

The complaint

T, a partnership, complains Accelerant Insurance Europe SA/NV UK Branch voided its business protection insurance policy meaning a claim it made wasn't paid.

What happened

Following damage caused by a storm in January 2024 T made a claim on its policy. After reviewing matters Accelerant said, when taking out the policy, T had answered 'No' when asked whether its proposer, director or business partner had ever had any County Court Judgements (CCJ's) against them. But that was incorrect as there were two CCJ's relating to one of T's partners (Mrs R). Accelerant said it wouldn't have offered cover if had been aware of that and would be voiding the policy and refunding the premium T paid.

In her most recent view our investigator said, as this was a commercial policy, the duty on T was to make a fair presentation of risk. In this case she appreciated the CCJ's had been satisfied and understood T thought it only needed to provide information about CCJ's where that wasn't the case. But she thought it was clear Accelerant wanted to know about CCJ's more generally. And the underwriting evidence satisfied her it wouldn't have offered cover if it had known about the CCJ's. So she thought Accelerant acted correctly in voiding the policy and its decision to refund the premiums was in line with the relevant law.

T didn't agree. It said the question it had been asked related to outstanding CCJ's and it had correctly answered 'No' to that. It wasn't its fault if Accelerant had asked an incorrect question. So I need to reach a 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.

The relevant rules and industry guidelines say Accelerant has a responsibility to handle claims promptly and fairly. It shouldn't reject a claim unreasonably. And as Accelerant's reasons for declining the claim (and voiding the policy) relate to information it says T should have provided when taking out the policy I've also taken into account the relevant law in relation to that which is the Insurance Act 2015. The Act says when taking out the policy T had a duty to make a fair presentation of risk. So it had to disclose:

- everything it knew, or ought to have known, that would influence the insurer's judgment in deciding whether to insure the risk and on what terms; or
- enough information to put the insurer on notice that it needed to make further enquiries about potentially material circumstance

In considering whether a policyholder made a fair presentation of risk I think it's reasonable to take into account whether an insurer sought any particular information from them. So I think it's relevant to consider what questions Accelerant asked and how clear and specific

those questions were.

In this case I understand those questions are reflected in the Statement of Fact issued at the time the policy was taken out in February 2023. And in relation to any Proposer, Director or Business Partner it asked if they had *“any County Court judgements or arrangements with creditors outstanding?”*. Space was provided for further details to be provided if the answer to that (or any other question in this section) was ‘Yes’. However, T answered ‘No’ to that question. It says that’s because while there were two CCJ’s relating to Mrs R these had been satisfied so weren’t outstanding. Accelerant says the reference in the question to *“outstanding”* related to arrangements with creditors and not to the position with CCJ’s. So those relating to Mrs R should have been disclosed whether they were satisfied or not.

I think Accelerant could have worded that question more clearly. It could for example have explicitly said CCJ’s needed to be declared whether satisfied or not. And I’m aware the Insurance Act says the duty of fair presentation does not require the insured to disclose a circumstance if *“it is something as to which the insurer waives information.”*

However, while I accept the question could have been clearer, I don’t think the way it was framed meant T could reasonably have assumed it wasn’t required to provide further information on the matter. The reference to *“outstanding”* does follow on from the section which relates to ‘arrangements with creditors’. And the question had already referenced *“any County Court judgements”*. So I don’t think T could reasonably have concluded CCJ’s only needed to be declared if they weren’t satisfied. And if it was unclear whether the previous CCJ’s were something which should have been declared or not it could have asked either Accelerant or its broker prior to cover being confirmed.

In addition, the other questions in this section include ones relating to bankruptcy, insolvency or the cancellation or decline of previous insurance policies (of any proposer, director or business partner). Taking the section as a whole I think it’s clear Accelerant was seeking to understand the risks associated with individuals involved in the business including their previous financial history and credit worthiness. I think past CCJ’s, whether satisfied or not, are relevant to that and so are something T should reasonably have disclosed (or at least sought clarification about) when answering these questions.

And it’s not in dispute Mrs R had two CCJ’s against her dating from 2019. I’ve seen underwriting evidence which satisfies me if it had been aware of this Accelerant wouldn’t have offered the policy in the first place. So there has been a ‘qualifying breach’ here. That means Accelerant can avoid the contract but must return the premiums (unless the non-disclosure was deliberate or reckless). I understand it has returned the premium T paid in this case. As a result I think it’s acted in line with the provisions of the Insurance Act and I think it’s fair to do so in this case. So I don’t think there’s any further action Accelerant needs to take.

My final decision

I’ve decided not to uphold this complaint. Under the rules of the Financial Ombudsman Service, I’m required to ask T to accept or reject my decision before 14 February 2025.

James Park
Ombudsman