

## **The complaint**

Mr W complains about Accelerant Insurance UK Limited's handling of his building warranty claim.

## **What happened**

Mr W's property in an apartment block was covered under a ten-year building warranty insurance policy which ran from December 2009 to December 2019. The policy covered Major Damage under Section One, and Contamination under Section Two.

Mr W made a claim (initially in 2014, then again in 2019) after noticing movement and cracking within his property. He later complained to Accelerant about its handling of his claim. Accelerant issued its final response on the matter in December 2020. It accepted there had been a breakdown in communication which had led to delays, and offered Mr W £250 compensation. Mr W brought that complaint to the Financial Ombudsman.

Our investigator concluded the £250 compensation offered by Accelerant was reasonable. However, she recommended that Accelerant appoint an agent to carry out an inspection of Mr W's property, to see if he had a valid claim. Accelerant agreed to the investigator's recommendations.

Accelerant appointed a surveyor who carried out an inspection in February 2022. Following this, Accelerant said the surveyor hadn't identified significant crack damage that would indicate Major Damage had occurred. However, because of the historical circumstances of the claim, Accelerant said it would agree to make an ex-gratia payment to settle the matter. It obtained a schedule of works from the surveyor as well as the costs involved (including VAT), and the repairs were estimated to cost £4,656. Accelerant therefore offered £5,000 to Mr W, less the £1,000 excess. Mr W turned down this offer.

Accelerant reconsidered its offer. In March 2023, it decided to take into account potential inflationary increases to the repair costs. It therefore applied a 15% increase to the original costings (giving a total settlement offer of £5,354.40). It also agreed to waive the excess of £1,000 to recognise the poor service Mr W had received after he had rejected its initial cash settlement offer.

Mr W asked us to consider his new complaint. He accepted Accelerant's offer of compensation for its handling of the matter, but was unhappy with the cash settlement he'd been offered. He thought Accelerant had failed to comply with the recommendations made by the surveyor. He wanted Accelerant to arrange for further investigations to take place to establish the cause of the movement, and also carry out repairs to his property. Meanwhile, Accelerant paid Mr W £1,000 for the compensation.

Our investigator recommended the complaint be upheld. He concluded there likely had been Major Damage, as defined by the policy. He thought Accelerant should arrange for further investigations to take place by a structural engineer to determine the cause of the movement.

I issued a provisional decision on 2 February 2024. Here's what I said:

*'Accelerant says it hasn't accepted a claim under the policy, and its cash settlement offer for the repairs was made on a goodwill basis only. I've therefore considered whether the evidence supports that Mr W has a valid claim, under the policy terms.*

*It's not in dispute that damage occurred at the property during the ten-year period of cover. However, the parties disagree over whether the damage would be considered Major Damage. This is defined in the policy as:*

*'a) Destruction of or physical damage to a load bearing element of the Residential Property caused by a defect in the design, workmanship, material or components of the Structure which adversely affects the structural stability or resistance to damp and water penetration;*

*or*

*b) A condition requiring immediate remedial action to prevent damage to a load bearing element of the Residential Property which adversely affects the structural stability or resistance to damp and water penetration; or*

*c) A condition requiring immediate remedial action to prevent imminent danger to the health and safety of the occupants caused by a defect in the design, workmanship, material, components of the Structure or failure of the Developer to comply with the Building Regulations in respect of chimneys and flues;*

*which is discovered and notified to the Insurer...during the Structural Insurance Period.'*

*I've read the surveyor's report after the inspection took place in February 2022. The surveyor set out the classifications of crack damage referred to in the report. These were: - Category 0 (hairline cracks), Category 1 (fine cracks), Category 2 (between 1 and 5 mm), Category 3 (between 5 and 15mm), Category 4 (between 15 and 25mm which generally denote structural damage), and Category 5 (exceeding 25mm denoting structural damage).*

