

The complaint

Mr B, represented by his court appointed deputy, Mr W, has complained about his home insurer Accredited Insurance (Europe) Ltd (AIE) in relation to a claim he made following a flood at his home.

The court has appointed two deputies to act for Mr B in respect of financial issues. They are appointed on a joint and several basis. Here Mr W has been handling the claim and has made the complaint, although he has often utilised the services of solicitors in doing so. Apart from where relevant, in the body of this decision, I will likely only refer to Mr W or, occasionally, Mr B.

AIE is the underwriter for Mr B's policy. But it uses other companies to handle the claim for it. Including loss adjusters. AIE is responsible for the actions of those it has appointed to act on its behalf. So any failure by the loss adjuster, for example, is a failure by AIE.

What happened

There was a flood on 17 May 2021. Mr W made a claim to AIE and it appointed loss adjusters. On 13 July 2021 the loss adjusters told Mr W that damage to Mr B's garden and patio weren't covered due to an exclusion in the policy's statement of fact. Some of the claim continued to progress and/or was settled. But Mr W disputed the documents AIE had relied upon regarding the garden and patio.

As the rest of the claim progressed, with the property having been declared dry by September 2021, Mr W became concerned about the work that was being done. A site visit took place in October 2021 and it was agreed re-work was required. Mr W, twice on 17 December 2021, wrote to AIE detailing Mr B's complaints. In summary that; information requested had not been provided, the patio and garden damage had been declined on incorrect policy terms, further alternative accommodation (AA) payments were required including council tax not having been paid at all, poor work had been done with some agreed work also having been missed from the schedule and the claim had been delayed.

AIE acknowledged there had been poor work. A new loss adjuster was also appointed in January 2022. Also in January 2022 Mr W informed AIE that Mr B had received a court summons regarding the outstanding council tax.

On 10 February 2022 there was a meeting at Mr B's home to discuss the works and it was agreed the current builder could be replaced by AIE, or a cash settlement made so a contractor chosen by Mr B (or his representatives) could complete work. An agreement to progress the contents claim and make some outstanding payments for that was reached. Around this time further AA payments were also made.

A letter from the loss adjuster dated 10 February 2022 responded to some of the other concerns Mr W had raised. Notably regarding the patio and garden. It felt its answer, that this was not covered, was correct but with the caveat that AIE was still considering which policy documents were relevant. The adjuster accepted this answer was delayed, as had been some payments. The adjuster said £250 compensation would be paid. The letter

acknowledged that Mr B had said he was unhappy with the work – but said this had not featured in the complaint letter dated 17 December 2021.

The loss adjuster wrote a further letter to Mr B on 8 April 2022. This confirmed that since the letter and meeting of 10 February 2022, the adjuster had been waiting on a response from Mr W to the proposals for moving the claim forwards. It also acknowledged that, overall, the claim had been subject to delays on account of its poor handling. Mr W responded to the loss adjuster about ten days later and in August 2022 Mr W made a complaint on behalf of Mr B to the Financial Ombudsman Service.

Our Investigator explained that she could only look at the complaint as raised by Mr B in December 2021. She felt the external damage to patios and gardens should be considered under the claim (noting damage to the drive also), and that a surveyor should be appointed to determine what was needed to reinstate the property as a whole. With AIE paying Mr B the cost of the necessary work or, if Mr B wanted it to, it doing the repairs. She also felt that a total of £750 compensation was due (so a further £500 paid if £250 already had been).

Mr W felt that might be acceptable as long as Mr B could appoint the surveyor. He asked that AIE be directed regarding future AA payments. He said legal costs were currently at £37,000 and felt AIE should be required to pay these too.

AIE said it had already completed surveys of the property – the latest of which, along with the cost for the work identified, had been shared with Mr W in January 2023. When our Investigator asked it about Mr B's legal costs, it said it wouldn't cover these – the solicitors had acted in the role of a loss assessing company.

As the complaint couldn't be resolved, it was passed to me for an Ombudsman's decision. I was minded to uphold it. I felt AIE should be providing a breakdown of an emergency payment issued in 2021, that it should include damaged exterior hardstanding areas within the claim and also pay a total of £1,000 compensation. But I wasn't minded to apply any direction regarding future payments or any requirement to make it pay legal costs. The parties replied. AIE generally accepted what I'd said. Mr W challenged some of my findings.

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.

I quote below, in italics (subject headings aside), my provisional findings. Where applicable, I'll detail the relevant responses from the parties, along with my further review.

