

The complaint

Mr A has complained about his building warranty insurer Accelerant Insurance Europe SA/NV UK Branch, regarding how it handled his claim made on the policy for alleged defects, as well as the answers it came to as to coverage.

What happened

Mr A bought a newly converted property in 2020. Certain snagging issues were noted and, in December 2020, soon after purchase, issues with water ingress were noted. Mr A met with the developer and some works were done. In January 2021, Mr A contacted Accelerant to claim under the warranty.

Accelerant passed a list of outstanding issues Mr A had raised regarding the property to the developer. The developer responded. In short some issues, the developer said, had been resolved and some internal damage – related to the issues it had resolved – could be reinstated, or certain sums could be paid for that to be done.

Mr A though said water was still coming in – and one of the areas the developer was prepared to pay for reinstatement for, wouldn't dry. In 2022 he told Accelerant he hadn't heard from the developer. Accelerant said all of the issues Mr A had with his property were not covered by the warranty because they related to things which were not part of the conversion plans. Mr A didn't think that could be right and he challenged Accelerant. During subsequent correspondence Mr A, in May 2023, said the developer "[doesn't] exist as they have closed". Accelerant said that did not change its view that the issues in question were not defects covered by the warranty.

In 2023 Mr A also told Accelerant of two problems he had recently found at his home. Accelerant explained what cover was available under the warranty in years three to ten of the cover. It said it didn't think there was a valid claim for the two issues in question.

Mr A was unhappy about Accelerant's response overall. Accelerant, responding to a complaint Mr A had made, issued a final response letter on 17 October 2024. In short it did not uphold the complaint and it maintained its decisions on the claims. Mr A referred his complaint to the Financial Ombudsman Service.

The complaint was considered by one of our Investigators. He thought some issues Mr A had raised could not be considered by this Service. He felt Accelerant had generally answered Mr A's service concerns appropriately. He did not comment on the decision Accelerant had made on the claim, either for the alleged defects or the issues found by Mr A and reported to Accelerant in 2023 – that it had no liability under the warranty for the reported issues.

Mr A was unhappy. He felt the situation was incredibly unfair. His complaint was referred to me for an Ombudsman's decision. I felt there were some parts of his complaint I couldn't consider – at this point I've issued separate findings regarding these issues. And, for the parts I could consider, I wasn't minded to uphold the complaint. I issued some provisional findings and then some interim findings to both parties to explain my views on the complaint.

I said provisionally:

"Section 2 Defects Insurance

I can see Mr A is unhappy with Accelerant's stance on the issues he's raised as defects. I appreciate that it's frustrating for him to think the developer can take out cover based on a proposed development and then either not carry out the works proposed, or do additional work, and for there then to be no cover under the guarantee for any issues associated with any of that. However, even if I were to agree with Mr A that some of the issues he is having at the property might amount to defects, and I've seen the expert report he's provided as well as the proposal put forward by the developer when it arranged the warranty, that wouldn't mean I could reasonably require Accelerant to step in and fix them.

That is because, even where it is accepted that there are defects at a property, Accelerant will only be liable under the warranty for them in certain circumstances. None of which apply to Mr A.

The warranty says Accelerant will only be liable for defects where:

- A. • The Developer has refused to respond in writing to notification of a claim within 28 days of submission of written notification of the discovery of a Defect by the Policyholder; and/or*
- The Developer has withheld consent to resolve the dispute by using the Conciliation Service; and/or*
 - The Developer has accepted the decision of a building surveyor after using the Conciliation Service but has failed to carry out the works or repairs recommended in the surveyor's report within the time stipulated; and/or*
- B. The Developer has not effected the repairs or works determined by a binding legal process; and/or*
- C. The Developer has failed to carry out such repair, replacement or rectification work as a consequence of the death of the Developer or the Developer ceasing to trade because of incapacity due to ill health or Insolvency or Fraud.*

I'm satisfied these terms are clear."

