

The complaint

Ms Y complains about Arch Insurance (UK) Limited's handling of a claim made under her property owners insurance policy and about the offer they made to settle her claim.

What happened

The background to this complaint is well known to both parties, so I'll provide only a brief summary here.

Ms Y had a property owners insurance policy underwritten by Arch, to cover a property she owns and rents out.

She made a claim in April 2023 after her tenants moved out leaving substantial damage to the property and its contents.

Arch appointed a loss adjuster to visit the property. And on receipt of their report, Arch declined the claim. They said the damage was entirely due to wear and tear and wasn't covered by the policy.

Ms Y complained to Arch about this decision and asked them to reconsider. They did so and agreed that there were elements of the damage that should be covered.

To cut a long story short, Ms Y believes her claim to be worth in excess of £40,000, including loss of rent for a period of time at the property.

Arch offered her £640 initially and said they would look into other matters that might lead to further payments.

Ms Y wasn't happy with this and brought her complaint to us. Our investigator looked into it and didn't think it should be upheld.

She said Arch were justified in declining much of the claim and had proposed a reasonable way forward to Ms Y as regards the parts of the claim they were accepting. She also said Arch were entitled to decline the loss of rent claim because the other parts of the claim had been declined.

Ms Y disagreed and asked for a final decision from an ombudsman.

I also disagreed with our investigator. On the basis of the information and evidence we had at the time, I thought the complaint should be upheld. So, I issued a provisional decision. This allowed both Ms Y and Arch to provide more information or evidence and/or to comment on my thinking before I make my final decision in this case.

My provisional decision

In my provisional decision, I said:

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

I think it's important first of all for me to set out what I believe is covered – and what isn't covered – by the policy.

I don't think there's any dispute here that the policy covers malicious damage by tenants. There's no real definition set out in the policy, but I think it's clear that means damage caused on purpose and with an intent to cause harm.

The policy also covers accidental damage. Again, this isn't defined, but it would normally mean damage caused by a one-off, unexpected event which was not caused intentionally.

There is an exclusion set out in the policy in relation to accidental damage, which says Arch will not cover damage caused by gradual deterioration or wear and tear.

It goes without saying, of course, that Arch need not specify that exclusion in relation to the malicious damage cover. Something damaged maliciously is by definition not damaged by wear and tear.

The section of the policy that deals with loss of rent says Arch will indemnify the policyholder where there is "*interruption or interference with the Business*" caused by any one or more of a number of specified perils. Those perils include malicious damage and accidental damage.

So, here's where I think that puts us when we look at Ms Y's claim.

Ms Y has made a claim specifying parts of her property and/or its contents which she believes have been damaged by her tenants.

If any element of that damage were caused maliciously by her tenants, that would appear to be covered. And Arch should pay for repair or replacement, in line with the policy terms.

If any element of that damage could properly be considered accidental damage, that would also appear to be covered. And again, Arch should pay for repair or replacement.

If that damage (malicious or accidental), when taken as a whole, has "*interrupted or interfered with*" the letting out of the property, then Arch should cover loss of rent for any relevant period.

So, that's what I believe the policy covers. Now I'm going to look at the facts of this case and consider how the claim has in fact been handled and decided.

Arch's first response to the claim was to decline it completely, on the basis that the damage wasn't malicious, as Ms Y appeared to suggest, but was wholly caused by wear and tear.

It's not clear that, at that point, Arch really considered whether some of the damage might be covered because it was accidental damage (as per the policy terms).

They also later appear to have suggested to Ms Y that some aspects of the damage might be covered under other parts of the policy – for example, relating to escape of water (damage to a carpet from a radiator leak) and/or relating to lost or stolen keys (window keys have gone missing according to Ms Y).

It was only when Ms Y made a complaint that Arch looked again at the claim and decided that their initial assessment might have been, in their own words, “*harsh*.” They appear now to accept that some (if not much) of the damage is malicious. And they appear to think some (not all) of it may be accidental damage (caused by a one-off, unexpected and unintentional event).

The claim was made in April 2023. It was late August by the time Arch went back to Ms Y – after quite a protracted discussion in-house and with the loss adjuster - to make a proposal to her about what they would cover and what they would not. That’s a considerable delay. And the fault for that delay lies with Arch, not Ms Y.

It’s not entirely clear in that particular correspondence why Arch consider some items of damage to be not covered by the policy. It’s also not entirely clear why they are making offers in respect of some other items of damage. Or why those offers are for repair rather than replacement.

I should be clear, I’m not saying Arch’s decisions about those items of damage were necessarily wrong and/or can’t be justified. But there isn’t an adequate explanation provided to Ms Y.

It’s also unclear whether Arch have considered all the instances of damage that Ms Y wanted to claim for. I’m aware that Arch – and the loss adjuster – refused requests from Ms Y to see the loss adjuster’s report(s).

I’m not going to comment on whether Ms Y would be entitled to see those reports under data protection legislation. What I will say is that it’s very clear from the correspondence that Ms Y wants to check that the report covers all the instances of damaged items or property she wished to claim for. And I don’t think that’s an unreasonable request.

