

The complaint

Mrs F complains about how Admiral Insurance (Gibraltar) Limited (Admiral), handled a claim under her home insurance policy for damage to her property caused by a neighbour.

Any reference to Admiral in this decision includes their agents.

This decision covers Mrs F's complaint about Admiral as the insurer of her home insurance policy. It doesn't cover the insurer of the legal expenses section of the policy, which is a separate business.

What happened

The events in this case are complex and go back to November 2020. From the evidence and information I've seen they involve a dispute between Mrs F and a neighbour about the boundary between their properties and what Mrs F says is damage the neighbour has caused to her property (which she believes was deliberate). There is also disagreement about when Mrs F first contacted Admiral to tell them about the incident and the damage.

Given these points, I've set out what I think is the sequence of events in this case from the evidence and information available.

In November 2020 Mrs F said a neighbour, while carrying out work on their adjoining property, caused damage to an outside building and greenhouse, as well as a landscaped garden, retaining wall and fence. Mrs F has provided evidence she contacted the legal team of the insurer of the legal expenses section of her policy in November 2020 to tell them about the incident and to make a claim. I've seen an acknowledgement of this from the insurer (a separate business to Admiral). Mrs F has also provided a copy of an email from the police acknowledging her reporting a crime to them at the same time (and providing a crime reference number).

Mrs F says she also contacted Admiral at the same time to tell them what happened. However, Admiral's case notes don't record the first notification of the loss until July 2022, although there's a reference to Mrs F contacting them in 2020 – but that she didn't want to make a claim (under her home insurance policy) at that time. Mrs F provided information, including photographs showing the damage to her property. Admiral appointed a surveyor (S) to assess the claim and the damage.

However, having assessed the claim, including S's report, Admiral said they wouldn't cover the claim as the damage hadn't been due to one incident and therefore wouldn't fall under an insured peril (including accidental damage). Nor could they confirm the damage was malicious (which would be an insured peril). They concluded it was a legal issue (not a claims issue) between Mrs F and her neighbour.

Mrs F was unhappy at the decline of her claim, so complained to Admiral. Mrs F also raised several other issues, including S's report didn't record the presence of a family member when they visited the property; stated an incorrect length of time Mrs F had lived at the property; didn't include all damage that had occurred; and didn't include the criminal record

of the neighbour and other neighbours having issues with the neighbour; and she hadn't received a written explanation for the decline.

Admiral upheld the complaint in part, specifically the issues about the length of time Mrs F had been at the property and not being informed of the reason for decline of the claim. In recognition of this Admiral awarded:£50 for the upheld points, with a further £25 for calls Mrs F made regarding the claim and £50 for delays handling her complaint (a total of £125).

But Admiral didn't uphold the other points, or the decline of the claim. They said the damage to Mrs F's property couldn't be proven to be malicious (as opposed to poor workmanship by the neighbour's contractors, which would need to be pursued by Mrs F as a civil case). Admiral also referred to the policy terms and conditions about the requirement to notify damage to a property immediately (given the damage dated back to 2020) and notified to the police within 24 hours of being identified. Admiral also referred to a general exclusion in the policy for late reported claims.

Mrs F then complained to this service. She disagreed with Admiral's final response and their conclusions on the issues she'd raised. She'd had no use of her outbuilding, greenhouse, and garden. She'd also lost privacy and had the worry of her land being removed. She wanted the use of her property back.

Our investigator didn't uphold the complaint, concluding Admiral didn't need to take any action. On the decline of Mrs F's claim, he thought the only insured peril that could potentially apply was for damage caused by vandalism or malicious acts. While Mrs F considered the damage to her property was malicious, there wasn't independent evidence to support that conclusion (notwithstanding what Mrs F had said about the aggressive behaviour of her neighbour). The damage to Mrs F's property wasn't of a kind that would obviously (or only) be malicious. In the absence of a clear cause of damage due to an insured peril, he couldn't conclude Admiral unfairly declined the claim. On the other points Mrs F took issue with Admiral (covered in their final response) he didn't think they affected Admiral's decision on the claim and Admiral's offer of a total of £125 compensation was fair.