Across my provisional and interim findings, I explained that part C of the term did not apply in this situation. I explained that was because the developer had not become insolvent, at least not as defined by the warranty. In short the warranty sets out a definition for what it means by "Insolvency" and that is all to do with formal proceedings being undertaken to resolve a business in financial difficulty. I said accounts available on Companies House, dated shortly before the developer was dissolved, show the developer was not in a critical financial situation. So I was satisfied that part C did not apply in Mr A's circumstances and Accelerant's liability had not been triggered in line with this term.

I continued in my provisional findings to say:

"Regarding "B", this does not apply. Simply, there has been no legal process.

Turning to "A". Here the developer did not refuse to respond. It engaged with Mr A on the issues he'd raised over the course of a roughly two-year period.

Neither the developer, nor Mr A asked to formally use the conciliation service. So there was no withholding of consent by the developer, nor any recommendations made under the service for the developer to fail to carry out.

Reading the wording of the warranty I note the involvement of the service is to be triggered by a request from the warrantyholder. I realise Mr A may not have known that. So I've considered whether, once Accelerant could see, in around May 2021, that Mr A and the developer had stopped making headway on resolving the issues of concern, it should have pointed Mr A towards the option of using the service. After all, given the above exclusion, the warranty cover is largely dependant on the service being used.

The difficulty for Mr A in this respect though is that I'm not convinced that if the conciliation service had been triggered, the position he is now in would be any different.

Given the developer was willing to try and resolve issues at the property, I think the developer would likely have agreed to using the conciliation service. I don't think it would have withheld consent. So there'd be no trigger for cover under point two of "A".

Further, regarding point three of "A", I can see that even as early as August 2021, Accelerant had referred to its technical team to check the proposed conversion works against what the developer had said to it – that the issues claimed for were not part of the proposed development. With the policy definitions setting out that a defect, for a converted property, can only occur on the conversion works. I can't see that a building surveyor appointed under the conciliation service, would likely have reached a different outcome. Which means that, even if Accelerant had done what I think it should have – pointed Mr A to implementing the conciliation service – there simply would have been no recommendations made.

Which means, for Mr A, nothing has happened, or should have happened but didn't, to cause Accelerant, under the warranty cover, to become liable for resolving any defects. So, even if it were accepted or found that the issues of concern for Mr A are reasonably considered to be defects as defined in the warranty, I couldn't reasonably require Accelerant to act to indemnify Mr A for them.

Lack of support

I know Mr A feels Accelerant should have done more to try and help him resolve matters with the developer. I can see Mr A made a claim to Accelerant in January 2021. Anything Accelerant then did (given the way the policy is constructed) was done in respect of the insurance in place. But I note that, at that time, the developer had agreed to do some work. So Accelerant didn't step in to deal directly with the developer at that point. I think it was reasonable that Accelerant didn't do much more, at that time, other than to log the issue.

It was in around May 2021 that Mr A asked Accelerant for further assistance. At that time it sent a spreadsheet of issues to the developer to seek its response. I think that was reasonable. Once received Accelerant shared the developer's response with Mr A, I see it also began to review whether the developer's reply – that the issues were not related to conversion works – was likely correct. I think that was also reasonable.

I have said above that I think Accelerant should have signposted Mr A to the option of using the conciliation service. But I also noted above that, had it done so, that likely wouldn't have changed anything. And I think it's really Accelerant's refusal to resolve the issues of concern at the property which Mr A had raised the claim for that he really equates to a 'lack of support'. As explained above though, Accelerant reasonably had no liability under the warranty for resolving those issues (even assuming they are defects).

I know Mr A would have liked Accelerant to step in when he told it there were issues with the water supply installed by the developer. However, I note Accelerant told Mr A this issue was not covered under the warranty. I think Accelerant's response in this respect was fair – this is a warranty designed to offer certain cover for defects and damage at certain times during the

life of the warranty. It is not a guarantee for any work the developer did. And water supply is not a structural issue.

Section 3 (applicable in years three to ten of cover)

Whilst dealing with Accelerant in January 2023 regarding the reported defects at the property, Mr A advised Accelerant about two new issues – leaky guttering and a problem with the heating. Accelerant answered these concerns. When Mr A then complained to Accelerant in October 2024, he included a concern about the guttering. Accelerant, in its complaint final response letter, did not make any comment regarding the guttering issue. As Mr A has complained about it, I'll consider whether Accelerant's answer, given in 2023, that the guttering was not covered, was fair and reasonable.

