

## **The complaint**

Mr A complains that Accelerant Insurance Limited unfairly avoided his commercial vehicle insurance policy and declined his claim.

## **What happened**

Mr A had an insurance policy with Accelerant which covered his van for courier work. Mr A's van was damaged while on the driveway at his home, so he claimed on his policy with Accelerant.

Accelerant reviewed the claim and turned it down. It said that during its investigation Mr A had let Accelerant know he had a second occupation. Accelerant said if it had known Mr A had a second occupation, and wasn't a full-time courier, it wouldn't have offered him any cover at all. So it declined his claim, avoided his policy and refunded the premium. Mr A didn't think this was fair and complained.

Accelerant reviewed the complaint and said when Mr A bought his policy through a broker he had agreed to an assumption which said he was a full-time courier. Accelerant said as Mr A had now informed it that he had a second occupation it didn't think Mr A had answered the assumptions correctly. So Accelerant stood by its position that it had acted fairly by declining his claim, avoiding the policy and refunding his premium.

Mr A didn't agree and referred his complaint here. He said his main occupation was a full-time courier, but occasionally he carried out another driving job which he had done the day his van was damaged while it was at his home address.

Our investigator looked into the complaint and recommended it be upheld. He found that Mr A had given a fair presentation of the risk by agreeing with the assumptions screen. He said this was because it's possible to be a full-time courier, as Mr A is, and also have a second occupation. And as Accelerant hadn't asked if Mr A had a second occupation, he didn't think it was fair to avoid his policy due to this. Our investigator recommended Accelerant re-instate Mr A's policy, remove any records of the avoidance and settle the claim in line with the terms and conditions of the policy. He also recommended Accelerant pay Mr A £750 compensation for the distress and inconvenience caused.

Accelerant didn't agree. It said this policy had been taken out via a broker who would have completed a demands and needs with Mr A. It said the assumptions screen is then completed and having a second occupation means Mr A can't be classified as a full-time courier. So, Accelerant maintained its position that Mr A hadn't given a fair presentation of the risk. Accelerant also said Mr A hadn't declared he had access to other vehicles.

As Accelerant didn't agree the complaint has come to me to decide

## **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.

The relevant legislation to be considered here is the Insurance Act 2015 (“the Act”). Under the Act, Mr A had a duty to make a fair presentation of the risk when buying his policy. And for Accelerant to take any action, it needs to show that Mr A didn't do that and that it made what's known as a qualifying breach. To demonstrate a qualifying breach, Accelerant would need to show that if Mr A had made a fair presentation of the risk, it would either have not offered Mr A the policy or would have done so on different terms.

The Act says:

- “(3) A fair presentation of the risk is one—
  - (a) which makes the disclosure required by subsection (4),
  - (b) which makes that disclosure in a manner which would be reasonably clear and accessible to a prudent insurer, and
  - (c) in which every material representation as to a matter of fact is substantially correct, and every material representation as to a matter of expectation or belief is made in good faith.
- (4) The disclosure required is as follows, except as provided in subsection (5)—
  - (a) disclosure of every material circumstance which the insured knows or ought to know, or
  - (b) failing that, disclosure which gives the insurer sufficient information to put a prudent insurer on notice that it needs to make further enquiries for the purpose of revealing those material circumstances.”

I therefore need to consider whether Mr A failed to disclose a material circumstance that he knew or ought to have known.

It's not in dispute that Mr A knew about his second occupation and Accelerant has shown that this would be a material circumstance to it offering cover. However, in this particular case, I do not think it would be fair and reasonable for Accelerant to avoid Mr A's policy on the basis that he failed to disclose a material circumstance.

I say this because while the Act doesn't make reference to a consideration of the questions asked, the Insurance Conduct of Business Sourcebook says that a way of ensuring a commercial customer knows what they need to disclose is to have “asked clear questions about any matter material to the insurance undertaking”. I don't think the assumption asked by Accelerant indicated that a part-time job is something it wanted to know about and therefore I don't think it would be fair and reasonable for Accelerant to avoid Mr A's policy because of it. I'll explain why.

Accelerant said Mr A bought his policy through a broker who agreed to an assumptions screen on Mr A's behalf. The assumption screen provided by Accelerant says:

“The proposer is a FULL TIME courier, carrying mail, parcels and packages”

Accelerant has said that as Mr A had a second occupation, he's answered this incorrectly because if someone has a full-time occupation then they wouldn't be able to have a second occupation. However, I don't agree. The term full-time isn't defined or explained on the assumptions screen. And when looking at the normal everyday meaning, I think most people would define themselves as full-time if they worked around 35 hours or more in one job/role. It's therefore possible to have a full-time occupation and have a second different occupation.

Mr A explained that his main full-time occupation is a courier and that he occasionally does another job, on a zero hours contract basis, which doesn't involve using the van insured on this policy. He also said he'd only done this other job 4 or 5 times before the incident involving his van. I'm therefore satisfied that Mr A answered the assumptions screen correctly and gave Accelerant the correct answer to the question it asked.

I've also considered Accelerant's point about the broker Mr A used knowing it would want to know about a second occupation. It said this is because the broker guidance says that second occupations may be considered, when providing cover, but need to be referred to the underwriter. While the broker was Mr A's agent in buying the policy, I'm not persuaded the guidance made it clear that a zero hours contract work, which had only been done occasionally, needed to be declared to Accelerant when taking out the policy. And so, it follows I'm not persuaded it was clear enough that Mr A or his broker needed to declare this to Accelerant.

Accelerant has also said Mr A hasn't disclosed that he had access to another vehicle. While I can see his other job does involve driving customers' cars, as this wasn't the reason Accelerant avoided his policy, I've not considered the access to other vehicles further in this decision.

I'm therefore not satisfied that Accelerant has shown Mr A failed to disclose a material circumstance by agreeing with the assumptions screen. It follows that I'm not persuaded Accelerant has shown Mr A made what is known as a qualifying breach and therefore Accelerant has no remedies under the Act. It's possible that my decision might be different to one which a court would make but I have to consider what is fair and reasonable in all of the circumstances. And in this case, I do not think it's fair and reasonable for Accelerant to avoid Mr A's policy and decline his claim when he correctly responded to the assumptions it had set out.

As I'm not persuaded Accelerant acted fairly by declining Mr A's claim and avoiding his policy, I've looked at what it needs to do to correct this. Accelerant therefore needs to remove the avoidance from any internal and external databases and settle Mr A's claim in line with the terms and conditions of the policy. As Accelerant is reinstating the policy then it will be entitled to charge the premium as this had previously been refunded.

Mr A also explained that as Accelerant declined his claim and avoided his policy it affected his job and his ability to earn a living. He also said this in turn caused him considerable stress and anxiety. Our investigator recommended Accelerant compensate Mr A £750 for the distress and inconvenience caused. I'm satisfied this is a fair and reasonable amount in the circumstances when considering the impact of Mr A's policy being avoided. Accelerant therefore needs to pay Mr A £750 for the distress and inconvenience caused.

### **My final decision**

For the reasons explained above, my final decision is that I uphold this complaint. I require Accelerant Insurance Limited to:

1. Reinstatement of Mr A's policy and removal of any records of its avoidance from any internal and external databases.
2. Settlement of Mr A's claim in line with the remaining terms and conditions
3. Payment to Mr A of £750 for distress and inconvenience

As the policy is being reinstated Accelerant Insurance Limited is able to charge the policy

premium it refunded.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 19 October 2023.

Alex Newman  
**Ombudsman**