I can see from the correspondence that Arch have told Ms Y they won’t be covering loss of rent because, despite the damage caused by the out-going tenants, the property was inhabitable (it had utilities etc.).

The loss of rent section of the policy makes absolutely no mention of that criteria for deciding a loss of rent claim (whether the property is inhabitable). It simply says Arch will pay for loss of rent in circumstances where an insured peril (including malicious damage and/or accidental damage) interrupts or interferes with the business (of renting the property out).

So, I’m not convinced Ms Y has been given a proper or full explanation as to why Arch have declined this part of her claim.

Again, I’m not saying Arch’s decision was wrong necessarily. But again, Ms Y has had no proper account of how and why it has been declined. It’s also difficult for me to assess whether Arch’s position is justified when it’s not clear what their position is.

It's not for me – at this point at least – to step in and determine which items of damage should or should not be covered in this claim. I'm aware the claim is on-going. And I'm aware that discussions between Ms Y and Arch ceased around the time Ms Y brought her complaint to us, in September 2023.

However, unless I receive any further compelling evidence or information and/or persuasive reasons as to why I should not do so, I'm minded to uphold Ms Y's complaint.

I believe the claim has been handled poorly in the first instance. The damage, by Arch's own subsequent admission, is not all wear and tear. It was wrong to suggest to Ms Y that it was.

The position Arch eventually reached in around August 2023 – that some of the damage was covered and that they were willing to consider other claims (around the escape of water and/or lost keys) - might have come much earlier in the piece, when the claim was first considered.

In addition, I don't think Arch and/or their agents facilitated – as they should have done – a full and open discussion with Ms Y about what items of damage exactly their loss adjuster had included in her report after the first visit to the property.

On that basis, I'm minded to suggest that Arch pay Ms Y £500 in compensation for her trouble and upset. The stress and inconvenience she's been caused, over a number of months, by the poor initial response to her claim and the subsequent delay has been considerable.

As I say, it's not for me to step in now and specify how exactly the various elements of the claim should be settled. However, I am also minded – unless further evidence, information or argument persuades me otherwise – to require Arch do the following.

One – give Ms Y a list of the damage (to parts of the property and/or to particular contents) they have considered as part of this claim. This will enable Ms Y to reassure herself that Arch have properly considered all of her claim. And to advise Arch if there are any instances of damage they've missed.

Two – and at the same time – tell Ms Y whether Arch consider each item of damage to be: (a) malicious damage; (b) accidental damage (as per the policy terms); or (c) wear and tear. And explain why. And, for all covered damage, explain what they intend to do to settle the claim (repair, replace, or cash settle).

Three – in light of the above, reconsider Ms Y's claim for loss of rent. And provide a full explanation of that decision, by reference to the policy terms.

Given that this provisional decision will put Arch on notice that those actions on their part may well be required, I'd expect them to have taken those steps within two weeks of the date of my final decision in this case.

As Ms Y may be aware, our role is to look back at things that have already happened, to determine whether a business got something wrong and, if so, to specify what they need to do to put things right.

If she's unhappy with what Arch do from here on in – for example, if she doesn't agree with their decision on any aspect of her claim after they follow the steps I've set out above, then she can make a further complaint to Arch – and then to us if she's not happy with their response."

The responses to my provisional decision

Ms Y's response

Ms Y agreed with much of my provisional decision.

In particular, she affirmed that Arch only seemed to consider the malicious damage peril, at least initially. And she agreed that Arch had no basis in the policy terms for declining the loss of rent claim on the basis that the property was inhabitable.

She also confirmed that, as I said in my provisional decision, Arch at first declined the claim as a whole and later changed their minds and said some items were covered.

Ms Y says the property was definitely not fit for lease after the previous tenants moved out – and so the damage they caused had "*interrupted or interfered with*" her business. And so, her loss of rent claim should be paid.

Ms Y says she had a two-year lease (to begin in April 2023) arranged prior to the previous tenants moving out – and that had to be cancelled due to the damage to the property. She says she relies on the rent to pay the mortgage on the property.

Ms Y hasn't carried out any repairs to the property or replaced any damaged items. She says this is because she hasn't had the funds to do so and because she didn't want to do so in case further inspections or photographs were required by Arch.

She says she will have lost 12 months' rent by the time I issue my final decision in this case and it will take a further three months (at least) to get the property repaired and redecorated so that it can be let out again.

Arch's response

Arch are happy to pay the £500 compensation for Ms Y's trouble and upset that I suggested in my provisional decision.

They're also happy to carry out the other directions set out in my provisional decision. So, they will provide a list of damaged items to Ms Y and, for each item, specify whether they consider the damage to be malicious, accidental, or wear and tear (or possibly other categories – see below). And they will re-consider Ms Y's loss of rent claim in light of that list.

Arch say some of the items – the window and door keys and the remote control for the fire – had been stolen by the tenants (rather than damaged) and so would be considered under the theft peril set out in the policy terms, rather than the malicious damage peril. They also point out that some damage to a carpet due to a radiator leak would be considered as an escape of water claim.

And they note that the value of the damaged contents claimed by Ms Y came to over £21,000 – which suggests that the total contents' Sum Insured on the policy (£25,000) is likely to be inadequate.

