

## **The complaint**

Mr K, on behalf of K, a limited company, complains that Accelerant Insurance Limited unfairly cancelled a policy after K made a claim on a business protection insurance policy. He wants the claim to be paid.

Mr K brings the complaint as a director of K, and has been represented in some dealings with our service. Where I refer to Mr K within this decision, this includes these representatives.

Similarly, where I refer to Accelerant within this decision, this includes agents and representatives who have acted on its behalf during the claim and complaint.

## **What happened**

K held insurance provided by Accelerant which covered goods it held in storage. A theft occurred and K made a claim on its policy.

After carrying out enquiries, Accelerant declined cover for the claim and cancelled the policy. It said that the value of the goods held in storage at the time of the theft (and which was being claimed) was more than the amount which had been insured. It also said that if the actual value had been notified, it wouldn't have provided the policy to K. It refunded part of the premium to K.

Mr K complained to Accelerant. He referred his complaint to our service after Accelerant rejected it. Our investigator didn't think Accelerant had done anything wrong. Mr K didn't agree and requested an ombudsman's decision.

## **My provisional decision and further correspondence with the parties**

On receipt of this complaint, our investigator didn't believe the complaint should be upheld. He said that under the provisions of the Insurance Act 2015, K had a duty to give a fair presentation of the risk to Accelerant and didn't consider it had done so.

When K disagreed with this assessment, the complaint was passed to me to make a final decision. On review of the information available, I considered that the provisions of the Insurance Act 2015 didn't apply here as the requirement to make a fair presentation of the risk applied at policy inception or renewal, but Accelerant's argument was that the value of the goods held in storage exceeded the sum insured during the period of cover, and this should have been disclosed.

I issued a provisional decision which said that K should have disclosed the value of the goods being held in storage having exceeded the sum insured within 14 days of the value exceeding the limit. While I didn't have evidence of when that occurred, I thought it was reasonable for K to have inferred from information provided by K that this had happened several months before the theft.

In response to my provisional decision, Mr K sent evidence of having received a large amount of stock less than a week before the theft, and that this was the first occasion on which the value of goods held in storage exceeded the sum insured.

After reviewing the information, I was minded to agree with Mr K. The evidence now available to me (which hasn't previously been provided to our service or Accelerant) was that the value of the goods held in storage only exceeded the sum insured a matter of days before the theft. The policy condition was that such a change needed to be informed within 14 days – which hadn't yet elapsed. I was minded to uphold the complaint and require Accelerant to reconsider the claim.

I wrote to Accelerant to explain this. It agreed with my conclusions and said it would be prepared to reconsider the claim and carry out further enquiries to establish whether the claim was covered.

On receipt of this, I wrote to Mr K. I explained that I was now of the opinion that the claim should be reconsidered and the complaint upheld. Mr K disagreed. He wants me to require Accelerant to pay the claim now.

In order to resolve this matter, I'm issuing this final 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.

As I've outlined above, I think the complaint as presented to us should be upheld. I'm no longer of the opinion that Accelerant can reasonably say that K was obliged to disclose the increase in the value of the goods held in storage prior to the theft.

In my provisional decision, I outlined a number of points which were undisputed at the time, and it would seem remain undisputed now:

- The period of cover of K's policy was from November 2020 to May 2021.
- The sum insured on the policy for storage of goods was £99,999.
- After taking out the policy, K didn't contact Assurant to make any changes to the policy or notify it of any changes to the value of the goods held in storage.
- The theft occurred in April 2021.
- The value of the stolen items was around £106,000.

What was in dispute was when the value of the goods held in storage exceeded the sum insured. My original findings, based on Mr K's statement that *"due to lockdown in Christmas and New Year we could not have a decent sale. This was the sole reason our stock piled up"* was that the value had exceeded the sum insured several months before the theft.

The schedule of insurance of K's policy says *"You must tell us within 14 days of you becoming aware if any of the information provided by you changes after you purchase your policy and during the period of your policy."* The terms and conditions of the policy also say *"you must tell us as soon as possible if there are any changes that may affect your insurance such as... if the value of items increases beyond the sums insured covered under this policy."*

In light of these conditions, and Mr K's previous statements, I was of the opinion that K hadn't disclosed to Accelerant as it should have when the value of the goods held in storage

exceeded £99,999. Accelerant had demonstrated that it wouldn't have offered cover on this policy if the value of goods held in storage exceeded £99,999.

What has changed here is that Mr K has now provided documents showing that on 31 March 2021, 4 days before the theft, K received a large amount of goods which were placed into storage. This was when the value of the goods in storage exceeded £99,999. Accelerant hasn't provided any evidence to show that the value of the goods held in storage exceeded the sum insured before that date.

I think it's fair to say that K hadn't breached the duty of disclosure as set out in the policy documents – it had 14 days in which to do so and this hadn't yet passed. I've no reason to believe that K didn't intend to do so. Mr K said they wanted to do so but due to the Easter holidays were unable to contact Accelerant before the theft.

For these reasons, I'm no longer satisfied that Accelerant can fairly say that K breached its duty to disclose the increased value. Therefore, I don't believe it can maintain its position that the claim should be declined on these grounds. Accelerant has agreed with this, and said it will make further enquiries in order to establish whether the policy provides cover for K's claim.

Mr K doesn't agree with this. He believes that I should require Accelerant to pay the claim now, as its reason for declining the claim is no longer supported. I can't agree with Mr K here. The complaint submitted, and my decision, is about Accelerant's decision to decline cover because the value wasn't disclosed.

I'm not a claims handler or an insurer. I can't say, and don't have the power to determine, whether the remaining terms and conditions of the policy have been satisfied and so I won't be requiring Accelerant to pay the claim at this point.

My decision to uphold the complaint does not mean that Accelerant are obliged to settle the claim. Nothing I've said prevents Accelerant from carrying out reasonable enquiries and investigations into the claim to establish what settlement, if any, should be made for the claim.

I've also considered whether I should award compensation to K for the inconvenience caused by Accelerant declining the claim. I'm not minded to do so. This is because it's only become apparent as part of our investigation into the complaint when the value of the goods exceeded the sum insured.

As I've outlined above, I was previously of the view that Accelerant had acted fairly. On receipt of the information from our service, Accelerant has agreed to reconsider the claim. It seems to me that this is what it would have done if Mr K had provided that same evidence to them during the claim process or initial complaint before it was referred to our service.

### **My final decision**

It's my final decision to uphold this complaint. In order to put things right, Accelerant Insurance Limited must reconsider K's claim in line with the remaining terms and conditions of the policy. In the event that a settlement is to be made, the policy will need to be reinstated.

Under the rules of the Financial Ombudsman Service, I'm required to ask K to accept or reject my decision before 11 July 2022.

Ben Williams  
**Ombudsman**