

The complaint

Mr B complains Accelerant Insurance Europe SA/NV UK Branch (“A”) has declined to settle a buildings insurance claim against his commercial property insurance policy in full.

For ease of reading references to Mr B include the actions of his wife and references to A include the actions of its agents.

What happened

Mr B had a Commercial Property Owners Insurance policy with A for a property he rented out. In March 2023 a serious fire damaged the property. Mr B made a claim against his policy. A accepted the claim. This complaint is about the settlement on the buildings part of the claim. Other parts, such as contents and business interruption (“BI”), do not form part of this decision.

The crux of the dispute was A’s view that Mr B was underinsured. Our Service considered the complaint and recommended that it should be upheld. This was because, in summary, the Investigator found Mr B had made a fair presentation of risk and so it was unfair and unreasonable for A to offer a reduced settlement. A didn’t agree so the complaint was referred to me to decide.

In September 2024, before I issued a decision, A changed its position. It no longer said Mr B was underinsured and offered to settle his claim in full. But A said it would not pay Value Added Tax (“VAT”) on the settlement because it said Mr B should be VAT registered, and therefore able to claim the VAT back. Mr B said he’s not VAT registered, and doesn’t need to be, so that’s unfair.

I issued a provisional decision. I said:

“Mr B and A have made many arguments and have provided a great deal of evidence. If I don’t comment on something, it’s not because I’ve ignored it. I haven’t. Instead, I have focussed on what I consider material to reaching a fair outcome. Our rules allow me to do this, and no discourtesy is intended. It simply reflects the informal nature of our Service.

I recognise this claim/complaint has been a challenge for Mr B, and while some matters have fallen away, more have come about. Most notably a relatively recent development regarding a dispute over the BI payments. This decision does not address that dispute. But Mr B can ask the Investigator to consider it as a separate complaint, if he hasn’t started arbitration, which I understand may be his intention.

A said Mr B was underinsured for a considerable period of time, but it has now departed from this stance. I won’t go over all the relevant considerations again as our Investigators have already done this. But suffice to say I find its current stance to not rely on any underinsurance remedies is correct. And I find its persistence with this course of action was unnecessary, unreasonable, and unfair.

I'm not persuaded the underinsurance saga caused Mr B a financial loss because I understand the cash settlement has been increased in line with building work cost increases, and I understand BI will be paid up to August 2025, which should allow for the building work to be completed before it ends. But Mr B has been caused a great deal of distress and inconvenience by the uncertainty, frustration and delays. I find £1,000 compensation fairly and reasonably reflects the impact this matter has had on Mr B.

A's settlement offer doesn't include VAT. The policy says:

"Value added tax (VAT)

We will pay you for VAT, paid by you, which is not recoverable. Provided that;

- 1. Your liability for the tax arises as a result of the reinstatement or repair of the **property** following damage;***
- 2. We have paid or have agreed to pay for the **damage**;..."***

The building work will likely incur VAT. If Mr B is VAT registered, he can claim it back from HMRC. If he isn't, he can't, and A will need to reimburse Mr B, as set out in the policy conditions. Mr B says he is not, and has not needed to be, registered for VAT. A says, in effect, Mr B should have been registered for VAT at the date of loss.

HMRC's website says:

"When to register for VAT

You must register if either:

- your total taxable turnover for the last 12 months goes over £90,000* (the VAT threshold)*
- you expect your taxable turnover to go over £90,000* in the next 30 days"*

*the threshold increased to £90,000 from £85,000 in 2024.

I will include an extract of Mr B's turnover figures below. These figures appear to be what A has based its recent BI payment calculations on. I say this because in its September 2024 breakdown it has monthly pre-loss earnings as £9,908 for January 2023 and £8,409 for February 2023, which is what the below shows. It follows I'm satisfied A accepts their accuracy.