Mrs F disagreed with the investigator's view and asked that an ombudsman review the complaint. She said she'd been in contact with Admiral from the date the damage first occurred, but it took two years for them to tell her to refer the matter under her insurance policy. She also took issue with the actions of S, saying they hadn't asked for evidence of the actions of her neighbour. Nor was their report consistent with the claim she'd made. And she'd provided evidence of the neighbour's behaviour, showing it was aggressive, intentional and premeditated (to prevent her evidencing their taking her land and property, by moving the dividing line between the two properties).

In my findings I concluded it wasn't possible to say Mrs F notified Admiral of the damage (as the insurer of her home insurance policy) at the time of the damage (as distinct from notifying the insurer of the legal expenses section of the policy). But the police were notified.

Given this conclusion, while I didn't think the damage could conclusively be considered malicious, I wasn't persuaded Admiral properly considered whether the damage would therefore fall to be accidental, given the policy definition. So, I provisionally concluded Admiral hadn't acted fairly and reasonably towards Mrs F.

To put things right, I thought Admiral should assess the claim (if they still believed the damage wasn't malicious) under the provisions of the accidental damage section of the policy. That is, on the assumption Mrs F had accidental damage cover under her policy. Or, they should say why they consider the damage was neither malicious nor accidental.

Because I reached different conclusions to those of our investigator, I issued a provisional decision to give both parties the opportunity to consider matters further. This is set out below.

What I've provisionally decided – and why

I'd first want to say to Mrs F that I recognise she feels strongly about what has happened, including the actions she says her neighbour has taken. I've seen a video taken by Mrs F she says shows an altercation with her neighbour and I can appreciate the effect on her. Disputes between neighbours can be extremely distressing and stressful, and I don't doubt what Mrs F has told us in this respect. However, my role here is to decide whether Admiral have acted fairly towards Mrs F. It isn't to judge the actions and attitude of the neighbour. Mrs F clearly feels the actions have been aggressive, deliberate and malicious. She's reported what she considers to be a crime to the police, and it's for them to consider the appropriate response.

Coming back to Mrs F's complaint, the key issue is Admiral declining her claim for the damage she says the neighbour has caused to her property. I've noted the other issues in Mrs F's complaint to Admiral (and their final response on those issues). Having done so, I don't think they affect the key issue of the decline of Mrs F's claim, including the reasons for the decline. I've also noted Admiral upheld the complaint in respect of two of the issues (and awarded compensation, in addition to compensation for calls Mrs F had to make about her claim and the time they took handling her complaint).

Mrs F says Admiral should cover the damage as it was malicious. And she reported the damage to them when it first occurred (and reported it to the police). Admiral say the damage wouldn't fall to be considered under one of the insured perils covered under the policy, didn't take place in one incident and couldn't be shown to be malicious. Admiral also say the claim wasn't made at the time the damage occurred, referring to specific policy terms and conditions.

Taking the second issue first, the timing of the notification of the claim, I've first looked at the policy terms and conditions referred to by Admiral in their final response. They refer to a General Exclusion for Late reported claims that states:

"A claim where you have failed to notify us of the insured incident within a reasonable time of it happening and where this failure adversely affects the reasonable prospects of a claim, or we consider our position has been prejudiced."

There's a difference of view about when the damage was notified to Admiral. Mrs F maintains she told Admiral about it when it first occurred (November 2020). But Admiral say the first notification of loss to them as a home insurance claim was July 2022. Mrs F has provided evidence she contacted the legal team of the insurer of the legal expenses section of her policy in November 2020 to tell them about the incident and to make a claim. While this supports Mrs F's view she notified the damage at the time it occurred, the acknowledgement is from the legal expenses cover insurer – not Admiral as the insurer of the home insurance policy insurer. Looking at the response from the legal expenses insurer, it asks for further information to support the claim.

Given the nature of legal expenses cover, it suggests Mrs F was looking to use the legal expenses cover to obtain redress for the damage she says was caused by her neighbour. It doesn't show a claim was made (or registered by Admiral) under the home insurance policy.