*The surveyor observed crack damage throughout the property with the majority falling into Categories 1 and 2 (with one crack being partly in Category 3). He also noted gaps between some skirtings and floor tiles, as well as between wall tiles and the bath. He also observed crack damage (Category 2) to the common entrance hallways, as well as dropping/misalignment of the flooring there.*

*The surveyor concluded that the damage within Mr W's property and the common areas of the development (together with the deflection of the floor slabs) was a direct result of either/both downward movement of the supporting structural elements, and/or deflection of the structural floor slabs of the development. However, he said the factors contributing to this couldn't be determined from a visual inspection within Mr W's property alone.*

*The surveyor thought the deflection of the slabs appeared to be within the limits of deflection with reference to British Standards (though structural drawings would need to be assessed for clarification), but said the property had been adversely affected due to the same, and remedial works would be needed (raking and filling of the cracks). He thought the crack damage to the party walls would have compromised the fire rating performance, and recommended that remedial works be done in the immediate term to the party wall locations.*

*Whilst it's clear there has been damage to Mr W's property (and some common areas), the report doesn't persuade me that Major Damage has more than likely occurred.*

*First of all, the cracks weren't large enough to be categorised as Category 4 or 5, which would denote structural damage. Presumably the party walls would be load bearing walls, and there is crack damage to those walls. However, there's no evidence that these cracks were caused by a defect in the design, workmanship, materials or components of the property which affects its structural stability. Nor does the evidence show that remedial action is needed to prevent damage to a load bearing element (including the party walls) because the structural stability of the property has been affected or will be in future.*

*I note the surveyor thought the damage to the party walls in the property had likely compromised their fire rating performance (though he said this would need to be confirmed by a review of the fire safety certificate drawings and technical report for the building). This could potentially fall under part C of the Major Damage definition - in other words a condition requiring immediate remedial action to prevent imminent danger to Mr W's health and safety. Though again, the evidence doesn't show that any compromise of the fire rating performance of the party walls has been caused by a defect in the design, workmanship, material or components of the structure.*

*Having said all of that, we don't know the cause of the damage so I can understand Mr W's concern that if the cracks are filled in (as some of them have been previously) they may reopen if there is Major Damage and movement continues.*

*Our investigator recommended that Accelerant arrange for further investigations to take place to establish the cause of the damage. This could be an option, but I've taken into account Accelerant's arguments that it may not be appropriate to require it to arrange for structural engineers to review such a substantial property (made up of over 100 residential properties and commercial buildings) which could involve intrusive investigative work and the agreement of other property owners for it to do so. Particularly as no claims have been made in over ten years by any of the other property owners that held policies with Accelerant, and there's no evidence at the moment to support that there's progressive movement in Mr W's property.*

*Accelerant has suggested to us that a 12-month period of monitoring could take place to see if there is evidence of ongoing movement. I think that seems like a reasonable way forward in the circumstances. If there is evidence of progressive movement, then it might be reasonable at that time for Accelerant to carry out further investigations to establish the cause of this. If not, then Accelerant has already offered a payment for the repairs based on the schedule of works prepared by the surveyor, and so it wouldn't need to do anything further. If Mr W is unhappy with any decision that Accelerant makes about the matter once the monitoring is complete, he may be able to bring a new complaint to us.*

*Accelerant has offered Mr W a cash settlement so that he can arrange the repairs if he wishes. Mr W is unhappy about this, and wants Accelerant to carry out the repairs.*

*The policy says that Accelerant has the option of either paying for the cost of repairs or arranging to have any damage corrected. When an insurer decides to pay a cash settlement, I'd expect this to be based on the cost to a policyholder. Accelerant obtained the repair costs from the independent surveyor, but then added an additional 15% to the original costings to take into account inflation between the date of the surveyor's schedule of work and its final cash settlement offer. I'm satisfied the offer to Mr W was based on the amount it would cost him to arrange the repairs. In any event, this offer was made on a goodwill basis as Accelerant hasn't accepted that the repairs are covered under the policy.*

