Who Pays the Excess?

These days it is accepted that an insurance policy will carry an excess which is sometimes referred to as a deductible.

This is the contribution the policyholder has to pay towards any claim before the insurer pays the balance. Commonly, different levels of excess will apply to different types of losses.

Who should pay the excess and why?
The starting point is the lease; some modern leases specify how excesses are to be dealt with – which is usually done by including them under the service charge account. Older leases, on the other hand, are unlikely to specifically dictate how insurance excesses are to be handled as, when they were drafted, excesses were less common.

So, you may ask, why have excesses become common place? The answer is that they are a means of reducing the premium. Initially, small excesses were imposed on insurance policies to eliminate small claims where the cost of administering the claim could be greater than the amount of the loss being claimed for. More recently, however, larger insurance excesses have become a way of reducing the premium; and the larger the excess becomes, the more contentious an issue it becomes and the more likely this will be legally challenged by means of an appeal to the First Tier Tribunal (FTT).

Assuming your lease is silent on the subject, you will have to consider whether you pay it via the service charge account. But if you do, then you need to be aware that the FTT may rule against you. If the claim relates to common parts, or affects multiple flats, it could be assumed that this would be considered a general maintenance issue and as such, the excess simply can be paid from the service charge account.

With escape of water, on the other hand, it is usually the flat owner underneath the flat where the water originated that suffers damage and will often be the party making the claim.

Whilst, morally, the flat owner below may feel that it is the fault of the flat owner above, the challenge is in establishing strict liability in law and for most claims this is not easily possible. For example, a flat owner who accidentally overfills a bath would probably not be considered negligent by a court of law unless it could be proved that this was not the first time they had done so.

The FTT have generally allowed for excesses to be claimed under the service charge account but this is not always the case, so this is a grey area. It is commonly accepted that insurance excesses are a means by which insurance premiums can be reduced but the difficult debate is whether they form part of the insurance costs in the eyes of the lease.

Electing for, or having a very large excess can cause problems for owners looking to sell their property. The solicitor acting for a prospective purchaser is bound, by the Council of Mortgage Lenders' handbook, to refer to a mortgage lender if the insurance excess contribution from any one flat is greater than £1,000. Where this is the case, a mortgage lender may refuse to lend which could reduce the market value of a flat.

If your lease is silent on the subject of excesses you are lucky enough to have the advantage to choose between a higher excess and lower premium or lower excess and higher premium – the choice is yours!

Excess
The first part of a claim which is paid by the Policyholder. The Insurer pays amounts in "excess" of this first amount. An excess may be compulsory (i.e. imposed by the Insurer) or voluntary (i.e. accepted by the Policyholder in return for a premium reduction).

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