Mr A told Accelerant:

"The rainwater guttering has started leaking/ dripping and is now falling away from the property. I assume this would be covered as it was part of their renovation?"

I understand that Mr A was asking about the guttering in terms of it being "part of the renovation" because, regarding a defect, Accelerant had said only conversion works would qualify. And that is one of the definitions that applies in the policy. But it's not the only one.

Most of the debate about "defects" had taken place regarding the cover available under the warranty in Section 2. Section 2 applies to the first two years of cover. In years three to ten of the cover, new issues found would be considered under Section 3. Section 3 is the "Structural Insurance" period and the cover within that period is for Major Damage. With the warranty defining Major Damage as being caused by a defect in either the "Structure" or the "Waterproof Envelope". With both of these terms carrying their own specific definitions.

So, only if the guttering was part of the "Structure" or the "Waterproof Envelope" would I be able to say Accelerant should reasonably be considering if there was a defect with it which was causing/had caused Major Damage.

There is a long list of items which form the definition of "Structure". Accelerant included the list within its final response letter so I won't reproduce it here. But it includes things like the property's roof and foundations. So core parts of the important supporting and covering features of the building. Guttering is not on the list.

The definition for "Waterproof Envelope" contains a shorter list: "Waterproof envelope shall mean the ground floors, external walls, roofs, skylights, windows and doors". Clearly 'guttering' is not part of that list.

I know it is frustrating for Mr A to have experienced leaky guttering just three years after buying the property, and on top of all of the other issues he's been dealing with too. I've also seen the expert report he obtained which says the guttering is "not properly supported by the correct bracket fittings". I understand why he'd think that kind of failure should be covered by the warranty. However, my above assessment of the relevant policy definitions satisfies me that Accelerant's decision, that the guttering is not covered under the warranty, is fair and reasonable.

Summary

As explained above, there are some parts of Mr A's complaint that I think can't be considered by this Service. They are simply not within our jurisdiction for consideration.

Regarding the cover under Section 2 Defects Insurance, I've explained that given the relevant policy exclusions, even if it could be shown that there were defects at the property, Accelerant would have no liability for resolving them. I appreciate that leaves Mr A in an

unsatisfactory and likely costly position. However, I can only make assessments on claim decisions fairly and reasonably in line with the terms of the warranty. Which is what I've done here. And I've also explained that I think Accelerant, in the circumstances here, offered reasonable support to Mr A.

I also considered Mr A's report to Accelerant of leaky guttering and its response that this was not covered under Section 3 Structural Insurance. I've explained that I've found its decision in that respect was fair and reasonable.

So, in respect of those parts of the complaint I have considered; Section 2, Lack of Support and Section 3, it is my view that Accelerant has not failed Mr A. As such I'm not intending to uphold the complaint."

Accelerant did not respond.

Mr A, regarding Section 2, requirement C (insolvency), said this term should not be treated too narrowly – to do so will leave him with no recourse. He said he had looked to get the developer's limited company reinstated – but it was determined this could not be done because all its assets had been removed – its directors, Mr A said, had effectively made it insolvent even if a formal 'insolvency' route had not been utilised to close the company. With the warranty, he said, existing to protect homeowners in exactly this type of position when the developer is no longer financially viable.

Importantly, Mr A said, insolvency should be treated as no more than a trigger that then causes one to ask whether that business can/could still perform. He provided references of prior decisions issued by this Service which he said illustrates that point. Under a fair and reasonable consideration, Mr A said, Accelerant's liability should be seen as triggered.

Mr A added that Accelerant had answered his claim by considering the issue of defects. It, he said, had not relied on a lack of liability under the policy. He said that would mean that I should only consider the defect issue.

