

The complaint

Mr and Mrs C complain that Allied World Assurance Company (Europe) dac declined a loss of rent claim on their commercial property insurance policy.

What happened

Mr and Mrs C own a property which they let to tenants. In December 2022 there was an escape of water from a burst pipe that caused a lot of damage to the property. Allied World accepted a claim on the policy for the damage and arranged for repairs to be carried out.

The property had been let to tenants but was empty when the damage happened. Mr and Mrs C said they couldn't arrange for a new tenant to move in, as the property couldn't be lived in until the damage had been repaired. The repairs were completed in December 2023.

Mr and Mrs C claimed for the loss of rent during the period while the repairs were being carried out but the claim was declined. Allied World said there was no cover for loss of rent because there was no tenancy agreement in place at the time of the loss. Mr and Mrs C complained but the decision was confirmed.

Our investigator's initial view was that it was fair to decline the claim but, after considering further evidence, he said it was likely that the property would have been let to tenants if the damage hadn't happened. So he thought it would not be fair to refuse cover for the loss of rent during the time the property was uninhabitable.

The investigator recommended that Allied World pay the claim for rent lost from January 2023 until the date when the repairs were completed, with the loss calculated on the basis of the previous tenancy.

Mr and Mrs C have accepted the investigator's view.

Allied World disagrees and has requested an ombudsman's decision. It says loss of rent cover is only provided if the property is tenanted at the time of the damage, and the property wasn't occupied, so there's no cover.

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 industry rules and guidance say insurers must deal with claims promptly and fairly, and not unreasonably reject a claim.

The policy includes cover for loss of rent, defined as follows:

"...rent which should have been paid to you until the property is fit for habitation again for a maximum period of 24 months;

if your property is uninhabitable due to the damage covered by the Section 1."

The policy covers the loss of rent that should have been paid by Mr and Mrs C. So they need to show they have lost rent that should have been paid – not just the opportunity to rent. To show this, I'd expect to see evidence they had a firm intention to let the property, this was about to happen, and the reason it didn't happen was because the property was uninhabitable as a result of the damage.

I appreciate the house was empty at the time, but this was only meant to be a very short period between lets. Mr and Mrs C have provided evidence showing they property had been rented consistently through an agent for years, and they were about to let it to a new tenant. They had gone further than merely considering letting the property – they had instructed the agents to market the house, the agents had interested parties, and there had been a number of viewings. I'm satisfied that, if the damage had not happened, the property would have been tenanted again within a very short period.

Allied World makes a number of points, including:

- As the policy term says cover is for "*rent which should have been paid to you*", Mr and Mrs C need to show there was a tenant in place, who should have been paying rent. If there was no tenant, there's no rent that should have been paid to them.
- While they may have found a tenant at some unknown point in the future, the policy doesn't provide cover for that scenario, and accepting the claim in these circumstances would extend cover beyond the terms of the policy.
- Providing cover for this claim this would mean providing extended cover for an indeterminable risk (which can't be supported by evidence) as opposed to cover for an actual loss.

I've considered all the points Allied World has made but I don't find them persuasive in the circumstances of this claim. It might not be fair to cover the claim if there was no evidence of when the property would be tenanted again – for example, if Mr and Mrs C hadn't instructed agents or there were no prospective tenants lined up. But that isn't the situation here. I don't think it would be fair to say this was an unknown risk which isn't supported by evidence.

Allied World says the viewings were in late November, the evidence shows no more than a speculative prospect of obtaining a new tenant, and it's unlikely that would have happened by January. The property had been occupied consistently over many years, and they were actively seeking a new tenant at the time. I think it's likely a new tenant would have been found soon. The incident happened in December, very soon after the viewings, and I'm satisfied if the damage hadn't happened a new tenant would likely have been in during January.

There is evidence showing the property was about to be let again, and the reason that didn't go through was because it was uninhabitable as a result of the damage. In these circumstances I don't think it would be fair to interpret the policy term strictly, in the way Allied World suggests.

For these reasons, the fair way to resolve this complaint is for Allied World to pay the claim from January 2023. It's likely a new tenant would have been in place by then but for the incident.

Mr and Mrs C say the policy covers rent that should have been paid while the property was uninhabitable, which in their case is from December 2022 to December 2023. I've explained why I think the payments should start from January 2023. I agree they should run until December.

Mr and Mrs C have said they expected the rent to increase, but there was no tenancy in place yet. The investigator's view was that it wouldn't be fair to increase the rent above what was being paid up to then. They have accepted that view and I agree that would be the fair way to deal with the claim.

My final decision

I uphold the complaint and direct Allied World Assurance Company (Europe) dac to

- pay the loss of rent claim, based on the rent from the previous tenancy, from January 2023 to December 2023 when repairs were completed; and
- simple interest on that sum at 8% a year from January 2023 to the date of payment.

If Allied World Assurance Company (Europe) dac considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr and Mrs C how much it's taken off. It should also give Mr and Mrs C a tax deduction certificate if they ask for one, so they can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C and Mrs C to accept or reject my decision before 24 April 2025.

Peter Whiteley
Ombudsman