

## **The complaint**

Ms C is unhappy with the amount Accelerant Insurance Limited paid following a claim she made on the loss of rent section of her Residential Owner's Property policy.

## **What happened**

In May 2022 Ms C made a claim on her policy as the tenants of her property had caused significant damage to it. Accelerant agreed to make payment on the material damage section of the policy up to the indemnity limit of £10,000. It also considered a claim under the loss of rent section of the policy which provides cover where a damage claim has been accepted and the damage makes the property unfit to live in.

However, Accelerant said Ms C should have declared the total rent for the 24 month indemnity period as £111,600 rather than £50,000. So it said Ms C was under-insured. And it said her claim would be reduced proportionally by the extent of the under-insurance. The monthly rent that would have been due was £4,650 so it said it would pay £2,083 a month.

In early 2023 Accelerant queried why repairs to Ms C's property hadn't been completed. It appears that was because she'd had difficulties in obtaining funding for the work. But in March she said this would be finished in around 8-10 weeks. Accelerant agreed to make further loss of rent payments. Ms C said in June repair work was complete but she couldn't let the property because the agents hadn't paid a debt to a utility company.

Accelerant said the policy only covered loss of rent while repairs were being carried out. In this case it had made payment covering 13 months and some of that included periods when work wasn't being carried out because Ms C was raising funds for this. It thought it had gone beyond what the policy required and didn't agree to make any further payment.

Our investigator thought Accelerant had acted fairly in relation to the number of rental payments it made. But he didn't agree it was entitled to reduce the amount paid on the basis of under insurance as he wasn't satisfied Ms C hadn't made a fair presentation of risk. And in any case Accelerant hadn't shown what, if anything, it would have done differently if it had been aware of the total rent for the indemnity period. He said it should pay the loss of rent claim without the reduction for under-insurance and pay 8% simple interest on those payments from the date they should have been made until the date they were.

Accelerant didn't agree. It provided a 'Statement of Fact' showing information Ms C would have provided when taking out the policy which said "*Loss of Rental Income (£) 50,000*". And it drew attention to the wording on that document which said it was important a policyholder checked the information and confirmed they had made a fair presentation of risk. It also thought it had made loss of rent payments for long enough for Ms C to restore her property. So I need to reach a final 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.

The relevant rules and industry guidelines say Accelerant has a responsibility to handle claims promptly and fairly. It shouldn't reject a claim unreasonably.

I've thought first about the number of payments Accelerant made for Ms C's loss of rent claim. Her policy says *"In the event of Damage to the Property at the Premises for which We have admitted liability under Section 1 of this Policy which renders the Premises or parts of the Premises unfit to live in We will pay...the amount of Loss of Rent"*. Loss of Rent is defined as *"The amount by which the Rent during the Indemnity Period falls short of the Rent which but for the Damage would have been received"*.

Accelerant says the intent of the policy is to only pay loss of rent while work to remedy the damage is being carried out. It hasn't quoted a specific policy term in relation to this. But the Claims Conditions of the policy do say *"where an event which could give rise to a claim under this Policy happens You will... take all reasonable steps to recover Property lost or otherwise minimise the claim"*.

Given that I think it's fair to say there is an onus on Ms C to ensure repairs to her property are carried out within a reasonable period as doing so would minimise the amount Accelerant would be required to pay for loss of rent. I'd nevertheless expect it to take into account any reasons she provided as to why repairs weren't able to take place. But I think it's done that. It queried progress with the repairs and agreed to make further payments given the difficulties Ms C was having in organising these.

And those payments didn't end until the repairs had been completed. I appreciate Ms C then had further problems because of an unpaid debt but I don't think that's something which her policy covers. At that point the damage had been repaired and the property was no longer unfit to live in. I think it was fair of Accelerant to say it wouldn't be making further payments.

Turning to the issue of under-insurance, it's a general condition of the policy that a policyholder has a duty to make a fair presentation of risk. And the policy sets out the remedies that are available to Accelerant where that hasn't taken place which include:

*"if the failure to make a fair presentation of the risk is not deliberate or reckless and We would have issued cover on different terms had You made a fair presentation of the risk then We can:*

- i. reduce proportionately any amount paid or payable in respect of a claim under Your Policy using the following formula. We will divide the premium actually charged by the premium We would have charged had You made a fair presentation and calculate this as a percentage. The same percentage figure will be applied to the full amount of the claim to arrive at the proportion of the claim to be paid or payable; and/or*
- ii. treat Your Policy as if it had included the different terms (other than payment of the premium) that We would have imposed had You made a fair presentation."*

That wording is in line with the requirements of the Insurance Act 2015 which also says a commercial customer has a duty to make a fair presentation of the risk to the insurer. And given Ms C is bringing this complaint in her capacity as a landlord I think that's the right test to apply in this case.

