advice should a broker provide to clients who insure for Buildings only?

If the liability paradox has not been explained to clients, especially those who choose not to insure for contents, it is not beyond reason to expect that a broker could be held to account in the event their client is faced with an uninsured liability claim. We suggest that brokers draw up an action plan as follows:

- a. Consider providing a fact sheet to list the extra cover provided under a contents policy, stressing the availability of Occupier's liability as well as cover for Personal Liability
- b. Make sure your client is fully aware of cover forgone if contents remain uninsured
- c. Train staff so that they are put on enquiry if an existing client asks to delete contents cover to save premium
- d. Contact all buildings-only clients with the fact sheet offering to quote for contents cover

Can Buildings insurers be forced to deal with Occupier's Liability claims?

Until policy wordings are brought into line, what is to be done when an Insured faces a liability claim and there is a buildings policy, but no insurance for contents? There have been cases where a buildings insurer has simply declined to deal with an Occupier's Liability claim, pointing out it is a matter for a contents policy, even though no contents policy exists. The more enlightened buildings insurer would agree to deal with the matter if there is no contents insurance, but not all insurers share this good practice.

We first came across this as long ago as 1990 when reading the annual report from the Insurance Ombudsman Bureau (as it then was). Julian Farrand commented on the expansive liability insurance wording found in buildings policies:

But this impressive provision may actually beat the air. The fatal flaw lies in the restriction of the indemnity to liabilities incurred purely from ownership of the property.

He added:

...so far as I have discovered and despite invitations for enlightenment, there simply is no relevant and realistic civil liability which arises purely from ownership of land or buildings... The only reasonable result in my judgment, therefore, has been to expect the indemnity to cover the liabilities ordinarily regarded as being those of an owner/occupier.

It therefore seems likely that the Financial Ombudsman Service would continue to expect a buildings insurer to deal with a liability claim where there is no contents insurer. But this arrangement is far from satisfactory and it is possible that future Ombudsman determinations on this point would be limited by the prevailing cap on awards.

It would be much better for the industry to respond by adopting a uniform, universal wording to remove all doubt. The current arrangements are anachronistic and incomprehensible. It is on our agenda.

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