

## The complaint

Mr and Mrs O have complained that Accelerant Insurance Europe SA/NV ('Accelerant') declined their claim for water damage under their home insurance policy.

There were other parties acting on behalf of Accelerant, such as claims agents, claims handlers and leak detection contractors. For ease of reference however, I only refer to Accelerant in this decision.

## What happened

Mr and Mrs O took out an insurance policy with Accelerant in March 2021. In April 2021, they reported a water leak to Accelerant. They said that this caused severe damp to areas under the shower cubicle and walls in the shower room. Mr and Mrs O had called out a plumber, but he couldn't locate the source of the leak, although he gave possible causes.

Accelerant agreed to appoint experts to trace and access the leak but said that an excess charge of £350.00 was payable before it could book a visit. Mr and Mrs O paid this amount and leak detection experts attended their home in May 2021. Accelerant concluded that the leak was caused by defective sealant. It said that failure or lack of sealant was an exclusion under Mr and Mrs O's policy and declined to cover the claim for necessary repairs.

In October 2021, Mr and Mrs O then noticed water leaking into the kitchen wall, even though re-sealing and re-plastering work had been carried out in the adjoining bathroom. They called out their own leak detection expert who provided a detailed report regarding the on-going problem. Mr and Mrs O wanted Accelerant to reimburse all the money they'd spent to resolve the issue, including the excess of £350 and to help address the leak which they said definitely wasn't caused by broken bathroom sealant. They felt that they'd been caused stress and inconvenience due to Accelerant's actions.

Accelerant maintained its position and Mr and Mrs O then referred their complaint to this service. However, our investigator didn't uphold the complaint. She thought that Mr and Mrs O's expert found the same cause for the damage as Accelerant's expert. She stated that as this cause was excluded under the policy, she couldn't ask them to do anything differently. She said that Accelerant were acting within the policy terms, and *'as they were agreed between you the two of you when you signed up to the policy, I think they've acted fairly when declining to cover your claim due to failure of sealant.'*

Mr and Mrs O remained unhappy with the outcome of their complaint and the matter was referred to me to reach a final decision in my role as Ombudsman. In April 2022, I issued a provisional decision for this complaint and explained why I was minded to partly uphold Mr and Mrs O's complaint as follows; -

*'The issue for me to determine is whether Accelerant acted fairly and reasonably in declining Mr and Mrs O's claim and applying the terms and conditions of its policy in the way that it has. I can't say that it did in all respects for the following reasons.*

*My starting point is to look at the terms and conditions of Mr and Mrs O's insurance policy. I*

*see that in principle, it covers damage caused by escape of water. There are also standard exclusion provisions in the policy however which limit the cover. The cover is set out in the policy booklet under the heading of 'Buildings' as follows: -*

***'WHAT IS COVERED***

*In the event of damage to buildings which are owned by you or for which you are responsible... because of a sudden or unforeseen event which is not specifically excluded, we will pay the cost incurred of repairs, replacement or reinstatement.'*

*The exclusions to the Buildings Section include the following: -*

***'WHAT IS NOT COVERED***

*We do not cover any damage caused by: ....*

- failure of or lack of sealant and/or grout*

*Under the heading of 'General Exclusions', this includes:-*

***DEFECTIVE DESIGN OR WORKMANSHIP***

*Any damage caused by, or resulting from defective maintenance or materials, design or workmanship. However, we do cover any resultant damage unless another exclusion applies.'*

***GRADUAL PHYSICAL LOSS OR DAMAGE***

*Any damage caused by:*

- wear, tear or depreciation*
- atmospheric, climatic or weather conditions or the action of light*
- rot, fungus, mould, damp or rust*
- other gradual deterioration*

*I turn first to the evidence supplied by Mr and Mrs O. Mr and Mrs O's plumber who was first called out when they noticed the damp problem wasn't an expert at detecting leaks and he advised Mr and Mrs O to stop using the bathroom, so the water system was turned off. He also recommended that Mr and Mrs O inform their insurance company as he thought it was within the remit and responsibility of insurers.*

*Mr and Mrs O said that they made numerous telephone calls to Accelerant and in doing so considered they'd received an appalling and 'sub-standard level of customer care.' When Accelerant's leak detection expert visited them, he spent only 10 minutes in total at the property. He advised that shower sealants should be replaced every 10 years even if nothing was wrong. Mr and Mrs O were concerned about this comment because the shower was only three years old. Mr and Mrs O also said that there was no correspondence or feedback following the visit. They said that Accelerant's representatives were dismissive and evasive and made no attempt to put Mr and Mrs O's property back into a pre-damaged state.*

