

The complaint

Mr R has complained about his caravan insurer Accelerant Insurance Europe SA/NV UK Branch because it declined his claim for damage caused by a leaking shower.

What happened

On 26 December 2022 Mr R found some of the floors in his caravan were wet. He made a claim to Accelerant. Accelerant thought that the shower had likely been affected by the extremely cold weather which had occurred 13-16 December 2022. It assessed the damaged shower part, deciding it was frost damaged. Accelerant felt Mr R hadn't taken appropriate precautions to protect the caravan – which it said meant his claim was excluded under the policy terms relating to water damage. It declined the claim.

Mr R said he had been at the caravan on 19 December 2022, and there had been no problem then. When Accelerant wouldn't change its view, Mr R complained to the Financial Ombudsman Service. Mr R said that Accelerant, from the outset, had assumed this was a freeze/thaw event – that it had been intent on grouping the claim in with many others it had told him it had seen for that period. He noted Accelerant had not returned the damaged part of the shower to him for assessment.

Our Investigator noted Mr R had said he had left the heating on low even when he wasn't at the caravan. He asked Mr R if he could show evidence of this. Mr R was unable to do so.

Having considered everything, our Investigator felt Accelerant's decline was fair and reasonable. So he didn't uphold the complaint. The complaint was referred to me for an Ombudsman's consideration.

I was minded to uphold it. I felt Accelerant hadn't presented compelling reasons or evidence to support its decline of the claim. I felt it should be considering the claim and paying £250 compensation. So I issued a provisional decision to share my views with both parties, and give them a chance to reply. The period for responding to my provisional decision has now passed and neither party has replied.

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 said provisionally:

"The claim

The policy offers cover for damage caused by escapes of water. The damage caused to Mr R's caravan was from a leaking shower. So, on the face of it, the claim is covered.

But there is an exclusion to the cover. In respect of exclusions, if Accelerant wants to rely on one to decline liability, it is for it to show that something excluded has occurred. The policy

says that claims for water damage will be excluded if the caravan is unoccupied. The policy specifies what Accelerant means by “unoccupied”. The definition is when the caravan is “left unattended by You.....for a period in excess of 72 hours”.

I'm not persuaded, from the detail I've seen, that Accelerant has established this. Its focus seems to have been on establishing that Mr R couldn't have been at the caravan on 19 December 2022 without noticing a problem because it was adamant the shower was damaged sometime between 13-16 December 2022. For Accelerant to have established that the exclusion to cover applies it would, strictly speaking, have to show that the caravan was unoccupied in the 72 hours prior to the damage occurring. I know Mr R has said he was at the caravan intermittently during the month of December. But I haven't seen anything from Accelerant which makes me think that Mr R was absent after 10 December until he's confirmed he was there on 19 December 2022.

That said I'm conscious that Accelerant has not submitted all of its files to us. Accelerant used a loss adjuster to handle the claim. Accelerant has provided two reports from the loss adjuster – the second only after a specific request to see it. But not its claim notes or email correspondence. And I'm aware from some comments Mr R has made that there was email contact between him and the loss adjuster. So it's possible there is detail available about the specific dates when Mr R was at the caravan which I haven't yet seen. Therefore, I'll go on to consider the situation as would apply if Accelerant had established that the caravan was unoccupied when the water damage occurred.

The policy says that where the caravan is unoccupied all water damage is excluded unless Mr R does certain things. The word “unless”, changes this exclusion into a condition of the cover. Which means the burden of proof shifts from Accelerant to Mr R. It is up to Mr R to show he complied with the condition. If he can't show that, then he is considered to have acted in breach of the condition.

The condition says that if the park is open (which it was), Mr R, when leaving the caravan unoccupied, must either switch off the mains stopcock, or keep the heating on. Mr R hasn't suggested he switched off the water. He has said he kept the heating on. But he hasn't been able to show that. Whilst I appreciate showing that would be difficult in a caravan – given gas bottles are used and it isn't clear how long one might last given certain usage – because he can't show the heating was left on, he is considered to be in breach of the condition.

Being in breach of the condition though does not mean that Accelerant is automatically justified in declining the claim. This service's approach is that where a breach of condition occurs, for the insurer to decline liability based on that breach, it has to show the breach was material to the loss which occurred. I'm not persuaded Accelerant has done that here.

If the shower failed due to frost, clearly switching the water off at the stopcock would have meant that only a small amount of water would have left the shower once temperatures increased and the water within the damaged part of the shower thawed. But switching off the stopcock, according to the condition, was optional – switch it off or keep the heating on.

