DRN-4044799

Financial Ombudsman Service

The complaint

Mr H complains that Accelerant Insurance Europe SA/NV has settled his property owners claim on a proportionate basis.

What happened

Mr H holds a property owners policy with Accelerant. He made a claim after a fire happened at the insured property. Accelerant assessed the claim, and noted that part of the property had a flat roof. It said Mr H hadn't told it this when taking out the policy, and if he had done, it would have charged a higher premium. It therefore settled the claim on a proportionate basis. Unhappy with this, Mr H brought a complaint to this Service.

Our investigator didn't recommend the complaint be upheld. She thought it had been reasonable for Accelerant to say that Mr H hadn't made a fair presentation of the risk when taking out the policy, and for it to therefore settle the claim proportionately.

Mr H didn't accept our investigator's findings, and so the matter has been passed to me to consider.

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 Mr H holds a commercial policy, the relevant law I need to consider is the Insurance Act 2015 ('the Act'). This says that before a contract of insurance is entered into, the insured must give a fair presentation of the risk to the insurer. That means disclosure of every material circumstance which Mr H knew or ought to have known.

Accelerant has provided a copy of the statement of facts. One of the statements said, '*flat roof %'* and the answer given was '*0%*'.

The main section of the building has a pitched roof. However, at the rear of the building is a large single storey structure which has a flat roof. Accelerant says the flat roofed section makes up approximately 43% of the overall roof area. It's unclear who built this section of the property. Though I understand it has been in place for a number of years, and was there before Mr H purchased the freehold.

The policy covers damage to property. That is defined in the policy as '*the **buildings** at the address(es) shown in **your** schedule'*.

'Buildings' is defined in the policy as:

*'The **buildings** at the **property** shown in **your** schedule, including:*

1. *Landlords fixtures and fittings (forming a permanent part of the structure);*

2. *Outbuildings, annexes, private garages, gangways, foundations or footings, swimming pools, tennis courts, squash courts;*
3. *Walls, gates, fences and hedges;*
4. *Yards, car parks, roads, pavements, paved terraces, patios, paths, drives;*
5. *Underground pipes and cables belonging to you or which you are responsible for;*
6. *Tenants improvements which you are responsible for'*
7. *Fixed glass in windows, doors, fanlights, skylights, partitions and fixed sanitary ware.'*

Mr H says the areas which have the flat roof are standalone and are not part of the main structure. He explains they were constructed by a previous tenant and could easily be removed without causing damage to the main building. Mr H maintains that the flat roofed areas should be considered equipment and belong to the current tenant.

I've looked at the latest lease from November 2018 arranged between Mr H and his tenant. This says that it was Mr H's responsibility (as the landlord) to procure insurance of the property against loss or damage by insured risks. The property is stated to be the risk address, the outline of which is shown in a diagram edged in red, and this includes the flat roofed areas.

Based on Mr H's description, it seems that the flat roofed area wasn't a permanent part of the main structure. However, I don't agree that the flat roofed area could be described as equipment owned by the tenant. It was a structure at the risk address, which Mr H had insured under the policy (as he was required to do under the lease). It seems to me it would be covered under the policy either as a building, or an outbuilding or annexe.

I therefore agree with our investigator that Mr H failed to make a fair presentation of the risk when taking out the policy, as he ought to have advised Accelerant that part of the property to be insured had a flat roof.

I've considered what Accelerant would have done differently if it had known that part of the property had a flat roof. Accelerant has provided its underwriting criteria which shows that it would have still offered cover to Mr H, but for a higher premium. This is commercially sensitive so I can't share this information with Mr H, but I'm satisfied that Accelerant has shown that it would have charged Mr H a higher premium. That means there was a qualifying breach of the duty of fair presentation.

I note that Accelerant said it would have applied an additional 1% increase to the premium because Mr H didn't disclose that the attic room was being used. Mr H hasn't complained about that, so I haven't considered it here. But I've taken it into account when checking Accelerant's calculations for the proportionate settlement.

Accelerant accepts that the qualifying breach wasn't deliberate or reckless. In these circumstances, the Act says that the insurer may reduce proportionately the amount to be paid on a claim.

I'm satisfied that Accelerant has done this. I find this was reasonable and in line with the remedy available to it under the Act.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr H to accept or reject my decision before 18 December 2023.

Chantelle Hurn-Ryan
Ombudsman