

The complaint

P's complaint is about a claim it made on its Accelerant Insurance Europe SA/NV UK Branch ('Accelerant') business protection insurance policy.

P says Accelerant treated it unfairly.

P's complaint is brought by Mr S in this complaint, but I shall refer to all of P's submissions as its own for ease of reference.

What happened

In February 2024 P received a letter of claim on behalf of three individuals ('the Claimants') alleging they'd been discriminated against by P at its business premises.

P's broker got in touch with Accelerant and enquired about the most appropriate course of action. Accelerant appointed a loss adjuster to consider the claim under the policy. The broker asked the loss adjuster to speak with P directly about the details of the claim.

During a call between the loss adjuster for Accelerant and P, the loss adjuster explained that an acknowledgement email had been sent on Accelerant's behalf to the Claimants' Solicitors. The loss adjuster and P discussed the details of the claim and P was told that this type of claim would be covered under the policy, but that Accelerant would be providing a further opinion on this. It was left that the loss adjuster would write to P to confirm what was covered under the Accelerant policy by the end of the week.

In the interim Accelerant instructed a firm of Solicitors to consider the claim against P under the policy wording. A Barrister's opinion was obtained by those Solicitors, which didn't support that cover was available for this type of claim under P's policy.

By mid-March P complained to the loss adjuster that the firm appointed by P hadn't contacted it. By early April Accelerant declined to cover P's claim on the basis that there was no cover for defending claims of discrimination.

P complained to Accelerant through its broker who said:

- The claim should be covered as the policy doesn't contain an exclusion for it;
- The matter had been notified to Accelerant for advice on policy coverage rather than as a claim. Despite this the matter was treated as a claim and a letter had been sent to the Claimants' Solicitors without P's permission.
- The letter sent prejudiced P's position which will lead to P incurring financial losses.
- The service levels provided by Accelerant fell outside the requirements of the Consumer Duty.

Accelerant didn't think it had done anything wrong, so P referred its complaint to the Financial Ombudsman Service. Our investigator considered P's complaint and agreed it should be upheld. He thought that the service provided by Accelerant had fallen below what was reasonable and that P was led to believe its claim would be covered, when the policy

terms did not support this. The investigator said that Accelerant should pay P £150 in compensation for this. The investigator didn't think Accelerant had done anything wrong beyond this.

P did not agree, so the matter has been passed to me to determine.

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.

Having done so, I agree that P's complaint should be upheld for broadly the same reasons and in the same way set out by the investigator. This is why.

The starting point is the policy terms. Having considered them in detail, I'm not satisfied that there is a section of the policy under which discrimination claims might be covered. P is not disputing that the public and product liability section of cover does not engage here so I don't intend to cite it again, save to say that it does not extend to the type of claim that has been brought against P.

P says that claims for injury to person are covered so this claim should be considered in line with the policy accordingly. I've considered the letter of claim sent to P and I'm not satisfied that this is a claim for injury. Rather it is a claim for discrimination. It is not being claimed that the losses that arise out of that are in relation to any injury. So I'm not satisfied that the claim is one that should be considered as such.

P also says that the policy it took out is a hospitality policy and that it should extend to covering known risks that would affect the hospitality sector. Because of this, P feels that Accelerant should have drafted a specific exclusion into the policy if they didn't want to cover the claim or offer a specific extension setting out what it would need to do to be covered. I appreciate that P feels that cover should have been available for the claims made against it, but insurance isn't intended to cover each and every risk that might affect a policyholder. And if the policy doesn't provide cover for a particular situation, then we wouldn't expect an insurer to ensure that an exclusion is included for this. In this case there is no cover for the type of claim being made against P and I wouldn't interpret this to mean it should be covered because there's no exclusion in relation to it either.

P's main concern is that Accelerant prejudiced its position by sending the Claimants' Solicitors an acknowledgement letter when P did not claim on the policy but rather asked for advice. I've looked at the letter Accelerant's Solicitors sent, but I don't agree. In that letter the Solicitors for Accelerant say that they've been instructed to consider the claim under the terms of P's policy and ask for certain information. The fact that Accelerant won't now be defending this claim on behalf of P doesn't to my mind mean that P's claim has been prejudiced. I appreciate that it's been said the Claimants in this matter have made several claims like this against other businesses and some have ignored the letters, which has led to the Claimants missing the limitation date for filing the claim. But that doesn't mean that this would ensure the Claimants wouldn't do that in this case. And just because one thing might have happened on one claim, that's not to say that the meaning of that is absolute and universally applicable to P's case. Insurers can and do withdraw funding on behalf of policyholders for a variety of legitimate reasons both before and during litigation. In doing so they cease to offer representation. The act of ceasing to provide legal representation doesn't on its own mean that a policyholder's claim is prejudiced. Litigation is a complex process and parties' motivations for pursuing or failing to pursue claims is wide ranging. As such I couldn't say that Accelerant sending out a letter of acknowledgement and asking for further information meant that this would, on balance, cause P to lose a claim against the Claimants

that would otherwise have not been pursued.

I do however accept that Accelerant could have handled things better in this claim. When sending out the letter of acknowledgement, Accelerant could have asked P whether they wanted them to do this, particularly as the position on cover had yet to be established. I also think Accelerant's loss adjuster gave P the strong expectation it would be covered for the claim made against it, which shouldn't have been the case had he properly consulted the policy terms. I appreciate Accelerant took a Barrister's opinion for this but I'm not sure this was wholly necessary, given there is clearly no cover for this kind of claim under the policy. There were also delays in the claim being progressed and acknowledgements and updates being provided to P that should have been handled better. I accept that these actions don't accord with the Consumer Duty or the requirement for Accelerant to treat customers fairly. Because of this I think Accelerant should pay P £150 in compensation for these service failings, because they would have no doubt caused P inconvenience. This amount is broadly in line with the awards this Service makes in similar circumstances.

P should note that I can't award for any distress to its Director personally in the circumstances as this is P's complaint. Rather I've considered the impact on P and made an award for the inconvenience Accelerant's actions would have had on it.

Putting things right

Accelerant should pay P £150 for the poor service it provided.

My final decision

I uphold P's complaint against Accelerant Insurance Europe SA/NV UK Branch and direct it to put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask P to accept or reject my decision before 11 November 2024.

Lale Hussein-Venn
Ombudsman