

The complaint

Mrs W complains about Allied World Assurance Company (Europe) dac's handling of a claim made under her landlord's insurance policy.

What happened

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

Mrs W has a landlord's insurance policy underwritten by Allied World Assurance Company (AWAC) which covers a property she owns and rents out.

She made a claim when tenants moved out of the property after Mrs W ended their contract. In her view, the tenants had caused damage maliciously before they left.

Mrs W's claim was for just under £8,000. AWAC accepted the claim but paid out only just under £3,000. They said much of the damage was not malicious but rather was due to the lifestyle of the tenants and/or gradual wear and tear. And that damage wasn't covered under the terms of the policy.

Mrs W made a complaint to AWAC. She wasn't happy with the settlement of her claim. And she said she'd experienced poor service, confused communications and unnecessary delays in the handling of her claim.

AWAC accepted that Mrs W hadn't received the standard of service they'd expect. They agreed the claim had been delayed overall. They said they hadn't always answered Mrs W's queries in line with their expected timescales, which caused her to have to chase them for answers. And they'd provided conflicting statements about what information they required from Mrs W and about the proposed settlement.

AWAC offered Mrs W £350 in compensation for the trouble and upset they'd caused her through that poor service. But they maintained their decision about which parts of the claim to accept had been correct, because much of the damage hadn't been caused maliciously by the former tenants.

Mrs W disagreed and brought her complaint to us. Our investigator looked into it. Whilst we were investigating the complaint, AWAC looked again at the claim and agreed to pay out for a further element of the damage – to a bath panel.

Our investigator agreed with AWAC that the remaining damage to the property wasn't malicious. And they thought the offer of £350 in compensation was fair.

Mrs W disagreed and asked for a final decision from an ombudsman.

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 understand Mrs W has made a separate complaint about a claim she's made under the legal expenses section of her policy. That's still being investigated by us and it's not for me to consider it here.

I'll start with the policy terms. I don't think there can be any confusion or dispute about what they say. In short, AWAC will cover damage to certain parts of the property if that damage is caused by an insured event.

The relevant insured events here are malicious damage (which is not defined in the policy terms) and accidental damage – defined as sudden and unexpected damage caused by an identifiable (unintentional) event.

The policy also says that AWAC will not cover damage caused by wear and tear or gradually operating causes – including, specifically, mould.

There's no doubt here that all of the damage included in Mrs W's claim was damage to parts of the property covered by the policy. I say this because Mrs W's response to our investigator's view suggests she may think that if damage is to those part of the property then it's covered – full stop.

That's not true, of course. For a claim to be successful, the policyholder would also have to show that on balance the damage was likely caused by one of the insured events listed in the policy terms.

AWAC have paid out for some parts of the claim. They accept that particular damage was caused by an insured event.

The remaining damage – which AWAC are not willing to pay for – includes damage to: the flooring in various rooms of the property; the underlay to laminate flooring; carpets; spindles; blinds; a toilet seat; and the décor at the property in general. The latter appears to have suffered staining due to smoke or soot.

Given the terms of the policy, the key question for me in making this decision is whether that damage was accidental damage (which is covered), or malicious damage (which is covered), or wear and tear / gradual damage (which his not covered).

I don't think anyone is suggesting this damage is accidental damage. Much of it doesn't appear attributable to an unexpected one-off event (an accident).

Mrs W says it's malicious damage. I'm afraid I don't agree with that based on the evidence – mainly, the photographs provided by Mrs W.

The flooring appears frayed or slightly disintegrated at the edges, as does the underlay. It looks worn down rather than damaged by a malicious act. It would certainly be an odd act of maliciousness to cause damage in that way.

The carpets appear to be very dirty and possibly to have some sort of staining or substance ground into them over time. Again, this appears to be more a case of a lifestyle choice or failure to clean and maintain the carpets on the part of the former tenants rather than a malicious act.

The damage to the spindles and the toilet seat is similar. I don't think it's unreasonable to conclude that the damage has happened gradually over time as a result of misuse or lack of care, rather than as a result of malicious acts.

The blinds are mouldy. That can only be due to prolonged exposure to dampness. It's not really credible that someone would go to the lengths necessary to cause that damage maliciously over the period of time necessary.

The décor needed a refresh because of smoke or soot stains. That is likely due to the former tenants burning candles or something similar within the property over time, rather than setting out to maliciously cause the damage.

Malicious damage isn't defined in the policy terms, so we have to give it its regular normal usage meaning. To do something maliciously means to do it *with the intention* of causing harm or damage. It's not the same as being careless or failing to maintain something. And I don't think the evidence shows malicious damage here.

I'm satisfied then that it wasn't unfair or unreasonable for AWAC to conclude that the damage (that they haven't paid out for) wasn't caused maliciously.

It's far more likely, on balance, looking at the evidence, that the items in question have worn out or become damaged over time. They may have worn out more quickly because the former tenants didn't take appropriate care with them or treat them the way they would if they were their own. But that's not covered by the policy.

I must stress, my decision here isn't informed only by a strict reading of the terms and conditions. It's not inherently unreasonable – *particularly* since it's set out in the terms – for AWAC to choose to cover damage caused by tenants acting maliciously but also to choose not to take on the risk of tenants just being poor tenants and/or misusing the property.

They might reasonably say that the relationship with the tenants was for Mrs W to manage. And, of course, she may still be able to pursue the tenants for damages if they didn't comply with the terms of the lease.

In conclusion, Mrs W has my sympathy about the way the former tenants appear to have treated her property. They left behind them damage which was most likely caused by their failure to take care of - and/or respect - the home in the way that might have been expected – and/or required by the terms of the lease.

Dealing with that has no doubt been stressful and draining for Mrs W. But, for the reasons I've set out above, I can't reasonably conclude that's it for AWAC to put all of that right for Mrs W, given the circumstances and the terms of the policy.

Putting things right

After we began our investigation, AWAC offered to pay for damage to a bath panel – a part of the claim they'd previously declined.

That was the right thing for AWAC to do – and it's to their credit that they reversed their previous position on that particular damage.

However, AWAC will understand that because they did so *after* we'd begun to investigate, that will be recorded as a change in outcome on our record of the complaint.

I also have to uphold the complaint, despite agreeing with most of what AWAC have said about the disputed parts of the claim, because of the above - and also because whilst AWAC had offered £350 in compensation for Mrs W's trouble and upset, they hadn't yet paid that to her.

I should confirm that I agree with AWAC and with our investigator that the £350 is fair and reasonable compensation in this case.

Mrs W was caused some confusion and delay – and the inconvenience of having to chase things up – as a result of poor communications and poor customer service on AWAC's part.

However, the end result was not substantially affected by those failings. And, despite the admitted delays, AWAC settled the claim within a few months of Mrs W making it.

As I say, I have no doubt that having her tenants leave the property in such a state was a stressful, worrying and disruptive experience for Mrs W. But that would have been the case even if AWAC had handled things absolutely perfectly.

What I have to look at is the *additional* trouble and upset for Mrs W caused by AWAC's errors and omissions in and of themselves. And I'm satisfied £350 in compensation is a fair reflection of that, bearing in mind the impact on Mrs W and the length of time it took for AWAC to settle the claim.

My final decision

For the reasons set out above, I uphold Mrs W's complaint.

Allied World Assurance Company (Europe) plc must settle the part of the claim for the bath panel (if they have not done so already) and pay Mrs W £350 in compensation for her trouble and upset.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 12 November 2024.

Neil Marshall
Ombudsman