PERIOD COVERED		Mar 22 - Feb 23
	Mar	£5,610.00
	Apr	£6,736.00
	May	£4,755.00
	Jun	£6,637.00

	<i>Jul</i>	£10,261.00
	<i>Aug</i>	£7,876.00
	<i>Sept</i>	£4,726.00
	<i>Oct</i>	£3,910.00
	<i>Nov</i>	£1,740.00
	<i>Dec</i>	£2,553.00
	<i>Jan</i>	£9,908.00
	<i>Feb</i>	£8,409.00
Rolling 12 monthly total		£73,121.00
VAT Registration Required (Y/N)		N

The turnover is below the threshold, and looking at other figures provided by Mr B, he didn't breach the threshold in previous rolling 12-month periods either. So I'm satisfied, based on the evidence available to me, he didn't need to be VAT registered. BI payments have taken Mr B over the threshold because they take account of forecasted growth. But Mr B has provided compelling evidence from a relevant expert to show BI payments don't count towards turnover for VAT threshold purposes, so I'm not persuaded Mr B needs to be VAT registered now.

Given my findings above, I'm not persuaded Mr B is or is required to be VAT registered, so he won't be able to claim VAT back on the building work. So, I'm satisfied this loss is not recoverable as things stand. And I note A has given me little in the way of reasoning as to why it believes the steps of Mr B becoming VAT registered should have taken place when this wasn't a requirement. It follows, in line with the policy conditions, A should pay Mr B for any VAT he incurs and cannot recover. While Mr B would likely prefer a lump sum, I find it would be fair and reasonable for A to reimburse him upon receipt of relevant VAT invoices.

My provisional decision

I intend to uphold this complaint and require Accelerant Insurance Europe SA/NV UK Branch to:

- Pay Mr B £1,000 compensation in recognition of the distress and inconvenience he's been caused and;
- Reimburse Mr B VAT payments on receipt of VAT invoices."

Mr B responded broadly accepting my provisional decision but raised two matters:

1. He would like the VAT paid upfront. This is in part because he submitted a VAT invoice following receipt of my provisional decision and A hasn't reimbursed him. So he has concerns A will be difficult when it comes to further reimbursement requests.
2. A's uplift for buildings works costs is 6%. He considers it should be 9.37% from September 2023 to April 2024, then 5% from May 2024 to the present.

A responded to my provisional decision to accept, on the condition there was no additional uplift to the building works costs. It also said it disagreed with some of my comments around the underinsurance element but would pay Mr B £1,000 in the interest of all concerned.

A also made a global offer to settle the claim in full. In brief, this was:

- VAT at 10% on £872,731.47, which is £87,273.14
- Contents at £70,798.83 (already settled)
- BI at £276,375, which it considers £67,755 higher than it should be, but as it's based on a previous offer will stand by it to conclude the claim.

The Investigator put A's offer to Mr B. Mr B declined the offer, saying VAT at 10% was too low, but that 17.5% would be acceptable. Mr B also said he'd provided further information for the BI part of the claim and is open to an offer/negotiation and if that fails, he will trigger arbitration.

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.

As I set out in my provisional decision, I'm not considering the BI element of the claim. Nor am I going to consider the value of the building works costs settlement as a line must be drawn somewhere. The focus of this complaint was underinsurance, and then later, VAT reimbursement. The dispute over the buildings works costs uplift is a relatively new development, coming about after my provisional decision. Mr B may be able to bring a separate complaint about the uplift value, should he consider there to be the need. Turning to what I have considered, I find the underinsurance aspect has fallen away, and I see no reason to depart from my provisional decision on VAT reimbursement.

Mr B is concerned about difficulties when it comes to further VAT reimbursement requests, and A has offered an upfront payment at 10%. I still find A reimbursing payments on receipt of VAT invoices is fair and reasonable in the circumstances. I say this because Mr B submitting VAT invoices and then complaining about not being reimbursed is not appropriate, or a fair reflection of what the position would be, given I'd issued a provisional non-binding decision, rather than a final binding one. And I find A's offer has the capacity to leave Mr B out of pocket on VAT payments, given he is likely to incur VAT at 20% on much of the building works costs.

My final decision

I uphold this complaint and require Accelerant Insurance Europe SA/NV UK Branch to:

- Pay Mr B £1,000 compensation in recognition of the distress and inconvenience he's been caused and;
- Reimburse Mr B VAT payments on receipt of VAT invoices.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 7 January 2025.

James Langford
Ombudsman