

The complaint

B, a limited company, complains that Accelerant Insurance Europe SA/NV UK Branch (Accelerant) has applied a reduced limit to a claim made under its residential property owners insurance policy.

B is being represented in this complaint. Where I've referred to B throughout, this also includes any communication from B's representative acting on its behalf. Where I've referred to Accelerant, this also includes any actions or communication by agents acting on their behalf.

What happened

B owns a number of properties, including buildings which are divided into individual flats which are let out to tenants. The different properties are all insured under one residential property owners' insurance policy underwritten by Accelerant.

In April 2023, there was a leak discovered at one of the flats insured under the policy which was coming from the underground heating pipes. This had caused damage to the flooring, walls, decorations, and electrical wiring. So, B made a claim to Accelerant.

Accelerant accepted the claim. However, they said that due to the type of property, and the damage that had been caused to it, a policy endorsement applied. This meant the maximum policy limit which applied to the claim was reduced to £25,000. Whilst the damage (including loss of rent) was going to be significantly in excess of this limit, Accelerant said this was the maximum amount that would be covered by the policy.

B disagreed with Accelerant's position that the endorsement applied and approached the Financial Ombudsman Service.

One of our investigators looked into things but she didn't uphold the complaint. She thought the endorsement had been applied fairly by Accelerant, so she didn't recommend they do anything further.

B didn't agree and asked for a final decision from an ombudsman.

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've reached the same outcome as our investigator.

The crux of this complaint is whether it's fair and in line with the policy terms for Accelerant to apply a reduced policy limit of £25,000 to B's claim. It's not in dispute that the claim, including loss of rent, will exceed this but B disputes the reduced limit should be applied.

Accelerant has sought to apply the reduced limit based on the following endorsement in B's policy:

"Water Damage Loss Limit

Our limit of liability for any Property Damage loss arising from water damage in any cellar, basement or part of the property below ground level including any loss of rent arising therefrom is limited to £25,000 any one loss."

Accelerant says the endorsement applies as the escape of water damage was to a flat which falls within the locations outlined that the reduced limit applies to. B disputes this.

B argues that the flat is lower ground floor, rather than a basement or cellar flat, and was marketed as such by the estate agent when purchasing the property. B also argues that some of the external walls and windows are open to the elements (the front where access is gained to the flat and an enclosed courtyard at the rear). So, B argues it isn't subterranean, and it can't be considered a cellar or basement flat, and therefore it says it's not fair to apply the endorsement.

By contrast, Accelerant says the flat is basement/below ground level, so the endorsement applies. They said they recognise the windows and door at the front are open to the elements, but that's solely because there is a sunken access terrace to the front, which can only be accessed by descending around six feet down metal steps from the street and pavement at ground level.

Having considered all the information and arguments provided by both parties, I don't think that Accelerant has acted unfairly by applying the endorsement here.

The endorsement, alongside applying to basements and cellars, also applies to property below ground level too. And I think the flat is ultimately below ground level. I say this because the flat is located below street and pavement level immediately outside, which I'd consider to be the ground level in this scenario.

The flat is solely accessible by descending metal steps, to around six feet below street and pavement level, into a sunken recessed courtyard/terrace area. And the ceilings of the flat and entrance door are also below the street and pavement level too. And the entrance door to the flat is directly underneath where the main building entrance is accessed from the street, via four shallow steps from the street/pavement.

So, given the location of the flat which suffered damage, below street level (by at least six feet), I consider it be below ground level. And the endorsement applies to below ground level property, along with basements and cellars specifically. With this in mind, I don't think Accelerant has acted unfairly by applying the endorsement and reduced policy limit of £25,000.

My final decision

It's my final decision that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask B to accept or reject my decision before 14 March 2024.

Callum Milne
Ombudsman