*In summary, in relation to the main issue, Mr and Mrs O stated that the seals around the shower cubicle weren't defective. They accepted that water leaked through the seals when their own expert tested the area for leakage, however they didn't accept that the water leaking through the seals was enough to cause such extensive damage to the walls. They thought the leakage was 'definitely not coming from broken sealant from the bathroom.'*

*As to the excess of £350, they thought the call out charge should have been covered under the policy rather than 'masquerading' as an excess charge. 'Excess charges should only be paid when a settlement issue has been reached or resolved.' Mr and Mrs O also stated that they'd taken the initiative of purchasing an industrial dehumidifier at the cost of nearly £550 in order to get rid of the dampness as they said it was nearly impossible to live at their home*

due to the health risk. They were therefore looking to Accelerant to reimburse this cost also.

Mr and Mrs O's leak detection expert reported in detail. He explained that the shower cubicle had been resealed around the shower tray to prevent water leaking through. He also said that the bathroom was directly behind the kitchen wall area. The wall was re-plastered, and the shower not used for several weeks. Upon using the shower however, the damp then started to come back.

The expert conducted moisture meter tests and at the bottom of the kitchen wall, detected moisture levels of 100% water saturation, with 72% saturation levels on the wall above. He said that he suspected the leak to have been occurring over a period of time. He found gapping between the grouting and tiles in the shower room, which ran the width of the cubicle. He also detected a number of smaller cracks in the grouting. The shower cubicle waste trap and pipework were also tested, and no water leaks were detected from these.

Shower cubicle walls were 'spray tested' for leaks and after running the water for some time, in one area 'water run marks were detected.' The report was clear that 'Water is penetrating through the cracks and gapping between the tiles and running down beneath the shower tray.' The expert also noted that a board beneath the shower tray had suffered significant water damage from the water leak. Areas of water leak were also detected in the upstairs bathroom shower facility including an area 'where the water was observed rapidly penetrating behind the bath/shower screen frame.'

The expert then provided detailed advice as to what work was required to prevent further water leakage. This involved resealing and re-grouting work and replacing the shower door's rubber seal at bottom of the door, 'as significant water damage was observed on the wood panel in that location beneath the tray.'

I now turn to the evidence produced by Accelerant. It referred to the report of its expert which revealed no leaks on the waste pipe or other pipework. The expert also 'flood tested' the shower seals and carried out thermal imaging. It said that this revealed the leak to be on the shower seals. 'We removed the inspection panel next to the shower and found the shower seals are letting water pass.' It concluded that the sealant would need replacing.

In summary, Accelerant relied on the terms and conditions and exclusion provisions in the policy to decline Mr and Mrs O's claim for damage. 'Based upon the contractor's comments, we do not consider that the damage to your property arose out of a sudden or unforeseen event in accordance with the definition of damage within the policy and is not consistent with an escape of water as leaks from sealant are excluded within this section. The damage arises out of wear and tear and gradual deterioration to the seals.'

It concluded that the common cause identified by both expert report was the failure of seals; 'around the bath/tiles which have failed and therefore allowed water to enter and continuously leak behind and below the shower and bath causing the damage for which Mr O claims.' It considered the policy wording to be unambiguous 'and clearly directly applies to the circumstances as the insureds own choice of contractor has demonstrated/corroborated.'

I've very carefully considered all of the evidence supplied by Mr and Mrs O and Accelerant and reached the following provisional conclusions.

I have considerable sympathy for Mr and Mrs O and appreciate that they've suffered distress and inconvenience from the time they discovered the water leak in their home. The plumber who originally visited their home was unable to pin-point the problem, Accelerant's expert then identified the problem and it appears that Mr and Mrs O then employed their own contractor to carry out works to re-seal and re-plaster problem areas. It's most unfortunate

*that the work which was carried out didn't resolve the problem. Mr and Mrs O then instructed their own leak detection expert who advised that further works be carried out. In addition to this, Mr and Mrs O bought their own industrial dehumidifier and also paid the excess of £350 before Accelerant's own expert would visit.*

*Having said all this, insurance policies only offer cover for certain specified events and don't cover every eventuality. Insurance policies often exclude cover for failure of or lack of sealant or grout, as it's a common cause of damage from water leaks. Policy documents make it clear at inception that it's most important to read the terms and conditions and to understand the limits of cover.*

