

## **The complaint**

A company that I will refer to as M complains about the decision of Accelerant Insurance Europe SA/NV to decline its commercial building and business interruption claim.

## **What happened**

The following is intended only as a brief summary of the events. Additionally, whilst a number of third parties have been involved in the correspondence on this claim and complaint, I have largely just referred to M and Accelerant. Accelerant are ultimately responsible for the decision on the claim, even though this may have been made on its behalf by its agents.

M had a commercial insurance policy underwritten by Accelerant. In late 2022, they made a claim for damage to their property and associated business interruption. The damage was found to be the result of water ingress into the property. But Accelerant declined the claim. It said that no event of flood or storm had been identified that had caused the ingress of water. And that the accidental damage cover M had excluded claims resulting from gradual deterioration or wet rot.

M was unhappy with this. They pointed to the conclusions of the contractors who had provided both an initial and follow up report on the damage and its likely cause. The last of these reports said:

“...it was discovered the gully surrounds had failed from the main roof downpipes, thus allowing a deluge of water/storm water to enter the building via air bricks and has contributed greatly to damage to sub floor and damp in surrounding walls.

In our professional opinion this has been caused by a single or consecutive events.”

When Accelerant did not alter its decision, M referred their complaint about this to the Financial Ombudsman Service. However, our Investigator did not consider the complaint should be upheld. He thought Accelerant had come to a fair and reasonable conclusion when considering the claim.

As M did not agree with this outcome, the complaint has been passed to me for a decision.

## **What I've decided – and why**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so, I am not upholding this complaint. I'll explain why.

Included in the evidence are report from Accelerant's loss adjuster and M's own contractor. Largely speaking, the reports do not disagree with each other. It is clear that the underlying damage has been the result of ingress of water into the property which has led to a decay and rot in the structure of the building. The issue is what is the actual cause of this.

Broadly, there are three main causes of damage that may mean M's policy should provide cover, these are flood, storm and accident. I'll deal with each of these in turn.

There is no suggestion that there has been a flood as covered by the policy. No evidence has been provided of the water level rising to the point that the property flooded. M have indicated that the issue is, partly, to do with the downpipe and guttering serving the property. And the flood definition in the policy excludes inundation by rainwater via the roof. As such, I don't consider there is any cover under this part of M's policy.

M have said that the storm cover should apply though. They have said that one, or a number, of storms has led to the water ingress. It is possible that there were storms within the period of insurance, and that one or a number of these contributed to the level of water ingress. It would be for M to have identified these storms in order to say that an insured event has occurred, and this does not seem to have happened here. But even assuming that there were storms, the question becomes whether these are the dominant cause of damage.

To give a more obvious example, if someone has a large hole in their roof and then there is a storm that allows water to come in, the main cause of damage is likely to be the hole not the storm. The storm has merely highlighted the existing problem.

In M's case, it appears to me that there are potentially a number of reasons for the water ingress. Some of those initially suggested in the first reports do not appear to be the main cause. For example, it isn't entirely clear what role the existing or absent airbricks had – or whether the issue was that those bricks that were there had been blocked. However, it does appear that there were a number of factors that had some involvement. The report M is relying on says that the issue with the downpipe/gully "contributed" to the damage, indicating this was not the sole issue.

It must be also shown that an insured event has taken place – in this case that a storm has caused damage. It does not appear that there is any suggestion that the cause of damage to the actual downpipe/gully was the result of a storm.

M have said that it was only in the event of a storm that there would have been water ingress into the property. I do not consider the report it is ultimately relying on says this. It refers both to storm water and a "deluge of water". If it is not a storm that has led to this deluge, then there would be no cover under a storm clause. It also isn't clear why an ingress of water would be limited to circumstances where there had been a greater than usual level of rainfall. With the gully seemingly blocked, even modest rainfall would presumably build up and then ingress into the property.

Regardless, even if a storm was the cause of water ingress via this downpipe/gully issue, this then returns the argument to whether this is an issue of a storm causing damage or, for example, the pre-existing condition of the downpipe/gully.

It seems evident from the photos provided that there were issues with the brickwork and potentially blockages around downpipe/gully. The policy does require that there is a six-monthly inspection of guttering. It may be that an insurer relying on such a specific term would not be fair or reasonable. But it is likely to be reasonable for an insurer to rely on the more general requirement for the property to be maintained and in good condition. Making sure generally that the property has good working drainage is likely to be something a policyholder would reasonably be expected to do. But even if the insurer is not relying on this, it must be shown that it was a storm, rather than issues with the condition of the property that caused the damage being claimed for. I am not satisfied that M has done this.

In summary on this aspect, it has not been shown that there was a storm and the dominant

cause of the ingress of water was seemingly the existing condition of the property. So, I do not consider Accelerant acted unfairly or unreasonably in declining M's claim under this cover.

Lastly, M's policy provides cover for accidental damage. Similar to the covers above, it would be necessary to determine what accident had caused the relevant damage. However, even if this could be done, the relevant clause contains a number of exclusions. Accelerant has referred to those relating to wet rot and any gradually operating cause. I think either of these could reasonably apply to the circumstances of M's claim. It is seemingly accepted that one of the main issues is the rotting of the building fabric. And this is likely to have occurred gradually.

M have suggested that the exclusion is not as clear as it could be, as it does not include punctuation. The lack of punctuation is common to insurance policies. The relevant test is what a reasonable person, with all the relevant background knowledge, would have considered the term to mean when the policy was taken out. I consider that a reasonable person reading the exclusion would know that damage caused by rot would not be covered where the claim is being considered under the accidental damage clause. So, I am not persuaded by M's argument. But even if I am wrong on this, the gradually operating cause part of the exclusion would still apply.

Ultimately, taking everything into account, I consider Accelerant's decision to decline the claim was fair and reasonable. I appreciate this outcome will come as a disappointment to M and their directors, but hopefully I have provided a clear explanation of what I am not upholding their complaint.

### **My final decision**

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask M to accept or reject my decision before 27 October 2023.

Sam Thomas  
**Ombudsman**