

The complaint

Mr Z has complained that Allied World Assurance Company (Europe) dac (AWAC) unfairly declined a claim under his commercial property insurance policy.

What happened

Mr Z owns a buy to let property. He said he'd had the property inspected by his letting agent in August 2024 when it was found to be in good condition.

A few months later Mr Z went to court to get possession of the property due to the tenant not paying the rent.

When he got the property back, Mr Z made a claim to AWAC for malicious damage. He said although there hadn't been criminal activity, the tenant had caused a lot of damage. The damage included insanitary conditions, unreported leaks, mould and damage to fixtures. He estimated that repairs, including a new kitchen and bathroom, would cost around £20,000.

After some investigation, AWAC declined the claim. It said the damage had been caused by the tenant's lifestyle and a lack of maintenance rather than malicious or accidental damage.

Mr Z brought his complaint to this service. Our Investigator didn't uphold it. She didn't think AWAC had treated him unfairly.

As Mr Z didn't agree, the matter has been referred to me.

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.

Mr Z's policy covers loss or damage caused by his tenant's "*Malicious Acts*". The term "*Malicious Acts*" isn't defined in the policy. Where a term isn't defined, this service considers what a lay person's reasonable interpretation of the term would be.

We generally consider malicious damage to be damage that has been carried out with the intention to do harm. If the damage has been caused by neglect or a lack of maintenance, then there's no malicious intent. As with any insurance claim, it is the responsibility of the policyholder to evidence that an insured event has occurred.

I've looked at the evidence provided including photos of the damage and the report from AWAC's loss adjuster. Based on this I don't think it's likely the damage was done with the intention to cause harm. It seems to me more consistent with wear and tear or general neglect. For example, there was a lot of mould throughout the house and particularly in the bathroom. This might have been caused by a lack of extractor fans and the tenant not opening windows to allow ventilation.

The front door was cracked. But the loss adjuster found historic photos of the door online

which appeared to show the damage to have been present before Mr Z bought the property. Pre-existing damage isn't covered by the policy.

Mr Z has argued that it's insurance practice for malicious damage to include reckless or knowing neglect where damage is a foreseeable consequence of the tenant's acts or omissions. He thinks the tenant was reckless or deliberately negligent because they:

- failed to ventilate the property despite obvious condensation and mould;
- failed to report leaks and bathroom defects;
- continued to live in the property while it deteriorated; and
- returned the property to him in an uninhabitable condition.

However it is important to remember that acting without care or even recklessly is unlikely to evidence malicious damage unless there was also a deliberate intention to cause harm. And I don't think Mr Z has shown that his tenant had such an intention.

I've gone on to look at whether the damage might have been covered as accidental damage. The term "*accidental damage*" is defined in the policy as:

"Unexpected physical damage caused suddenly by an identifiable external means".

It seems to me that the damage to Mr Z's property was more likely the result of misuse and/or neglect by the tenant over several months. I've seen no evidence that the damage was sudden. On the contrary it appears to have happened gradually. So I don't think it was unfair of AWAC to say that the damage claimed for wasn't covered under this part of the policy either.

Given that in my opinion, the damage can't fairly be said to be either malicious or accidental, and there is no other insured peril in his policy which might cover the damage, unfortunately for Mr Z, I don't think AWAC treated him unfairly by declining his claim for the damage caused to his property.

As Mr Z hasn't lost rental income due to an incident covered by his policy, I also don't think AWAC is liable to compensate him for lost rental income.

My final decision

For the reasons given above, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr Z to accept or reject my decision before 4 March 2026.

Elizabeth Grant
Ombudsman