

The complaint

W, a limited company, complains Accelerant Insurance Europe SA/NV UK Branch turned down a claim it made on its business interruption insurance policy.

What happened

W operates a site which provides holiday accommodation and associated services. In July 2023 there was an incident at one of its cottages which resulted in an individual sustaining knife injuries. The site was shut down for three days while police investigations took place. W claimed on its policy with Accelerant for losses and costs associated with that.

Accelerant turned down the claim. It said the only part of business interruption cover that could apply required there to be damage caused by one of the insured events set out in the 'Property Damage' section of the policy. It didn't think there was damage in this case. And in any case it didn't think any of the insured events set out in the policy applied; in particular it didn't consider what happened here was a 'Malicious Act'

Our investigator didn't think there was evidence to show the incident had resulted in damage as defined in the policy and there wasn't evidence to show repairs were required. And the claim W had made wasn't for damage. He didn't think there had been a 'Malicious Act' either. He thought a reasonable interpretation of that would be where something is done intentionally and wrongfully with the intention of causing harm to another person. In this case it appeared the individual concerned had caused harm to themselves. He thought Accelerant had fairly turned down the claim W made.

W didn't agree. It said following the incident there had been blood spatter which impacted the contents of the accommodation and required specialist cleaning to remove it. And it thought the cause of that was a malicious event and the related closure of the site had led to the business interruption losses its claim was for. So I need to reach a final decision.

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.

The relevant rules and industry guidelines say Accelerant has a responsibility to handle claims promptly and fairly. It shouldn't reject a claim unreasonably. And for cover to be available for W's claim it needs to fall within one of the insured incidents set out in its policy. The onus is on a policyholder to show their claim falls within one of those sections.

So I've looked first at the terms and conditions of W's policy. This does include cover for business interruption insurance where the loss arises from the insured events it contains. I've reviewed those events and I don't think it's in dispute the only one which could potentially cover the claim W made is:

"Damage to property used by You at the Premises for the purpose of the Business caused by one of the insured events under Section 1 – Property Damage that is

shown as being operative in the Schedule and where liability is admitted by Us and covering Your interest in such property”

So for cover to apply then there needs to be ‘Damage’ and that needs to be caused by one of the insured events set out in the ‘Property Damage’ section of the policy. The policy defines ‘Damage’ as *“Loss or destruction of, or damage to, tangible property”*.

W argues there was damage in this case because the result of the stabbing caused blood spattering to the accommodation which required specialist cleaning to remove it. I think that accommodation (including the actual location where the incident took place) would constitute tangible property. I’ve also reviewed relevant case law and I think it’s reasonable to say damage would need to constitute a negative change to the physical state or condition of property.

However, I don’t the position on whether contamination of property (as happened here) would constitute damage is clear. Again I’ve taken into account relevant case law and I think that would likely be the case if there was no way of removing the contamination. On the other hand, the more superficial or temporary the contamination, the less likely it is to constitute damage. I’m aware in particular that in *Hunter v Canary Wharf Ltd* it was found *“the fact it costs money or labour to remove a deposit of material on property does not necessarily involve a finding that the property has been damaged”*. But that judgement also indicated that if professional cleaning was reasonably required the cost of that would be actionable.

Applying that here would likely result in a finding that, if professional cleaning was required to remove the blood spatter, that would meet the policy definition of damage. But I don’t think that’s something I need to determine because even if I accept that there was damage in this case for cover to be available it would still need to result from one of the insured incidents the ‘Property Damage’ section of the policy contains.

Those incidents include ‘*Malicious acts or vandalism*’. W hasn’t argued that any of the other insured events would apply to the claim it made. And I think it’s accepted the incident here wouldn’t constitute vandalism. So the question is whether it could be classed as a malicious act. That isn’t defined in the policy but, taking into account relevant case law and dictionary definitions, I think it would be reasonable to say that for an act to be malicious it would be intended to cause harm or upset to another person and contain an element of spite or ill will (that part of the definition cited in *Navigators Insurance Company Limited and others v Atlasnavios-Navegacao LDA*).

I don’t think W has shown that’s the case here. It doesn’t appear to be in dispute the individual concerned caused injury to themselves. It’s unclear as to exactly what their motivation was in doing so but while it might be reasonable to say they intended to harm themselves I haven’t seen anything to show that spite or ill will formed part of their motivation. And in any event there’s no clear evidence they intended to cause harm or upset to another person.

As I’ve said it’s for W to show an insured event under the policy has taken place. I don’t think it was unreasonable of Accelerant to conclude it hadn’t done so in relation to the cause of any damage being a malicious act. And as W hasn’t suggested any of the other insured events under the ‘Property Damage’ section of the policy would apply to its claim I think Accelerant acted fairly in turning this down.

My final decision

I’ve decided not to uphold this complaint. Under the rules of the Financial Ombudsman

Service, I'm required to ask W to accept or reject my decision before 19 September 2024.

James Park
Ombudsman