DRN-5204201

The complaint

Mr W complains that Accelerant Insurance Europe SA/NV UK Branch (Accelerant) has unfairly concluded it won't cover the cost certain repairs to a property following a fire.

What happened

Mr W is the owner of a flat. The block is insured by a housing association with Accelerant. A separate property within the block was damaged by a fire and a claim was made with Accelerant.

Accelerant has agreed to cover the costs related to damage caused by the fire. However, it's said it won't pay costs which are related to the replacement of steel beams in the property. It said these had been fitted incorrectly and needed replacing as they were a safety risk.

Accelerant believes the replacement costs should be covered by the flat owners, including Mr W. Mr W (with the housing association's consent) complained to Accelerant.

Accelerant rejected Mr W's complaint and he referred it to our service. Our investigator thought Accelerant had acted fairly when it declined cover for the costs relating to the beams. Mr W didn't accept this and asked for an ombudsman's decision. He says the original works, where the beams were fitted incorrectly, were illegal and so an exclusion referred to by Accelerant doesn't apply.

My provisional decision

I previously issued a provisional decision in which I said:

When it declined cover for the beam replacement, Accelerant referred to the perils which are covered by the policy and a specific exclusion which says there's no cover for "*The cost of correcting faulty workmanship or design or the cost of replacing faulty materials.*"

The inference I take from this is that Accelerant's position is that the policy cover doesn't extend to the replacement of the beams as none of the insured perils corresponds to the circumstances. It further suggests that even if an insured peril did apply, the general exclusion listed above means there would be no cover.

In an insurance claim, the onus to show that an insured peril has occurred falls on the policyholder. If an insurer then seeks to decline cover based on an exclusion, it's for the insurer to show that the exclusion applies.

This means I only need to consider whether the exclusion listed above applies if the replacement of the beams is a result of an insured peril.

The policy terms and conditions detail the various perils which are insured, including fire, storm and water damage. If an event doesn't fall within the definition of any of these, then it isn't covered.

I've first considered whether the replacement of the beams arises as a result of the fire and

would therefore fall within the fire peril. Looking at the information available to me, I don't think this is the case. The reports I have available don't appear to say the beams have been damaged, and require replacement, because of the fire. My interpretation of the information available is that the fire caused damage which exposed the beams and on inspection it's been established they weren't fitted correctly and so require replacement for safety reasons. That means the replacement of the beams isn't required because of a fire.

The other possible peril I've considered could apply is malicious damage. The policy terms and conditions don't define malicious damage so I have to take the ordinary and normal meaning of this.

I think the ordinary meaning of this is damage caused with the intention of causing that damage, causing the policyholder some form of loss – for me, intent is the key element of this.

Mr W says the original installation (carried out over 40 years ago) of the beams was illegal. He says permission was given to install the beams but the work was never signed off or approved, which he says is indicative that the contractors knew the beams had been fitted incorrectly.

The issue with this is that I can't identify any intent on the part of the original contractors. While the final works may not have been signed off, I've nothing to suggest why this is. I think Mr W's belief that the contractors were aware of the substandard work and so deliberately avoided having it checked involves an assumption I'm not satisfied I can make.

Furthermore, I don't think there's any evidence that the mere fact the beams were fitted incorrectly shows an intent to damage the property or cause a loss to residents. While the incorrect fitting may have been because of poor design, poor workmanship, corner cutting or another reason, that doesn't mean it was done to intentionally damage the property. The reason why the beams were fitted incorrectly isn't known, and in the absence of that I don't think there's enough evidence to show the damage was caused intentionally.

On that basis, I don't think the circumstances presented here mean that it falls within the definition of the malicious damage peril.

I can't identify, and haven't been pointed towards, any other listed peril which could potentially apply to the claim.

As a result, I can't conclude the replacement of the beams falls within the definition of any insured peril. As that's the case, I don't need to consider whether the exclusion applies. Accelerant acted fairly when it declined to cover costs relating to the beam replacement.

The responses to my provisional decision

Both Accelerant and Mr W responded to the provisional decision.

Accelerant accepted what I'd said and had no further comments or points it wanted me to consider.

Mr W didn't accept my provisional outcome. He said there were errors in how I'd characterised ownership of the flat in the background I set out in the provisional decision. He also said his complaint was that the loss adjuster appointed by Accelerant had wrongly termed the issue to be one of poor workmanship when the works had been an illegal act.

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 acknowledge Mr W's point about the ownership of the flat and the relationship between him and the housing association, and have amended this in the background of the complaint above. However, that information was provided for context and the ownership of the flat and the block in which it sits isn't relevant to the issue I need to determine. The policyholder (the housing association) has given its consent to Mr W referring the complaint to our service. What I'm deciding is whether Accelerant's decision to exclude the repairs relating to the beams from cover was reasonable.

I say this despite Mr W's contention that his complaint is that the loss adjuster had wrongly concluded the installation of the beams to be an issue of poor workmanship. While correspondence regarding this has been sent to Mr W by the loss adjuster, they were working on behalf of Accelerant.

As the insurer it's Accelerant who are liable for decisions regarding cover and whether to apply an exclusion for all or part of a claim. I'm satisfied that Mr W's complaint arises because Accelerant has declined to cover the repairs relating to the beams. As I've explained, in correspondence with Mr W both the exclusion itself and the extent of the insured perils the policy covers are referred to.

The remainder of Mr W's response to my provisional decision relates to his continued assertion that the works carried out by the original contractors amounted to an illegal act.

While I understand Mr W's strongly held belief this is the case, the issue I have is that this doesn't change the reason why I consider it was reasonable for Accelerant to decline cover for the replacement of the beams, which is that no section of the policy cover applies.

I'm not in a position to determine whether the original works amounted to an illegal act. That would, I think, be a matter better determined by a court. My sole concern is whether the replacement of the beams is covered by the policy.

I don't intend to repeat what I said in the provisional decision, and which is outlined above. In order for the policy to provide cover, I'd need something to show that the replacement of the beams is required as a result of an insured peril. I've explained why I don't think this is the case. While I've carefully considered the points he's raised, nothing Mr W has said in response to my provisional decision has changed my opinion on that.

The exclusion for poor workmanship, and whether that exclusion extends to include what Mr W contends is an illegal act, only becomes relevant if the repairs are required because of an insured peril occurring. There's no need, or requirement, for me to explore whether an illegal act does fall within the definition of poor workmanship or reasonably falls within the definition of the policy exclusion where the damage being claimed for hasn't occurred because of an insured peril.

My final decision

I don't uphold Mr W's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 8 January 2025.

Ben Williams
Ombudsman