*Accelerant has agreed to waive the £1,000 excess because it accepted that it had provided Mr W with poor service after he refused its initial cash settlement. I haven't seen any*

*evidence of this poor service, so I'm not going to make a finding on that. Though in any event, Mr W has accepted this offer and Accelerant has paid him £1,000.*

*That means that Accelerant would only need to pay Mr W the remaining £4,354.40 for the repairs. If Mr W goes ahead with the repairs before the monitoring is complete (even if he just does this for the party walls to ensure their fire performance is no longer compromised), then Accelerant already has detailed information about the existing cracks and other damage in the property from the surveyor's report. It will presumably be able to refer to this as a starting point when monitoring the property to see if progressive movement has occurred to those areas or others.*

*I don't require Accelerant to pay interest on the cash settlement amount, as this was offered on a goodwill basis.'*

I asked both parties for any further comments they wanted to make before I made a final decision.

Accelerant didn't provide any further comments for me to consider.

Mr W responded with the following main points:

- It is clear from the surveyor's report there may be Major Damage to his property, and he thinks Accelerant has an obligation to see if this is the case.
- He provided a copy of a structural engineer's report dated January 2013, and said the contents of this report may persuade me there is likely Major Damage.
- He doesn't think it's fair for him to be disadvantaged because Accelerant wants to avoid the cost of further investigation. He hopes I will provide him with some protection if Major Damage is later discovered. He would like me to allow him to go back to Accelerant if repairs carried out don't last a reasonable length of time.
- If Accelerant aren't required to carry out further investigations at this time, then he agrees further monitoring might be reasonable. He would like this to be managed/overseen by a structural engineer to provide appropriate expertise.
- The walls of the apartment next to his are damaged, and he has asked if the cracks in that apartment could also be monitored as part of the exercise.

### **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.

Mr W says there may be Major Damage to his property, and that Accelerant has an obligation to see if this is the case. However, we don't know the cause of damage, and I remain satisfied that a period of monitoring would be the most appropriate way forward here, and for the same reasons as set out in my provisional decision.

I've considered the structural engineer's report dated January 2013 provided by Mr W. This referred to British Standards which says unless finishes have been detailed to allow for anticipated deflections in slabs, some damage can be expected if the deflection after installation exceeds the limits. The report said it was clear there was deflection of the structural slab in the area of Mr W's apartment (and two others). However, this was within British Standard limits.

Mr W says it's clear from this report that damage to non-structural elements shouldn't be expected if the deflection of the slab is within the limits, yet cracking has appeared throughout his apartment.

Whilst I appreciate the report suggests there would be damage if the deflection was outside the stated limits, that doesn't mean there couldn't be damage even if deflection was within the limits. But it remains the case that we still don't know the cause of the damage, and can't say that Major Damage has occurred at this stage.

Mr W is concerned about what will happen if Major Damage is later discovered. As I said in my provisional decision, Accelerant should carry out monitoring to see if there is evidence of progressive movement. It can then make a decision whether further investigations are needed. If Mr W is unhappy with any action Accelerant takes at this time, he may be able to bring a new complaint to us.

Although Mr W would like a structural engineer to oversee the monitoring, this will be up to Accelerant. I don't think monitoring necessarily needs to be done by a structural engineer. I also don't require Accelerant to carry out monitoring of damage to a neighbouring apartment, as the policy only covers Major Damage to his property.

### **My final decision**

My final decision is that I partly uphold this complaint. I require Accelerant Insurance UK Limited to arrange a 12-month period of monitoring of Mr W's property to see if there is any evidence of progressive movement. It should then decide whether further investigations are needed based on the results.

Accelerant has already made an offer to pay £5,354.40 for the repairs with the excess waived (£1,000 of this has already been paid). I think this offer is fair in all the circumstances, so I find Accelerant should pay Mr W the remaining £4,354.40.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 15 March 2024.

Chantelle Hurn-Ryan  
**Ombudsman**