Mr A also said he was pleased I'd noted the relevance of the waterproof envelope as that is exactly what he is complaining about – defects with the waterproof envelope. He asked for five things to be done:

1. Confirm that his submission, containing an expert report and his property insurer's findings are on his file and have been reviewed.
2. Reconsider the complaint, with specific attention to:
 - a) Section 2 — procedural prejudice from lack of conciliation signposting and the developer's failure to undertake any repairs despite assurances; and
 - b) Section 3 — defects within the render, pointing, flashings, window detailing, and other elements of the Waterproof Envelope constituting Major Damage.
3. Provide copies of the inspection reports, agreed scope of works, deviation/defect notes, and the exact policy definitions relied upon.
4. Review the call recordings for fairness and accuracy, ensuring all relevant evidence and correspondence are considered.
5. Provide written confirmation that all of the above have been reviewed and incorporated into the Ombudsman's assessment.

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 appreciate it's important for Mr A to have somewhere to turn to for assistance with resolving the issues he's found at his property. But even in a fair and reasonable assessment I can't entirely disregard the warranty wording. Sometimes the way an insurance document is drafted reasonably allows for a wider view on its meaning to be applied than perhaps the insurer intended when drafting it. But this particular wording is very specific – it doesn't leave any room, in my view, for a fair interpretation to be applied that anytime a developer merely ceases to trade, even if in doing so they dissolve all their assets, Accelerant will become liable under the warranty.

I can see Mr A has a certain understanding of what he sees as the purpose and/or intent of the warranty – essentially to offer protection to homeowners. The important aspect to remember though is that a structural warranty is provided by an insurer which, in setting out and offering the cover, then applies certain wording and terms that more distinctly define exactly the parameters of the protection it has agreed to offer.

I've read the decisions Mr A has referred to in respect of this point. I'm satisfied they don't assist in the way Mr A thinks they do. In short they are not analogous to his circumstances and/or the issue in question. One is about an insurance backed guarantee, not a structural warranty. Another considers a situation about what happens if problems arise with work completed by the structural warranty provider where it has taken on liability and done work on the home. The final example was about a warranty where the home-owners were also the developer – with that issue being the main focus of the findings.

I appreciate that Accelerant largely considered the defects issues Mr A had raised. But for this type of policy, for me to consider Accelerant's liability for covering defects, I have to be satisfied that liability was reasonably triggered. And for the reasons explained, on this occasion, I'm not satisfied of that.

Moving on from Mr A's response and comments about insolvency, I've also reviewed everything else Mr A has said. And I'm satisfied that everything he's said is really captured succinctly by, and/or reasonably falls for consideration as part of, the five requests he has made which I've set out above. So I'll address them and the points which sit at the heart of each below.

1.

Regarding Mr A's expert report and his insurer's findings – I can confirm they are on the complaint record and I did review them when considering the complaint before reaching my provisional decision. I even referenced the report when I said at the start of my findings about Section 2 cover: *"However, even if I were to agree with Mr A that some of the issues he is having at the property might amount to defects, and I've seen the expert report he's provided as well as the proposal put forward by the developer when it arranged the warranty, that wouldn't mean I could reasonably require Accelerant to step in and fix them."*

I can certainly assure Mr A that none of his evidence was ignored. But what my provisional findings explained was that even if I accepted the issues complained about were defects, as I understand Mr A believes his report and the findings from his insurer show, his claim under the policy would still fail under Section 2.

2. a)

I know Mr A thinks things would have been different if Accelerant had told him about the conciliation service. But I'm not persuaded that is the case – I think it's most likely the answer from Accelerant, if the conciliation service had been provided, would always have been that the issues were not covered because they were not to do with conversion works it

had agreed to cover. Which would mean Accelerant would never have made any recommendation under the warranty for repairs to be undertaken.

I can also see that Mr A feels the developer did no work in the two years during which matters were ongoing – that the developer making promises which were not fulfilled was, in effect, him not cooperating. However, the warranty terms do not require the developer to fail to cooperate for cover to be granted. They require the developer to refuse to respond in writing to a claim notification – the developer did respond in writing (or for there to be some kind of non-cooperation by the developer in respect of the Conciliation Service – but with the Conciliation Service here, as I've explained, not having come into effect).