"I first need to set some parameters for what I am considering here. Mr B is represented by his court appointed deputy, Mr W. Mr W is partner in a solicitor firm and has chosen to use the services of the firm to handle matters on his/Mr B's behalf. The complaint to AIE was made in two letters of 17 December 2021. AIE sought to respond to that complaint by its actions and in letters of February and April 2022. With the claim then moving on from there. So my complaint consideration will focus on those issues and responses, to the date of the second letter from AIE answering Mr B's complaint, dated 8 April 2022. Any issues raised by either party, or activity which has occurred, after that time will not be taken into account by me here."

Failure to provide requested information

“Three requests which hadn’t been met by AIE were detailed by Mr W. As far as I can see, AIE hasn’t commented on this issue and two of the three items haven’t been provided, but I think one has. Of the remaining two, I’m only going to require AIE to provide one.

Breakdown of repair costs – this is the item I’m not going to require AIE to provide. It is quite normal in insurance claims for the insurer or loss adjuster to provide a detailed scope of work. A costed copy will be kept on record. But an uncosted copy is shared with the policyholder. That is because the costs for the insurer are a commercial issue between it and its contractor.

Breakdown of emergency payment issued in August 2021 – I think AIE should be providing this key claim information. I haven’t seen it has done so previously and it hasn’t shared any detail about this payment with us. I’ll require it to provide it to Mr W.

An amended (from original dated 31 August 2021) contents list – I can see from the loss adjuster reports in spring 2022 that an amended list was provided towards the end of February 2022. I won’t require this to be provided again.”

Repair costs – Mr W said that not having a costed breakdown was causing delays to the claim and allowed for the potential for poor work to be completed. I’m not persuaded that the lack of a costed breakdown has caused delays or allows a potential for poor work. I’ve seen no good reason here to move away from the standard approach which allows insurers to provide uncosted scopes to the policyholder/their representative.

Emergency payment – AIE said that the August 2021 emergency payment was made up of six months’ rent for June to December 2021 at £7,500, a deposit (which will be claimed back later) of £1,442.31 and a contents payment of £750. As AIE has now provided this breakdown, I’ll remove the recommendation for its provision from my “Putting things right” section below. If Mr W has any concerns about the breakdown now provided, he can discuss this further with AIE, making a further complaint if necessary.

Cover for patio/garden

“Initial reports from the early stages of the claim haven’t been provided. There’s minimal detail about the external damage claimed for in this respect, although there is some reference to there being damage to the driveway. I think AIE has handled this issue very poorly – there’s been a live query about what cover was in place for Mr B since 2021 and, to date, AIE hasn’t provided any satisfactory reply – not even in response to our Investigator’s enquiry made to it in December 2022 before she issued her view. So I’ve taken a view on what cover Mr B had.

Mr W has presented policy documents with a reference ending “6558”. This is the reference that the loss adjusters used on their reports. So I’m satisfied this was the policy in place and against which the claim should be considered. AIE though has declined cover for the patio and garden, and I think also the driveway, based on a quote document it has presented. This document says Mr B has specifically chosen to not cover outbuildings, fences, patios and driveways. Our investigator noted this post-dates the loss, so felt it couldn’t be relied upon. But I’m conscious that when a claim is made, policy documents are reprinted and this can sometimes cause an anomaly with dates. That’s because original dates are overridden by the date of printing. Nevertheless, I think that AIE can’t reasonably rely on this document in support of it not covering damage to Mr B’s garden, patio and driveway. That is because that document does not include a policy reference number, and the detail about not including drives and patios does not come through on the policy documents that do include the policy reference number used by AIE during this claim.

The policy with reference ending “6558” defines buildings to include exterior areas of hardstanding such as drives, paths, patios and walls. And it offers cover for damage to buildings from flood. So I’m satisfied that any areas or structures of hardstanding at Mr B’s home damaged by the flood, reasonably fall due for consideration under this claim. The policy also does offer some cover for gardens, which I take to be lawned areas and flower beds. But that is only when damage is caused in certain circumstances/by certain events. With flood not being one of the listed circumstances or events. So if grassed or bedded areas forming the exterior of Mr B’s property were damaged by the flood, AIE is correct that they reasonably do not fall for consideration as part of this claim. AIE will have to amend any scope of repair to include the flood damaged ‘hardstanding’ type structures.”

AIE’s loss adjuster said he is unsure what damage exists externally to be included into the claim. Mr W said he doesn’t agree with my view about how/why the policy documents AIE had used to previously dispute cover for the exterior damage existed. He said he doesn’t agree that damage to the garden from flooding is excluded – that the part of the policy I have referred to in this respect is for additional cover for trespass protection.

I note Mr W disagrees with me as to why the policy AIE used to dispute liability for external damage exists. But AIE has not disputed my finding that it is not relevant and can’t be relied upon. My view remains that it is not the relevant policy document and can’t be relied upon by AIE to dispute liability.