In order to fulfil a fair presentation of risk, the Act says a commercial policyholder must disclose everything they know, or ought to know, that would influence the judgment of an insurer in deciding whether to insure the risk and on what terms. If it is found they didn't fulfil this duty then in order to say there has been a qualifying breach, the insurer needs to show that it would have either not offered the policy at all or offered it on different terms.

In this case Accelerant says the sum insured for loss of rent was £50,000 but given the indemnity period was 24 months and the monthly rent charged was £4,650 the correct figure should have been £111,600. It says policies are sold via brokers who would input information into its online portal "*using our question set*". And it's provided a 'Statement of Fact' which I understand captured the information Ms C provided at time of sale.

In considering whether a policyholder made a fair presentation of risk I think it's reasonable to take into account whether an insurer sought any particular information from them. So I think it's relevant to consider what questions Accelerant asked and how clear and specific those questions were.

I can see some information in the 'Statement of Fact' is in the form of a question, for example "*What is the current cost of rebuilding this property (£)?*" But the entry in relation to rent simply says "*Loss of Rental Income: (£)*". It doesn't contain any information on what Ms C was asked and so what led her to provide the figure of £50,000. Nor has Accelerant provided us with any more information about this. So while I appreciate the 'Statement of Fact' says Ms C has a duty to make a fair presentation of risk I'm not satisfied she didn't.

Even if that was the case, in order to show there had been a qualifying breach, Accelerant would also need to show that it would have either not offered the policy at all or offered it on different terms. There is correspondence in its claims file which says "*insurers accept that the under insurance on LOR [loss of rent] was not deliberate and reckless and would still have offered terms*". But there's no information on whether and how those terms would have been different to the ones that applied to Ms C's policy. In particular Accelerant has provided no information on whether this would have impacted the premium it charged Ms C.

Without that information it can't (and hasn't) correctly assessed in line with the policy terms what, if any, impact there should be on the claim she made. Those terms say it will "*divide the premium actually charged by the premium We would have charged had You made a fair presentation and calculate this as a percentage*". And it will then apply that to the claim amount to establish what is payable. But Accelerant hasn't done that. What it appears to have done is to divide what it believes was the sum insured by the actual amount and use that figure as the basis for establishing the under-insurance. That isn't what the policy (or the Insurance Act) entitles it to do.

I'm also satisfied Accelerant has been given a fair opportunity to provide evidence in relation to what it would have done if it had been aware of the actual rent due on Ms C's property. I can see our investigator asked for this information in his initial email on 24 August 2023, reached a view as it wasn't provided on 7 September (and made clear the basis on which he was doing so) and explained in a follow up view on 8 September that we'd need this information to reach a different outcome. Having reviewed the full file Accelerant then provided he said on 9 November it would need to show evidence that it would have offered the policy on different terms to apply under insurance. And he set deadlines for Accelerant to provide responses.

Under our rules (and in particular DISP 3.5.14) if a respondent business fails to comply with a time limit I'm able to proceed with consideration of the complaint. DISP 3.5.9 also says that I'm able to reach a decision on the basis of what has been supplied and take account of the failure by a party to provide the information requested.

### **Putting things right**

In this case, for the reasons I've explained, I'm not satisfied Ms C did breach the duty of fair presentation. But even if she did Accelerant hasn't shown there was a qualifying breach which enables it to reduce the loss of rent payment on the basis of under-insurance. It will therefore need to pay Ms C's loss of rent claim without applying the reduction for under-insurance (subject to the remaining terms of the policy including the relevant indemnity limit).

And it will then need to pay interest at 8% simple on those amounts from the date the payment should have been made until the date it actually is. If Accelerant considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Ms C how much it's taken off. It should also give Ms C a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

### **My final decision**

I've decided to uphold this complaint. Accelerant Insurance Limited will need to put things right by doing what I've said in this decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms C to accept or reject my decision before 31 January 2024.

James Park  
**Ombudsman**