Admiral also refer in their final response to the requirement (under a heading Malicious damage: what is not covered) to notify the police of damage within 24 hours of damage occurring. Mrs F has provided evidence (an acknowledgement of a crime being reported) from the police at the same time as the response from the legal expenses cover insurer

(November 2020). So, I've concluded the damage was reported to the police at the time. So, I don't think Admiral can use this condition to decline the claim. I'll come on to the point about whether the damage would more generally fall to be considered malicious within the other policy terms and conditions.

Taking the two points together, I've concluded it isn't possible to say Mrs F notified Admiral of the damage (as the insurer of her home insurance policy) at the time of the damage (as distinct from notifying the insurer of the legal expenses section of the policy). But the police were notified.

Coming back to the first issue, the reasons given by Admiral for the decline of the claim, I've considered the information and evidence available. Admiral don't specifically refer to what the policy terms and conditions say about malicious damage (apart from the requirement to notify the police within 24 hours). The policy does not define what constitutes 'malicious damage' but Section 1: Buildings includes the following under What is covered:

"9) Vandalism or malicious acts

What is not covered

Loss or damage:

- That has not been reported to the police within 24 hours of discovery..."

As I've concluded above, the evidence indicates the damage was reported to the police within 24 hours.

So, the issue is whether the damage was the result of 'malicious acts' (or vandalism). Mrs F says the actions of her neighbour were deliberate and malicious. While I can understand the reasons why she feels this is the case, I haven't seen evidence that shows this was conclusively the case. While I've seen an acknowledgement from the police of a crime being reported by Mrs F, I've not seen a report from the police (or other indication) showing they've concluded the actions of the neighbour constitute (or may have constituted) a criminal act, or otherwise reasonably considered to be malicious. As opposed to the damage having occurred inadvertently (through the actions of the neighbour, or their contractors).

However, while Admiral declined the claim on the basis it couldn't be shown the damage was covered under an insured peril (malicious damage) I've considered whether the damage could be considered under another part of the policy. Specifically, whether the damage (if it wasn't considered to be malicious) could be considered accidental.

From the information and documents I've seen, it appears Mrs F's policy included accidental damage cover, as the Policy Schedule states:

"Buildings accidental damage Included"

As part of our investigation of the complaint, our investigator asked Admiral to clarify or confirm the precise cover under Mrs F's policy. They haven't done so, so I've proceeded based on what the Policy Schedule states, that accidental damage cover is included.

So, I've looked at the policy definition of accidental damage. It states accidental damage is:

"Sudden, unexpected and visible loss, or damage which has not been caused wilfully or deliberately."

Looking at this definition alongside the cover for vandalism or malicious acts, if the damage isn't considered to be malicious or vandalism, which would be 'caused wilfully or deliberately, then it's not clear to me why the damage – if it wasn't considered malicious – wasn't considered to be accidental. That is, it's either malicious or – if not – then it's accidental (or inadvertent). Admiral's claim notes state they've considered the damage under accidental damage, but there's no detail about their consideration, or why they think the damage is neither malicious or accidental under the above policy definitions and terms and conditions.

Given this conclusion, while I don't think the damage can conclusively be considered malicious, I'm not persuaded Admiral have properly considered whether the damage would therefore fall to be accidental, given the definition set out above. So, I've provisionally concluded Admiral haven't acted fairly and reasonably towards Mrs F.

To put things right, I think Admiral should assess the claim (if they still believe the damage wasn't malicious) under the provisions of the accidental damage section of the policy. That is, on the assumption Mrs F had accidental damage cover under her policy. Or, they should say why they consider the damage was neither malicious nor accidental.

My provisional decision

For the reasons set out above, my provisional decision is that I uphold Mrs F's complaint in part. I intend to require Admiral Insurance (Gibraltar) Limited to:

- Assess the claim (if they still believe the damage wasn't malicious) under the provisions of the accidental damage section of the policy. That is, on the assumption Mrs F had accidental damage cover under her policy.*

Mrs F responded to make a number of points.

First, she wasn't clear what the provisional decision was saying, asking for a simpler explanation of the decision. Second she asked about when she might receive the compensation Admiral had offered. Third, whether she would receive an answer or explanation from Admiral for their decision, as he hadn't had one.