Mr W will likely understand that insurance policies are inclusive by nature. They can’t detail everything which is not covered, for something to be covered it has to be included. The policy offers cover for damage to contents and buildings. Lawned areas and flower beds are not contents items. As I noted the policy definition for buildings refers only to hardstanding type areas and structures. It does not include lawned areas and flower beds. My view remains that AIE is liable for flood damage to areas or structures of hardstanding – and as it is not sure what damage in these respects exists (apart from to the house itself), it will now have to investigate and consider that. I will not be directing it to include flood damaged lawned areas or flower beds within the claim.

AA

“In the complaint letter of December 2021, the then current rental costs and council tax charges were discussed. With requests for payments of the same being made. AIE didn’t answer these concerns specifically in the complaint response letters of February and April 2022. But the loss adjuster issued some internal reports in February and March 2022. These included requests for payments for AA. When Mr W made the complaint to us in August 2022, no outstanding payments were detailed. Rather a request was made that AIE be required, moving forward, to continue covering the cost of AA. And later a request was made that a time period for payment was applied. So whilst there were payments requested in December 2021, they seem to have been resolved with relevant payments having been made. So I won’t be requiring AIE to make further payments in this respect.

I don’t think there was any good reason for AA payments being so delayed though. To the extent that Mr B, in January 2022, received a court summons regarding outstanding council tax. I think this, in particular, was very distressing for Mr B.”

Mr W said the claim has continued to be delayed, so AIE should be directed to continue paying AA. With a direction for a time period for said payments also being applied. If not, Mr W said, Mr B will continue experiencing delays, causing him worry and anxiety.

I note Mr W's concern for his ward. But I think Mr W will understand that the nature of the Financial Ombudsman Service is not one of a claim handler. I'm not going to make any onward direction to AIE regarding AA payments.

Poor work

"I think it's safe to say that AIE accepts that poor work was done at the property. Mr W argues work was missed off the scope too. AIE disputes that."

Mr W said that the previous contractors had agreed to do some private work at Mr B's home. But that this wasn't included in the schedule. I think that was reasonable – the schedule reflects AIE's liability, so wouldn't include private works. If/when new contractors are appointed, Mr W can negotiate with them whether private work can be undertaken – with it being private work, scopes, costs etc would need to be agreed between the contractor and Mr W – AIE would not be involved in that.

Regarding the work AIE is liable for, in a meeting in October 2021, it was accepted that poor work had been done and a fair amount of re-work was required. Subsequently AIE agreed to replace the contractor or look to make a cash settlement for work so Mr W could appoint a contractor. To that end a new scope was produced by AIE in February 2022. I've seen no good reason why it took so long for a re-visit and re-scope to be arranged. The property had been declared dry by the beginning of September 2021 and it was then that poor work was done. With resolutions for progressing beyond that, as I've said, not being put forward until February 2022. That's a six-month delay here.

The visit and new scope were meant to allow the claim to move on from the poor work issues identified in October 2021. I note that the scope was produced within good time following the meeting and the loss adjuster had arranged for new contractors to be on 'stand-by' to start as soon as possible if this route was chosen. Between the new scope being shared in February 2022 and AIE issuing another complaint response on 8 April 2022, I don't think it caused any delays in regard to agreeing repairs. Emails provided by Mr W show that the loss adjuster was waiting on an answer from Mr W regarding how to progress the claim and further contact from Mr W in reply was only received on 18 April 2022.

In terms of the scope produced in February 2022, I've not seen any detail or arguments from around the time it was produced that makes me think it was unfair or unreasonable. I think it's fair to say that both parties have re-visited what is needed to reinstate the property since 8 April 2021. But those proposals and concerns aren't part of this complaint."

Mr W said it is not unreasonable, given the delays and previous poor work, for AIE to be required to allow a contractor chosen by him/Mr B to be appointed. He said three quotes could be obtained for AIE to pick one from.

The delay (until February 2022) came from AIE not moving quickly enough to determine what was needed to correct the poor work which had been identified in 2021 and accepted by it in a meeting in October 2021. So Mr W choosing contractors won't necessarily guard against further delay – although I trust there won't be any. I note Mr W's concern about previous poor work and the worry that this might occur again. But AIE accepted poor work was done by its contractor and removed them from the job, agreeing to review what was needed to reinstate the property with the appointment of new contractors. That was a reasonable resolution to the problem. To be clear, my assessment of what has happened here only goes up to 8 April 2022. I'm aware that the claim has moved on since then and it may well be that further issues or causes for concern for the parties have arisen. But I'm not considering any of that.

