

The complaint

A limited company, which I will refer to as O, complains about the decision of Accelerant Insurance Europe SA/NV UK Branch to decline its commercial property insurance claim.

What happened

The following is intended only as a summary of the events. Additionally, for the sake of simplicity, I have just referred to O and Accelerant even where other parties have been involved.

O operates a restaurant and held a commercial insurance policy underwritten by Accelerant. At the turn of the year 2024 to 2025, O's premises suffered water damage when its basement toilet overflowed. O claimed under the policy, but Accelerant declined this claim.

Accelerant said that the cause of the toilets overflowing was that the main drain that these toilets connected to was incapable of handling the heavy rainfall experienced in the area at the time. And it said that the policy excluded claims arising from or in connection with flood.

O did not agree, saying that the damage was the result of an escape of water rather than a flood. O brought its complaint to the Financial Ombudsman Service. However, our Investigator did not recommend that it be upheld. He thought that the proximate cause of the overflow was the heavy rainfall and the inundation of this rainfall into the drains.

O remained unsatisfied. It said that the heavy rain had not directly caused the damage. And that any inundation of the drains did not occur on the premises. As our Investigator was unable to resolve the complaint, it has been passed to me for a decision.

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.

Having done so, I am not upholding this complaint. I've explained why below.

Firstly, I'll just reiterate that the above is only a summary. Both parties have made detailed submissions and a number of arguments. I have not commented on each of these though, and have instead focused on what I consider to be the key issues. This is not intended as a discourtesy, but rather reflects the informal nature of the Financial Ombudsman.

The exclusion Accelerant has relied upon is not one automatically contained within the policy wording that O has. It has been added to O's policy by way of an endorsement in the policy schedule. And was added because O's premises are within an area with a high risk of flood.

The endorsement itself is worded quite simply, but quite broadly. It says:

"Material Damage excludes Damage arising from or in connection with flood."

The policy has a particular definition of “flood”, though it is notable that the endorsement does not have this term in bold – whereas other terms that are defined in the policy do appear in bold within the schedule. The policy definition of flood is:

“Damage caused by:

- a) the escape of water from the normal confines of any natural or artificial water course, lake, reservoir, canal, drain or dam
- b) inundation from the sea
- c) inundation by rainwater or rainwater induced run off other than where the inundation is solely caused by or solely results from ingress of rainwater through or via the roof of the building”

In the absence of a policy definition, I think that flood would likely be interpreted to mean a build-up of water.

Looking first at the policy definition here, O has said that “a” is not relevant “unless water escaped from the drains – it did not, the drains remained intact”. But O considers the claim should be met under the cover for, “Escape of water from any tank, apparatus or pipe...” It isn’t clear how its argument here can be that flood only applies where the drain is damaged, but water escaping an apparatus/pipe (the toilet) is covered even where there is an absence of damage to that apparatus/pipe.

Regardless, our Investigator has largely focussed on “c”. O’s response to this is that any inundation of water was to drains outside the boundary premises (potentially some distance away). So, it does not consider this part of the definition applies to the circumstances.

I note O’s argument that, because it removes water coming through the roof, the wording of “c” is drafted, “to rule out inundation by rainwater or rainwater induced run off at or directly adjacent to the premises, not at some potentially quite distant location.” But I do not agree with this. The reference to water coming through the roof here acts to remove damage caused by the build up of water resulting from a leaky roof at the premises from the definition of flood. It does not say that any other inundation of water has to occur at the premises for it to be flood.

What I do consider to be significant is that the wording of the endorsement is not limited to damage that is caused directly by flood. It refers to damage “arising from or in connection with” flood. Whilst the damage itself would (for a material damage claim) need to be to property insured by O, the flood itself might conceivably occur anywhere. There would though have to be a direct chain linking this event with the damage, so that the damage could be reasonably said to have arisen from or was in connection with this flood.

In this case, it seems most likely that the proximate cause of the toilet overflowing was an inundation of water into the drainage system that was linked to this toilet. This created a build up of water within this drainage system (thus meeting the non-policy definition of flood) that it was unable to handle, leading to a backflow of water to O’s toilet – and an overflow at that point.

I do also note O’s comments about an overflow and a backflow. But it is notable that O’s toilet was below ground level, so a backflow in these circumstances would not necessarily be unexpected. And, regardless, I don’t think this would change the fact that the ultimate cause here was an inundation of rainwater. The policy makes no mention of overflow or backflow.

I also don't consider that the fact the water that overflowed in O's premises was not (solely) rainwater to be relevant. The inundation was the result of rainwater, and hence was a flood. And this was the proximate cause of water overflowing O's toilet and causing damage.

Lastly, I also note O's comments about return valves within the system acting to prevent such an occurrence. O has something of a point here, and it may be that there is some potential liability attached to the party responsible for the drainage system. Consideration of this is not something that falls to me though. And ultimately whether this is the case or not does not change my conclusion that the damage to O's premises arose from or was connected to flood. And hence falls within the endorsement to O's policy.

Taking everything into account, whilst I appreciate it is not the outcome O was hoping for, I consider Accelerant acted fairly and reasonably by declining the claim on the basis that the endorsement applies to the circumstances. It follows that I am unable to direct Accelerant to do anything more in this complaint.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask O to accept or reject my decision before 3 October 2025.

Sam Thomas
Ombudsman