Fourth, she thought her property (her land) had been made unsafe by her neighbour and they'd asked her to remove property from that land. And they'd taken her property (her land) and left open water pipes they'd cut and exposed electricity cables. She maintained her neighbour had intended to enter and take her land, destroy the property on that land in order to build on it themselves.

Admiral didn't respond by the deadline requested.

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.

My role here is to decide whether Admiral have acted fairly towards Mrs F.

I've considered each of Mrs F's points in turn. On her first point, what the provisional decision was saying and asking for a simpler explanation, I would set this out as follows.

The provisional decision recognised Mrs F feels strongly the damage caused (by her neighbour) was intentional and malicious. However, in my view, I didn't think this was conclusively the case. However, I also didn't think Admiral had shown whether – if the

damage wasn't malicious – they'd considered the damage as accidental damage. That is, the damage could be considered as either malicious or accidental – it didn't seem it could have been neither. In asking Admiral to assess the claim under the accidental damage section of the policy, the provisional decision wasn't seeking to assess the damage – it was asking Admiral, as the insurer of the policy, to do so.

On the second point, when she might receive the £125 compensation Admiral had offered, this suggests Admiral haven't paid the compensation. While I didn't explicitly address this point in the provisional decision, having looked all the case, I've concluded Admiral's offer of compensation is fair in all the circumstances. On the assumption they haven't already paid it, Admiral should now do so.

On the third point, whether she would receive an answer or explanation from Admiral for their decision, as he hadn't had one, from what I've seen Admiral have said they won't cover the claim as the damage hadn't been due to one incident and therefore wouldn't fall under an insured peril (including accidental damage). Nor could they confirm the damage was malicious (which would be an insured peril). They've concluded it was a legal issue (not a claims issue) between Mrs F and her neighbour. Admiral have set out their position in their final response issued to Mrs F, as set out above.

This is separate from my provisional decision Admiral should assess the claim (if they still believe the damage wasn't malicious) under the accidental damage section of the policy. That is, on the assumption Mrs F has accidental damage cover under her policy. It would be for Admiral to carry out that assessment and tell Mrs F the outcome.

On Mrs F's fourth and fifth points, I recognise her strongly-held view her property (her land) has been made unsafe by her neighbour and they've asked her to remove property from that land. And they've taken her property (her land) and left open water pipes they've cut and exposed electricity cables. I recognise Mrs F maintains her neighbour had intended to enter and take her land, destroy the property on that land in order to build on it themselves.

However, based on what I've seen, I can't conclude this is clearly the case. It's also clearly a dispute between Mrs F and her neighbour, which isn't something that falls within the remit of this Service (which is to decide whether Admiral have acted fairly and reasonably towards Mrs F). If Mrs F feels her land and property have been taken and/or destroyed by her neighbour, I think that's something Mrs F may want to consider taking legal advice about – either through (as already seems to have been the case) the legal expenses cover section of her policy or seeking independent legal advice.

Taking all these points into account, my final decision remains the same as my provisional decision, with the addition of my conclusions about the compensation offered by Admiral.

My final decision

For the reasons set out above, my final decision is that I uphold Mrs F's complaint in part. I require Admiral Insurance (Gibraltar) Limited to:

- Assess the claim (if they still believe the damage wasn't malicious) under the provisions of the accidental damage section of the policy. That is, on the assumption Mrs F had accidental damage cover under her policy.

Admiral Insurance (Gibraltar) Limited have already made an offer to pay £125 compensation to Mrs F and I think this offer is fair in all the circumstances.

So, on the assumption Admiral Insurance (Gibraltar) Limited haven't already paid the compensation, they should pay Mrs F £125 compensation.

Admiral Insurance (Gibraltar) Limited must pay the compensation within 28 days of the date on which we tell them Mrs F accepts my final decision. If they pay later than this they must also pay interest on the compensation from the date of my final decision to the date of payment at 8% a year simple.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs F to accept or reject my decision before 1 December 2023.

Paul King
Ombudsman