Delay and compensation

“AIE, in the letters sent by its adjusters, accepts the claim has been delayed by it. And I’ve found that there was a period of six months of delay between September 2021 and February 2022. AIE will need to bear that in mind as it continues to assess and settle Mr B’s claim. Mr B was living somewhere other than his home during all of that time and I don’t doubt that would have been very upsetting for him. I’m also mindful of the great worry he’d have been caused, particularly in his personal circumstances, when a summons for council tax arrears was received. For that I think a total of £1,000 compensation is fairly and reasonably due. If £250 has already been paid to Mr B then it will only now have to pay him £750.

I note that AIE has accepted and referenced delays in communicating with Mr W and in making some reimbursements to Mr W. Those delays are clearly regrettable. But I can only award compensation for upset any failure by AIE caused to Mr B.”

AIE said it agreed to pay the compensation. Mr W did not comment on my findings in this respect, or my suggested award. So I’ll say nothing more about this.

Legal costs

“It’s unfortunate that legal costs of nearly £40,000 have been accrued. But I note that Mr W, as an individual, along with another, were appointed as deputies by the court to handle Mr B’s affairs. The court did not appoint a solicitor’s firm in that respect. So Mr B, as any other policyholder, albeit represented by Mr W, was free to claim and complain. It is not this service’s usual practice to award legal costs. I haven’t seen anything that makes me think it would be fair or reasonable for me to require AIE to pay such here.”

Mr W felt I had failed to account for the fact that Mr B’s health meant a deputy was required to handle his financial affairs – which, he said, naturally resulted in legal costs being incurred. But also that I was likely not aware that the court had agreed to the deputies appointing the solicitor’s firm to assist with the dispute. Mr W said the level of costs incurred here was a direct result of AIE’s mishandling of the claim. He asked I revisit my decision to not award legal costs.

I did not fail to account for the fact that Mr B is represented in his financial affairs by court appointed deputies. And I note the copy of the court order, now provided, wherein the court responsible for appointing the deputies, authorises them to instruct the solicitor’s firm (of which they are partners) to advise on the unresolved flood claim. The order agrees to payments to the firm coming from the estate of Mr B. With settlements to be approved by a litigation friend.

I appreciate that this order means that Mr B’s finances will be affected by the involvement of the solicitor’s firm – that the court found this appropriate in the circumstances relevant to its consideration of such. But I have to think about what is fair and reasonable here in the complaint between Mr B and AIE. This service sees complaints regularly from eligible complainants who, for a variety of reasons, have to be represented by another, in both their claim and complaint. Simply because someone needs representation does not necessarily mean legal costs will have to be incurred – nor does it make the insurer reasonably liable for covering such. AIE’s policy, which Mr W agreed was suitable for Mr B’s needs, does not cover paying legal costs incurred for resolving claims. And, in respect of what became the disputed claim, Mr W, as is any individual representing someone else, was free to make a complaint to AIE and then this service. Neither of which require legal advice to be obtained or legal services or representation to be given. It’s not for me to say why, in the light of that, the court found it appropriate to agree representation was required and payable for by Mr B’s

estate. But the court's decision in that respect does not compel me to extend that finding to make AIE liable for any costs incurred, the settlement for which the litigation friend may approve. Mr W was free to handle Mr B's claim and complaint as any individual would be, and similarly it was his choice to instead employ the services of the firm (of which he is partner) to do so, which resulted in costs incurring. I'm not persuaded, in the circumstances, its fair or reasonable to make AIE liable for these costs.

Having considered the parties responses to my provisional decision

I note that AIE didn't really object to anything I'd said. I've considered, as set out and responded to above, Mr W's concerns about my findings. But I've found that nothing said has changed my views on this complaint. As such, my provisional findings, along with my further comments above, are now the findings of this, my final decision.

Mr W will likely be aware that if he remains unhappy with my decision, overall, he is not bound to accept it. But that if he should be happy with some of it, he can't accept it only in part. Also that if the decision is accepted, within the deadline given, it's unlikely he will be able to go to court to make further challenge on any disputed parts or to request additional payments are made. If Mr W is unsure about any of this, he may like to seek legal advice before deciding whether or not to accept my decision.

Putting things right

I require AIE to:

- As part of the claim, investigate and consider what exterior, hardstanding areas and structures have been damaged by the flood and consider what is needed to reinstate them, adding such into the schedule of repair.
- Pay Mr B a total of £1,000 compensation, if £250 has already been paid, then only £750 will now need to be paid.

My final decision

I uphold this complaint. I require Accredited Insurance (Europe) Ltd to provide the redress set out above at "Putting things right".

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 20 September 2023.

Fiona Robinson

Ombudsman