

## The complaint

W complains that Accelerant Insurance Europe SA/NV (Accelerant) has unfairly declined its claim under its Combined Insurance Policy for damage to its sewage treatment plant.

W has used a third party to represent it in both the claim and complaint but for ease, I'll mainly refer to W throughout this final decision. Any reference to Accelerant in this final decision includes its respective agents unless specified otherwise.

## What happened

The background of this complaint is known in detail to the parties involved so I've summarised what I've found to be the key points.

- W is the owner of a property that has a sewage treatment plant (STP). In February 2023 it noticed the tank was rising.
- W instructed a local contractor to carry out a service of the STP which was completed in March 2023. They found that there was physical damage to the STP that services the property – an internal compartment wall, called a baffle wall, and the side of the STP were damaged beyond the point of repair and therefore they advised that a new/replacement STP was required.
- The contractor introduced W to a drainage claim specialist company (U) and W agreed for it to manage the claim on W's behalf. U completed a claim report for accidental damage to underground services and sent this to Accelerant in April 2023.
- In July 2023, Accelerant conducted a site visit at W's property to investigate the damage being claimed for. It found the proximate cause of the damage to be the result of external hydrostatic pressure which was causing the walls of the STP to bow inwards over time, which in turn caused a split to the tank.
- Accelerant said that as the type of damage happened gradually, it wasn't covered under the policy, and it declined W's claim.
- W agreed with Accelerant on the likely cause of damage (hydrostatic pressure) but disagreed that it had happened gradually. It said Accelerant had no evidence of this, but Accelerant maintained its position on the claim, so W brought its complaint to this Service.
- Our Investigator looked into the matter and concluded that Accelerant had acted fairly and so didn't uphold the complaint. W disagreed, so the complaint was passed to me to decide.
- I reached a different outcome to that of our Investigator, so I issued a provisional decision on this complaint explaining my reasons why. I've included part of what I said in this below.

*"Throughout the course of this complaint, several points have been made. And I've carefully and fully considered what W and Accelerant have said. But in line with this Service' informal approach, I won't address every point raised, instead I'll focus on what I see as being the*

*crux of the matter and the key outstanding issues following our Investigator's assessment.*

*W has made a claim under its combined insurance policy. When making a claim, the onus is on the policyholder (in this case W) to show that an insured event most likely occurred. So, this is my starting point in this case.*

*From what I've seen, W is claiming that the STP has become damaged due to a split in the outer tank shell resulting in ground water entering the tank. W has made a claim for this under the accidental damage section of its policy – which includes damage to underground services.*

*"Accidental Damage" is defined in the policy as "Sudden, unexpected, and visible damage which has not been caused on purpose." So, for me to agree that an insured event most likely occurred in this case, I'd have to be satisfied, on balance of probabilities, that the damage being claimed for by W most likely meets this definition.*

*From what I've seen in this case, the damage is visible, and I've seen no evidence or allegation of it being caused on purpose. And Accelerant doesn't appear to dispute that the split to the tank most likely happened suddenly and unexpectedly. So, on balance, I'm satisfied that W has done enough to show that an insured event most likely occurred. The onus now switches to Accelerant – it should either accept the claim or, if it thinks an exclusion applies or that a condition has been breached, it must show, on balance of probabilities that this is most likely the case.*

*Accelerant hasn't accepted the claim and has relied on an exclusion to decline it. The exclusion in question states that the policy doesn't cover any accidental damage caused by "Settlement, shrinkage, or anything that happens gradually".*

*Accelerant says the external hydrostatic pressure most likely built up over time, causing the walls of the STP to gradually bow inwards, eventually resulting in the split to the tank. So, while Accelerant appears to accept that the split to the tank may have been sudden and unexpected (accidental damage), it thinks the cause of that damage was gradual, which is excluded under the policy. Therefore, it's satisfied it's acted fairly and in line with the policy terms by declining W's claim. W doesn't think it's done enough to evidence this and so thinks the claim should be paid.*

*I've considered both arguments carefully. And while it appears there's no definitive evidence either way, it's worth keeping in mind that Accelerant only needs to demonstrate what's most likely on balance of probabilities in relation to the exclusion.*

*Accelerant appear to argue that by its very nature hydrostatic pressure is more likely to build up over time. And so far, I'm also persuaded that the bowing of the STP walls seen in several areas likely supports a gradual build-up of pressure. With that in mind, and without evidence of a specific event/incident that could have caused a sudden build-up of pressure to W's STP, I'm minded to agree that the cause of the damage was most likely gradual.*

*So, with strict application of the policy terms it would seem the exclusion Accelerant seeks to rely on is likely relevant here. But I also need to consider what's fair and reasonable in all the circumstances of this case. And in doing that I've thought about whether W should have reasonably been aware of the gradual cause of the damage.*

*I think this is an important consideration in this case given that I'm currently satisfied an insured event took place, so the damage is something that is usually covered by the policy. And if W couldn't reasonably have been aware of the gradual nature of the damage it would seem unfair for the claim to be declined with this in mind.*

*From what I've seen, the STP was serviced at least annually, with the last service (before the damage was discovered) taking place in April 2022. And during that service, it's my understanding that there was no mention of any internal or external damage to the STP, which arguably it seems likely a service would pick up.*

*W says the tank was then emptied in August 2022 with no sign of damage at that time, and that regular grass maintenance around the unit took place up until December 2022, with no damage being spotted on those occasions. The STP continued to operate as expected and without loss of service throughout this time with the damage only being discovered in February 2023 when W saw that the STP had risen and reported the issue soon after this.*

*With all that in mind, I'm not currently persuaded that W could have reasonably done more to know about the damage sooner than it did – or to stop it from getting worse. Based on what I've seen so far, I'm persuaded it took reasonable action as soon as it did become aware of the issue, and again, I can't see that it could have done anything more than this. Therefore, I don't currently think it would be fair or reasonable in the specific circumstances of this case for it to lose out on the claim because of the exclusion.*

*It follows, based on the information I've seen so far, I don't think it would be fair or reasonable for Accelerant to rely on the exclusion it has to decline W's claim in this case. So I intend to direct it to accept the claim in line with the remaining policy terms and conditions."*

Both parties were given a chance to respond to what I'd said and to provide any further comments and evidence before I made my final decision. W said it had nothing further to add and Accelerant accepted my findings.

### **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.

In response to my provisional decision W had nothing further to add and Accelerant accepted my findings. So, I see no need to repeat them again here. It follows, for the reasons already set out in my provisional decision above, I don't think it would be fair or reasonable for Accelerant to rely on the exclusion it has to decline W's claim in this case. Accelerant must now accept the claim in line with the remaining policy terms and conditions.

### **My final decision**

My final decision is that I uphold this complaint and Accelerant Insurance Europe SA/NV must now accept W's claim in line with the remaining policy terms and conditions.

Under the rules of the Financial Ombudsman Service, I'm required to ask W to accept or reject my decision before 28 October 2024.

Rosie Osuji  
**Ombudsman**