2. b)

I can understand that Mr A would want his concerns to be reconsidered to take into account that certain things, like the render and the windows, are part of the waterproof envelope. But as Mr A has recognised – the definition of “Waterproof Envelope” applies under Section 3 of the warranty. As I explained provisionally Section 3 applies to issues found with the property in years three to ten of the cover. So whilst issues Mr A identified shortly after purchase might be part of what can be considered to be the waterproof envelope (and I'm not making a finding that they were/are), any consideration in that respect is not relevant to determining any liability Accelerant has for resolving those matters.

3.

I know Mr A would like copies of various documents. But as I said provisionally – before I can require a business to do something, I have to be upholding the complaint. And I'm not doing that here. I can and do share documents, as long as they are not confidential, where I rely on them in making a decision. I have relied on the scope of works when, in my provisional findings, I found that the claim would most likely not have resolved any differently even if Accelerant had told Mr A of the Conciliation Service. However, the scope in question was a document relevant to the contract that existed between Accelerant and the developer. In that respect I view it as confidential and I'm satisfied it is, therefore, not appropriate to share it with Mr A.

The fact that Mr A has not seen this document, and others, does not mean it is unfair for Accelerant to have taken it (and the others) into account. It is not uncommon for insurers to sometimes rely on documents and/or data which the policyholder is not privy to and which are considered confidential, such that they can't reasonably be shared with them.

I am happy to share with Mr A the relevant warranty terms regarding the Waterproof Envelope. The warranty says:

“Section 3 – Structural Insurance

The Underwriter will indemnify the Policyholder during the Structural Insurance Period against the cost of:

1. Complete or partial rebuilding or rectifying work to the Residential Property which has been affected by **Major Damage** provided always that the liability of the Underwriter does not exceed the reasonable cost of rebuilding each Residential Property to its original specification;”.

The warranty defines:

“Major Damage

A. Physical Damage to any portion of the Residential Property for which a Certificate of Insurance has been issued by the Underwriter.

- B. A condition requiring immediate remedial action to prevent actual Physical Damage to any portion of the Residential Property for which a Certificate of Insurance has been issued by the Underwriter.

In either case caused by a Defect in the design, workmanship, materials or components of:

- A. the Structure; or
- B. the waterproofing elements of the **Waterproof Envelope**, which is first discovered during the Structural Insurance Period.”

With the warranty also defining:

“Waterproof Envelope:

Waterproof envelope shall mean the ground floors, external walls, roofs, skylights, windows and doors of the Residential Property but excluding those parts below ground floor or slab level, except where especially accepted by ICW as an inclusion within this property. This would be subject to formal approval by ICW’s inspectors.”

I’ll also add here the definition for:

“Insolvency

An order is made or a resolution is passed for the winding-up, administration or bankruptcy of the Developer (except for the purposes of solvent amalgamation or reconstruction previously approved by the Underwriter in writing); or A liquidator, trustee, administrator, administrative receiver, receiver, manager, trustee in bankruptcy or similar official is appointed over the whole or any part of the assets of the Developer or the directors of the Developer request any person to appoint any of the same; or A notice of appointment or a notice of intention to appoint an administrator under Schedule B1 to the Insolvency Act 1986 is issued by the Developer or its directors.”

4.

I appreciate that Mr A would like me to review the phone calls he had with our Investigator. But it is not part of my role to consider our Investigator’s actions. Mr A was clearly unhappy with our Investigator and, in terms of his complaint about Accelerant, he opted to have an Ombudsman undertake a review. The complaint then came to me and I am happy to confirm that I considered everything he’s told us and I’ve reviewed the evidence submitted.

5.

I am happy to confirm that I have taken into account all of the points raised by Mr A and I have considered everything he has asked to be done. However, having done so, I can also confirm that my view on the complaint has not changed. As such, it is my final decision that I do not uphold this complaint.

My final decision

I don’t uphold this complaint. I don’t make any award against Accelerant Insurance Europe SA/NV UK Branch.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr A to accept or reject my decision before 26 December 2025.

Fiona Robinson
Ombudsman