They propose to value *all* the contents in the house and, if the total value exceeds the Sum Insured, to settle the claim according to the average clause set out in the policy. This says that if the policyholder is in effect underinsured by X% against the true total value of the contents, Arch will reduce the settlement by X%.

Arch also noted that I'd specifically made no direction about whether any particular item was covered under the policy terms and/or whether Arch should pay out against Ms Y's loss of rent claim.

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'm pleased that both Ms Y and Arch agree with the directions set out in my provisional decision. And, as per my provisional decision, I'd expect Arch to comply with those directions within at most two weeks of Ms Y's acceptance of my final decision, assuming of course that she does accept it.

Neither Ms Y nor Arch have given me any reason to change my mind about the outcome of this case. To be fair, it's clear that neither of them, in their responses, intended to do so.

I'm grateful to Arch for their comments on how the claim relating to the keys, the fire remote control and the radiator leak would be considered. I said they should send the list of damaged items to Ms Y and specify whether the damage was malicious, accidental or wear and tear. But I'm happy for Arch to categorise some items in the list under other perils – including theft and/or escape of water.

It seems to me though that both parties, having accepted my provisional decision, have in effect attempted to lay down some markers about how they think the claim should now be decided.

As I said in my provisional decision, it's not for me to now step into the middle of what is still in effect an on-going claim. I'm directing Arch to explain to Ms Y how they now intend to settle the claim. To tell her, in other words, which parts of the claim they accept – and what they propose to do to settle those parts of the claim - and which parts they are declining – and why.

If Ms Y then has a problem with any of Arch's decisions about how to settle the claim, she'd be entitled to make a further complaint to Arch – and then to bring that to us if she's dissatisfied with their response.

However, in order to try to avoid any unnecessary further delays and/or further complaints – and to try to assist in bringing this whole affair to a conclusion as soon as possible – it may be worth me offering some comments on both Ms Y's and Arch's responses to my provisional decision.

First of all, I should be clear that the terms of my provisional decision at least imply that Arch will take another look at the list of damaged items and decide whether they are covered. In asking them to list those items for Ms Y – and explain their decisions to her – it's clear that they will need to either justify their current position and/or change it.

In terms of the loss of rent aspect of the claim, I should make two things clear. First, whilst Arch are right to say I haven't directed them to accept that part of the claim but only to (re-) consider it, they should take into account the fact that in my provisional decision I made it

clear that they can't simply decline it on the basis that the property was "inhabitable". That's not the criteria set out in the policy terms. Instead, they'll need to consider whether the damage which they *are* covering "*interrupted or interfered with*" Ms Y's business.

Second, I can understand why Ms Y thinks Arch should pay her for her loss of rent for the period from the point the cancelled lease was supposed to start (April 2023) until the property is repaired and re-decorated and fit to be let out again.

However, it is a principle in insurance that policyholders should act to mitigate any losses they suffer as a result of an insured event. Arch will need to consider Ms Y's comments about why the property hasn't been let out since April 2023 (and they should give her a chance to provide a more detailed explanation if she wishes), but it's not unreasonable for them to ask whether some of the losses might have been mitigated.

Again, I'm not providing an answer to that question, I'm simply saying it wouldn't be unfair or unreasonable for Arch to consider it.

Finally, I am aware of the average clause in the policy terms, but Arch also need to be aware of our approach to questions of underinsurance.

In short, underinsurance may in effect be the result of what the policyholder was asked when they took out or renewed the policy (and declared a required Sum Insured). Where that is the case, then it's our view that the fair way to calculate any proportional claim settlement (*if* settling proportionally is indeed justified) is unlikely in most cases to be by comparing the Sum Insured and the true value of the items covered.

Rather, in order to settle any claim fairly, the insurer should calculate the premium which should / would have been charged, had the insurer known the true value of the items insured. And then compare that to the premium actually charged, in order to arrive at the proportion of any claim which should reasonably be paid.

Putting things right

As I've said, both parties in this case have accepted my provisional decision and given me no cause to change the proposed outcome.

That being the case, I'm going to direct Arch to carry out the steps set out in my provisional decision and repeated in the section below which sets out my final decision in this case.

My final decision

For the reasons set out above and in my provisional decision, I uphold Ms Y's complaint.

Arch Insurance (UK) Limited must:

- Pay Ms Y £500 in compensation for her trouble and upset.
- Give Ms Y a list of the damage (to parts of the property and/or to particular contents) they have considered as part of this claim.
- Tell Ms Y whether they consider the damage to each item to be caused by: malicious damage; accidental damage; wear and tear; theft; escape of water; and/or any other cause. And explain why.

- For all covered damage, explain what they intend to do to settle the claim (repair, replace, or cash settle).
- And in light of the above, reconsider Ms Y's claim for loss of rent. And provide a full explanation of that decision, by reference to the policy terms.

The above steps must be taken within two weeks of Arch Insurance (UK) Limited being notified that Ms Y has accepted this decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms Y to accept or reject my decision before 24 April 2024.

Neil Marshall
Ombudsman