

The complaint

Mr B complains that Accelerant Insurance Europe SA/NV turned down his property owners insurance claim.

Any reference to Accelerant includes the actions of its agents.

What happened

Mr B has a property owners insurance policy with Accelerant, which covers a property he rents out.

On 14 November 2022, Mr B's tenant moved out and returned the keys for the property. Some contractors visited the property after this. Then Mr B went there on 5 and 12 December 2022 to check on it. On 16 December 2022 a neighbour discovered an escape of water at the property (caused by a burst pipe).

A claim was made under the policy. Accelerant turned it down and said the property had been vacant for more than 30 days, and therefore the loss wasn't covered. Unhappy with this, Mr B brought a complaint to the Financial Ombudsman Service to consider.

I issued a provisional decision on 29 February 2024. Here's what I said:

'I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.'

The policy covers loss in the event of an escape of water from a pipe. However, it doesn't cover damage whilst the premises are 'vacant or disused'.

The policy doesn't define 'disused', though it does include a definition for 'vacant or unoccupied'. The policy says this means where the premises have become untenanted or which have not been actively used for a period of more than 30 days.

Mr B says he thinks the loss happened on 13 December 2022 (29 days after the tenant moved out). He says 'The first day temperatures did not rise above 0 was the 12/12/2024 (though I assume he means 2022). The next two days they did rise above 0 and as such it stands to reason this is when the 'thawing' occurred, and leak commenced.'

Mr B also says that given the extensive damage found on 16 December 2022, this supports the leak must have been occurring for some time.

We can speculate when the pipe may have burst, but it remains the case we simply don't know when this happened. I can't say that it's more likely than not to have happened on 13 December 2022 as Mr B says. Given that the escape of water was first discovered on 16 December 2022, I think it was reasonable for Accelerant to use this as the date of loss.

The property didn't have a tenant in the 30 days before 16 December 2022. Although Mr B argues the property was being actively used, I don't need to consider this, as only one of the two meanings of vacant listed needs to apply and not both. So I think it was reasonable for Accelerant to say the property was vacant, according to the policy definition and to turn down the claim by relying on the exclusion.

The policy includes a condition that whenever the premises are vacant or unoccupied, the insured needs to notify Accelerant of that and certain conditions apply (such as the insured needing to turn off utilities at the mains). It says the insured will lose their right to claim if they fail to fulfil any of the listed conditions.

Mr B didn't comply with the condition after the property became untenanted for 30 days. Accelerant has confirmed that if Mr B had complied with the condition, then it would have provided limited cover only (fire, lightning, explosion and aircraft). So, there never would have been cover for escape of water in any event, even if Mr B had complied with the condition and told Accelerant the property was vacant.

Mr B says the condition is onerous and wasn't brought to its attention. However, Mr B hasn't claimed for loss due to fire, lightning, explosion or aircraft. So I don't need to consider whether the condition was onerous and should have been brought to his attention (or his broker's on his behalf). I say that because even if I agreed this were the case and concluded that Accelerant couldn't rely on a breach of the condition, this wouldn't make a difference to the matter.'

I asked both parties if they wanted to provide any further comments or evidence before I made a final decision.

Accelerant responded to say it had no further comments.

Mr B responded with some new evidence from a plumber and a loss assessor. He also said he thinks section 11 of the Insurance Act 2015 applies, as the risk of loss hadn't increased 30 days after the tenant had vacated. He said there was a cold snap between 8 and 16 December 2022 with the average minimum temperature -4.1 degrees. So he thinks it must be at the start of this period that the actual risk occurred, and it wasn't materially greater on 16 December than on 8 December. Mr B also said that if I don't accept the risk of loss was from 8 December, then I should use the risk of loss from 14 December 2022 as the weather was colder on this date than on 16 December 2022.

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.

First of all, I've considered the new evidence that Mr B has provided.

The plumber's report says an engineer attended on 10 January 2023, and they found a leak on a damaged joint and pipework. They said the leak was due to the cold weather snap at the time as lots of pipes froze.

However, the plumber's report hasn't provided any new information, as I was already aware that the pipe had burst due to a period of cold weather in December 2022.

The information from the loss assessor says that, in his opinion, the water that escaped from the pipe in the loft had been running for at least three days in order to cause the damage it did when he inspected the property.

The loss assessor inspected the property on 13 January 2023, which was almost a month after the leak was discovered. So I don't find his evidence to be particularly persuasive, as he hasn't explained why the damage would have happened over a three day period (as opposed to one day, for example). It's also the case that further deterioration likely happened between 16 December 2022 and the date of his inspection.

Mr B has referred to section 11 of the Insurance Act 2015 ('the Act'), and says the risk of loss hadn't increased 30 days after the tenant had vacated. He's referred to the dates when the temperature dropped below freezing, and thinks the risk of loss began on 8 December 2022.

The Act says the insurer cannot rely on non-compliance of a term to exclude, limit or discharge its liability, if an insured shows that the non-compliance with the term could not have increased the risk of the loss which actually occurred in the circumstances in which it occurred.

However, there doesn't need to be a direct causal link between the breach of the term and the loss that happened. So I don't need to consider whether the non-compliance with the term actually caused or contributed to the loss. I only need to consider whether the non-compliance could not have increased the risk of the loss that happened.

When a property is vacant, this presents a higher risk to an insurer. If the temperature in the property is too low, this can lead to pipes freezing in cold weather. Also, if a pipe does burst, this can leak for longer if no one is there to turn off the water. So I can't reasonably say that the property being vacant could not have increased the risk of the loss in the circumstances in which it occurred.

I've looked at the weather data Mr B has provided. Whilst it's reasonable to say the pipes likely started thawing out when the temperature began increasing, we still have no way of knowing at what point the joint and pipework actually burst. I therefore remain satisfied that it was reasonable for Accelerant to use the date of discovery as the date of loss, which was 16 December 2022, and to turn down the claim as the property was vacant according to the policy terms.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 16 April 2024.

Chantelle Hurn-Ryan
Ombudsman