

The complaint

Mrs F has complained that Accelerant Insurance Europe SA/NV UK Branch declined a claim she made under her residential property owners insurance policy.

What happened

Mrs F, via her managing agent, let out a property to tenants. In November 2022 fire damage was discovered at the property. In turn Mrs F wasn't able to rent out the property due to the fire damage.

Accelerant declined her claim. It said that Mrs F's agent hadn't carried out the necessary due diligence checks or carried out adequate periodic inspections.

Mrs F referred her complaint to this service. Our investigator didn't recommend that it be upheld. Mrs F appealed.

In summary she said:

- The parts of her policy relied on to decline her claim started with 'You must...' – not 'You and Your agents'. She felt that she had met her responsibility by employing a managing agent.
- The insurer was using the Right to Rent law for an unintended purpose.
- It was incorrect that insufficient checks were carried out. After the pre-tenancy inspection, inspections had be carried out at (approximately two and three months in. She said that this accorded with the managing agents protocol.

As no agreement has been reached the matter has been passed to me to determine.

All references to Accelerant include its agents.

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.

Although I've summarised the background to this complaint no discourtesy is intended by this. Instead, I've focused on what I find are the key issues here. Our rules allow me to take this approach. It simply reflects the informal nature of our service as a free alternative to the courts. I recognise that Mrs F will be very disappointed my decision, but I agree with the conclusion reached by our investigator. I'll explain why.

The regulator's rules say that insurers must pay due regard to the interests of its customers and treat them fairly. So I've considered, amongst other things, the Insurance Act 2015, the policy terms and the available evidence, to decide whether I think Accelerant treated Mrs F fairly in the circumstances here.

There is no dispute that a managing agent was acting on Mrs F's behalf. Mrs F has argued that the policy's use of the word 'You' should be interpreted as her alone – not her and her managing agent. I don't agree. The policy defines *Insured, You, Your* as the person(s) or company named in the Schedule. It wouldn't be fair and reasonable to interpret *You* as meaning Mrs F only and not the managing agent appointed by her and acting on her behalf. For completeness I note that her agent has said *"Nothing will ever progressed to being let without the situation surrounding the tenant been (sic) explained and accepted by the landlord"*.

In response to questions by Accelerant regarding the checks that were made prior to the tenancy commencing, the agent gave an explanation as to why it had taken on the tenant of the property concerned. The agent accepted that a previous landlord had not been contacted for a reference and no credit checks had been undertaken. It said that it had called the tenant's employer and was satisfied that he was able to pay the rent. The agent said that the tenant paid in cash, had never held a bank account and had no credit score to check.

The agent gave a reasoned and detailed explanation as to why the tenant was accepted with limited checks. To summarise he said that the area was a very poor one, with higher levels of drink/drug misuse and all sorts of other social and criminal difficulties to tackle. He explained that they did their best to look after their client's investment by trying to put the best tenant in the property. But he said that this boils down to a trade-off. I understand he was saying the trade-off was between having a property that's empty and losing rental income versus having an undesirable tenant, in a street/neighbourhood where all manner of crimes including burglaries happen on a pretty common basis. He notes that neighbouring properties were in a poor state of repair and empty. The agent said that if the suggested questions were asked – financial/credit/previous landlord checks – they wouldn't fill the properties.

I understand the reasons why Mrs F's agents let the property with limited due diligence checks. But the General Policy Condition requires Reasonable Precautions are taken. As far as relevant here, the Condition says:

You must:

b) take all reasonable precautions to prevent:

i. Damage to the Property insured;

ii. Injury to any person or Damage to their property.

d) take all reasonable steps to comply with statutory requirements obligations and regulations imposed by any authority;

If You do not comply with this condition, We may not pay Your claim.

It is reasonable to assume that reasonable precautions would mean finding a suitable tenant by completing all relevant and statutory checks. This wasn't done – for the compelling reasons given. But I don't find that those reasons mean Accelerant isn't entitled to rely on the policy condition above. And although Mrs F has said that the laws here were used for an unintended purpose, the fact remains that vetting, and the checks to immigration status checks required by the Immigration Act 2014 weren't completed.

Further although post letting two inspections were carried out, there was no inspection between May 2022 and November 2022. It seems that no inspection was planned and the

damage was noticed by chance by an employee of the agent when passing by in December 2022.

Given that the agent was aware of the level of criminality in the area I don't agree that another inspection would have infringed on the tenant's rights of quiet enjoyment. I'm satisfied that it was reasonable to conclude that the illegal 'cannabis farm' which it seems led to the fire, is likely to have been noticed if a further inspection had taken place. In fairness the policy doesn't state specifically at what frequency checks should be carried out. But given what was known about the locality, I don't find that Accelerant unfairly concluded that inadequate checks took place. I also don't find that the cost of carrying out more frequent inspections is a relevant factor.

Mrs F has said that her managing agent is truly sorry that a tenant placed in the property ended up abusing the privilege and carried out criminal activity at the premises. I have no doubt that the contrition is genuine. But it doesn't make Accelerant liable for the risk taken.

Insurers can't unreasonably reject claims and can't rely on terms not relevant to the actual loss to reject a claim. I'm not persuaded that Mrs F has shown that non-compliance with the above term could not have increased the risk of the loss which actually occurred in the circumstances in which it occurred. It follows that I don't find that Accelerant treated Mrs F unfairly by relying on the Breach of Reasonable Precautions condition in order to decline the claim.

In these circumstances there is no basis for me to require Accelerant to make any payment to Mrs F. I'm sorry my decision doesn't bring her welcome news.

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 Mrs F to accept or reject my decision before 22 November 2024.

Lindsey Woloski
Ombudsman