*In this instance, the expert reports are consistent and although Mr and Mrs O's expert report is more detailed than that of Accelerant, it comes to the same clear, consistent conclusion and that is that the water leak is due to problems with the sealant and grouting. It discounts other possible causes such as leaks in the pipework. I agree with our investigator on a provisional basis therefore that the available expert evidence concludes that the leak is due to the seals and grouting within the bathroom failing. This subsequently allowed the water to enter and cause damage. The policy is clear and excludes damage caused by failure or lack of sealant and/or grouting.*

*As for the policy excess however, a customer would only reasonably expect to pay an excess when all or part of their claim was being paid. I don't think Accelerant made it sufficiently clear to Mr and Mrs O that it was expecting them to pay the excess regardless of whether the claim would be dealt with and paid out. On a provisional basis therefore, I consider that it would be unfair and unreasonable for Accelerant to decline to reimburse Mr and Mrs O's excess amount.*

*I appreciate that the provisional decision as to the main issue will come as a disappointment to Mr and Mrs O as they thought that their home insurance policy covered this damage. They remained of the view that the damage was too great to have been caused by failure of sealant or grouting. Unfortunately for Mr and Mrs O however, the evidence clearly showed that this was the cause of the damage. Also, the exclusion clause in their policy with Accelerant was clear and the importance of checking policy wording had been stressed in its introductory letter. I can't therefore say that Accelerant acted unfairly or unreasonably in declining their claim.*

*For the reasons given above, I'm minded to partly uphold Mr and Mrs O's complaint and require Accelerant Insurance Europe SA/NV to reimburse Mr and Mrs O's excess of £350.'*

In my provisional decision, I asked Mr and Mrs O and Accelerant if they had any further comments or evidence which they would like me to consider before I made 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.

Accelerant has agreed with the provisional decision and has refunded the excess amount of £350 to Mr and Mrs O. Mr and Mrs O have expressed their appreciation in this regard.

Mr and Mrs O also wanted Accelerant to pay compensation; *'for their extreme delay in their response'* at the outset. They also said that the leak detection company acting for Accelerant; *'failed to give us any comprehensive and detailed reports of the source of the leak in our property and what can be done to rectify this problem.'* Mr and Mrs O felt that the delay had led to further damage which was still costing thousands of pounds to sort out.

Mr and Mrs O referred to their previous correspondence. They said they'd made numerous telephone calls and spoken to several customer service agents and had to retell the story over and over again. They felt they'd been subjected to a sub-standard level of customer care. It had taken persistence and perseverance by them to get Accelerant to eventually arrange a visit by the leak detection company. Mr and Mrs O were also unhappy that they'd had to pay the £350 excess sum prior to the company agreeing the home visit.

In summary, Mr and Mrs O felt that their claim had not been dealt with properly, promptly and professionally. They requested that Accelerant; *'pay us some compensation towards exorbitant expenses'* they paid in order to make their property safe to live in. They considered that further damage from the leak occurred due to Accelerant's failure to respond on time and *'due to incompetence of their company and their agents.'*

I've considered what Mr and Mrs O have said in response to my provisional decision. I can understand their on-going frustration and I appreciate that they were looking to receive compensation for certain elements of their claims experience. I agree that Mr and Mrs O should not have needed to chase Accelerant on a number of occasions and that there were delays at the outset. I'm mindful however that the cause of damage as confirmed by Mr and Mrs O's expert was not an insured event covered by the Accelerant policy.

It's to Mr and Mrs O's credit that they'd tried to take early practical measures to resolve the problem and to minimise further damage. I can't however say that the initial delay by Accelerant in properly responding to their claim has led to damage or financial outlay which was additional to that which would have happened in any event.

I agree that several telephone calls with several different agents would have been frustrating and doesn't demonstrate good practice. I trust that Accelerant will take on board the lessons from this experience. In the light of the above however, I can't say that an award of compensation over and above the return of Mr and Mrs O's excess sum, would be fair and reasonable in all the circumstances.

I appreciate that Mr and Mrs O will not be entirely satisfied with this outcome. Subject to the recognition of delays and certain service failures however, I've concluded that the provisional decision provides a fair and reasonable outcome to the matter. I therefore partially uphold Mr and Mrs O's complaint as follows.

### **My final decision**

For the reasons given above, I partly uphold Mr and Mrs O's complaint and have required Accelerant Insurance Europe SA/NV to reimburse Mr and Mrs O's excess of £350.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs O and Mr O to accept or reject my decision before 13 July 2022.

Claire Jones  
**Ombudsman**