I don't think the position regarding the heating is so clear. If Mr R had kept the heating on (assuming for the moment he did not), then that might have prevented the loss as it seems logical to think that the caravan would likely have stayed warmer. That said, the condition only requires the heating "to operate" through the day and overnight – no setting is dictated nor any internal temperature for the caravan to be kept at is set. And I've seen no analysis from Accelerant to show what the internal temperature of the caravan was likely to be, with or without heating, when the external temperature was, at the time in question, it says, as low as minus five, with sub-zero temperatures sustained over several days. So I'm not currently convinced, if the shower was damaged by frost, that Accelerant has shown that Mr R's considered breach of the condition was material to that loss.

Furthermore, I'm also not convinced that the shower part was damaged by frost. That's important because if it did not fail, or hasn't been shown to have likely failed due to frost, the heating being on or not wouldn't have made any difference. In other words, the considered breach wouldn't have been material.

Accelerant had the shower part assessed to determine the cause of damage. The loss adjuster has said that it wanted to control the assessment of the part – so it instructed the repair company, initially involved under the instruction of the park and Mr R, to investigate the cause of the part's failure. The loss adjuster has said that the repair company determined the part had been damaged by frost. But, despite my requesting evidence of this, Accelerant has not provided a report from the repair company. So I'm not persuaded that that is what the repair company found. Nor that if they did indeed reach that conclusion, it was an entirely independent and unbiased opinion.

I see the loss adjuster has sought to corroborate the reported findings of the repair company, citing its own experience of 'frost' claims, particularly during the period 13-16 December, confirming that, in its view, the damage looks consistent with other instances of frost damage seen. A photo of the part has been provided and referred to by the loss adjuster in this respect. Considering this comment in the context of the claim as a whole, I don't find it persuasive. From the reports provided, the damage to the part was considered by the loss adjuster only after the view had already been reached that this claim must have resulted from frost damage having occurred 13-16 December 2022.

On balance then, I'm not persuaded that Accelerant has shown it's most likely that the shower part was damaged by frost. It follows that I'm also not persuaded it's shown the considered breach was material.

I'm mindful that Mr R has also been concerned that he has not been given a chance to have his own assessment of the part carried out. I asked Accelerant what happened to the part after it had the repair company assess it. The only response from Accelerant on this point was a copy email from its claims team to the loss adjuster asking if the part had been kept, but stating it was felt this was unlikely. I'm unsure why that would be unlikely – after all the part would be evidence in support of the decision to decline. I'm also not sure though why no enquiries have been made with the repair company which was tasked with the assessment. Or, if the part wasn't to be kept for evidence, why Accelerant did not make sure to clearly and safely return the part to Mr R. The part was last in the control of Accelerant's agents – the loss adjuster and the repair company – it has not been returned to Mr R and is now missing. Without the part, Mr R can't have an expert of his choice examine it to determine if it is likely frost damaged. I think that, at the very least, is extremely frustrating for Mr R. However, I can't say for sure what result would be returned by any further inspection of the part – so I can't say Mr R's position has most likely been prejudiced by the part not being returned to him.

In summary:

- *Accelerant has not shown the caravan was unoccupied, so it hasn't shown the exclusion to cover reasonably applies.*
- *But if it was unoccupied and the exclusion does reasonably apply, Mr R is considered to be in breach of the condition requiring him to switch off the water or keep the heating on.*
- *Only if any breach was material can Accelerant fairly and reasonably rely on it to decline the claim.*
- *Accelerant has not, in my view, shown that the breach was material to the loss which occurred.*

Therefore, it is my view that Accelerant has not shown its decline of the claim was fair and reasonable. As such it will now need to consider the claim in line with the policy's remaining terms and conditions.

Compensation

Mr R was clearly distressed by Accelerant's decline of his claim. I understand he then took steps himself to have the caravan repaired. I note it was March 2023 when Accelerant involved its loss adjuster, having received reinstatement estimates which were more costly than expected. I see Mr R then began repairing the caravan in April, and I think reinstatement completed in May 2023. So the period of disruption was relatively short, lasting only a few months. I'm satisfied that £250 is fair and reasonable compensation in the circumstances here."

As neither party responded to my provisional decision, I've no need to change or add to my findings. I'll just confirm here that my provisional findings are those of this, my final decision.

Putting things right

I require Accelerant to:

- Consider the claim in line with the remaining terms and conditions of the policy.
- If that results in a cash settlement, pay interest* on the settlement sum, applied from the date Mr R paid for reinstatement work until settlement is made.
- Pay Mr R £250 compensation.

*Interest is at a rate of 8% simple per year and paid on the amounts specified and from/to the dates stated. HM Revenue & Customs may require Accelerant to take off tax from this interest. If asked, it must give Mr R a certificate showing how much tax it's taken off.

My final decision

I uphold this complaint. I require Accelerant Insurance Europe SA/NV UK Branch 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 R to accept or reject my decision before 1 April 2024.

Fiona Robinson

Ombudsman