

The complaint

Ms K is a sole trader, trading as H. She complains Accelerant Insurance Europe SA/NV UK Branch turned down a claim made on H's commercial protection plan insurance.

What happened

H's business includes dog walking. In 2023 Ms K claimed on the personal injury section of its policy with Accelerant as a volunteer had been hurt when a dog lead became entangled causing her to fall. Accelerant turned down the claim. It thought the dogs in questions belonged to Ms K and so the injury hadn't arisen in connection with H's business. And it said in any case the personal injury section of the policy only provided cover for loss of earnings. As the volunteer was unpaid there was no loss the policy could cover.

Our investigator noted Ms K said the dogs were being walked in the course of business and didn't belong to her. But she didn't think that, or the question of whether the volunteer would be classed as an employee, was an issue she needed to investigate. That was because she was satisfied in any case there had been no loss that would be covered by the policy. So she didn't think Accelerant acted unfairly in declining the claim.

Ms K didn't agree. She reiterated the dogs were H's responsibility and not hers and a personal injury had been caused to the volunteer. She thought the policy should cover that and she'd hadn't been told it only covered loss of earnings

I issued a provisional decision on the complaint last month. In summary I said:

The relevant rules and industry guidelines say Accelerant has a responsibility to handle claims promptly and fairly. It shouldn't reject a claim unreasonably.

I've looked first at the terms and conditions of H's policy. The personal accident section says "we will cover you up to the amount shown below, in the event of an insured person sustaining an accidental bodily injury in the course of their employment engaged in the business during the period of insurance which within 12 months of the accidentally bodily injury occurring is the sole cause of the insured person's death or disablement".

The definition of 'insured person' which applies to this section includes "you and your directors, partners, managers and officers and the employees of your business". And the general definitions section of the policy defines employee(s) and includes within that definition "any person who is...a voluntary helper while working under your supervision and control and in connection with the business".

So if the volunteer dog walker in this case was carrying out that role on behalf of H then I think they would fall within the definition of employee the policy contains.

I appreciate there's been some debate over whether that was the case when the injury occurred. Accelerant says when the claim was first reported it was told the dogs being walked belonged to Ms K. We requested a copy of that call but Accelerant hasn't been able to provide it as it says calls are deleted after six months. However, I've seen email correspondence in which Accelerant quoted the volunteer as saying "she was walking the

insured's dog". If that's what was said it seems to me that comment could cover both a dog owned by Ms K personally but also one being walked as part of H's business.

And Ms K has consistently argued the volunteer was walking client dogs and has provided contact details for their owners. She's also provided information which details the arrival and collection dates of dogs being boarded at the relevant time, their walk schedule and names. I appreciate that doesn't in itself show which dogs were being walked on the day in question. But the key evidence Accelerant has relied on is something said in a call it can't provide and which, on the basis of the comment it quoted, is ambiguous as to the ownership of the dogs.

Having weighed up the available evidence, on balance I think it likely the dogs being walked were the responsibility of H. And the policy definition of employee includes a volunteer and H's business is listed on the policy schedule as including dog walking. So I think it's reasonable to say an insured person has sustained injury during the course of their employment and while engaged in the business.

Accelerant says the personal injury section of the policy only provides cover for loss of earnings and as the volunteer was unpaid there's no loss here. However, it hasn't evidenced that with reference to the policy terms. And, from my reading of the policy, I can't see that is the case. There's no reference to wages or earnings in the insuring clause I've already quoted. And personal accident policies don't normally link to earnings; they simply pay out a set amount of money if the claimant meets the policy terms.

That's in line with this policy which, where the insuring clause is met, says "we will pay the benefit shown below". It then sets out a number of different occurrences that will trigger payment none of which make any mention of a link to earnings. For example, for temporary partial disablement the policy says "up to GBP 125 per week". And the amount which the policy will actually pay is set out in the policy schedule which, again taking partial disablement as an example, confirms the figure to be £125 a week.

So I don't think Accelerant has correctly turned down this claim and it will therefore need to reconsider it against the remaining policy terms. That doesn't in itself mean the claim will be paid because Accelerant will be entitled to consider (and gather evidence as necessary) to see if the injury to the volunteer falls within one of the definitions of disablement the policy contains. I also think H will have been caused some unnecessary inconvenience as a result of the claim being wrongly turned down. Accelerant should pay it £100 in recognition of that.

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.

Neither party provided any comments in response to my provisional decision. So I don't have any reason to alter the conclusions I set out in that.

Putting things right

Accelerant will need to reconsider this claim against the remaining policy terms (including whether the injury to the volunteer falls within one of the definitions of disablement the policy contains). It will also need to pay H £100 in recognition of the inconvenience it was caused as result of the claim being wrongly turned down.

My final decision

I've decided to uphold this complaint. Accelerant Insurance Europe SA/NV UK Branch will need to put things right by doing what I've said in this decision. Under the rules of the Financial Ombudsman Service, I'm required to ask H to accept or reject my decision before 31 May 2024.

James Park
Ombudsman