

## **The complaint**

A company, which I'll refer to as N, complains that Accelerant Insurance Europe SA/NV UK Branch rejected a claim on its public liability insurance.

Miss B, who is a director of N, brings the complaint on N's behalf.

## **What happened**

N provides off-road driving experiences and training courses. An incident happened at N's premises in March 2024, when one of its off-road vehicles rolled down its car park, which is on a slope, and hit a parked car.

N made a claim for damage to its vehicle and in respect of a claim by the owner of the parked car for damage caused to their car.

Accelerant appointed loss adjusters to investigate the claims. After receiving the loss adjusters' report, Accelerant wrote to say neither claim was covered.

Accelerant said there was an exclusion that applied to the claim relating to N's off-road vehicle, which meant that claim was not covered. And it said the third party claim wasn't covered because:

- it was a condition of the policy that activity equipment must be inspected daily before use to ensure there were no defects or hazards that might reasonably cause injury, and documentary records must be available in the event of a claim.
- N had failed to comply with this condition, through its failure to retain any physical records of safety inspections carried out on the equipment.

N complained but Accelerant didn't change its decision, so the complaint was referred to this Service. Our investigator said it wasn't fair to reject the claim relating to N's own vehicle and that should be covered. With regard to the third party claim, the investigator said:

- N says it carried out regular inspections, but doesn't have records of these. As there were no records of the inspections, it's not possible to confirm whether the inspections actually took place, and N hadn't shown it carried out inspections for defects or hazards that might reasonably cause injury.
- The risk of the vehicle rolling back was impacted by the fact N didn't carry out the required inspections. So it was fair to decline this claim.
- There was some delay and Accelerant should pay compensation of £200 for the inconvenience caused.

N didn't accept the investigator's view that the third party claim wasn't covered. Miss B said the vehicle had been inspected and at no point did the vehicle display any faults with stopping or potential brake failure. She wanted this to be covered. Accelerant accepted the investigator's view that the claim for damage to N's own vehicle was covered and agreed to settle that claim.

I issued a provisional decision saying I intended to uphold the complaint and direct Accelerant to cover the public liability claim as well as the claim for damage to N's own vehicle. I set out my reasons as follows:

*As Accelerant has accepted the damage to N's vehicle should be covered and will settle the claim, that's no longer in dispute and I don't need to determine that. What's still disputed is whether Accelerant should also cover the claim for the damage to the other car.*

*The relevant industry rules and guidance say insurers must deal with claims promptly and fairly, and not unreasonably reject a claim.*

*The public liability section of N's policy includes cover for N against legal liability for damages and reasonable costs and expenses in respect of accidental loss or damage to property. So the third party's claim is covered unless Accelerant can show there's an exclusion or a breach of condition that applies.*

*Accelerant has relied on a breach by N of the following condition:*

*It is a condition precedent to liability that all activity equipment must be inspected daily prior to use to ensure no defects or hazards that might reasonably cause injury. Furthermore, documentary records must be available to the Insurer if required in the event of a claim.*

*Accelerant rejected the claim saying N had failed to comply with this condition, through its failure to retain any physical records of safety inspections carried out on the equipment.*

*N says it carries out daily inspections but accepts it doesn't keep written records of these. So it has breached this condition. The condition is clearly set out in the policy terms, and it's described as a condition precedent to liability. The starting point with a condition precedent is that the condition must be complied with for cover to be provided.*

*However, the Insurance Act 2015 provides that the insurer can't rely on this to decline the claim if the policyholder can show their breach of the condition did not increase the risk of the loss which actually occurred in the circumstances in which it occurred.*

*I've considered this carefully. The loss adjuster's report provides a number of points that I think are relevant to this, including:*

- There was an independent inspection of the vehicle following the incident and this could not identify any issues with the brakes.*
- Miss B did not know the reason for the vehicle rolling. She advised that it had never rolled before and had been sat on a steeper decline since the incident without issue.*
- N might be found at fault for the incident as it seemed the vehicle was not parked safely or securely.*

*If there had been a fault with the vehicle and that was the likely caused of the accident, then the fact N couldn't produce a record of inspection would I think be relevant. But if the inspection after the event didn't find any fault, it's unlikely any inspection beforehand would have. Miss B says she believes the handbrake was on but can't explain why, in that case, the vehicle moved. No fault has been identified and the vehicle has been parked on other occasions without any problem.*

*In the absence of any fault with the vehicle I can't see what difference the lack of a written record made or how that increased the risk of the accident happening in the way it did. It seems perhaps more likely that (despite what Miss B says) the handbrake wasn't applied properly and that's why the vehicle moved. In any event, it's difficult to say the accident was*

*caused by a fault, which would have been identified and recorded.*

*I don't think Accelerant has shown that the absence of a written record of the inspection increased the risk of the loss which actually occurred in the circumstances in which it occurred. And so it wouldn't be fair for Accelerant to rely on that breach to reject the claim.*

*For these reasons my view is that Accelerant should accept the claim under the public liability section of the policy and settle it in line with the policy terms.*

*Although Accelerant said it would accept the recommendation to settle the claim for damage to N's vehicle, it's not entirely clear whether it also accepts the recommendation to pay compensation. Having to deal with a claim that was rejected, when it shouldn't have been, has taken N away from other activities and in the circumstances I agree it's fair to compensate for the inconvenience caused by this. So (unless it has already done so) Accelerant should pay the compensation of £200.*

### **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.

Miss B replied on behalf of N to say she accepted the provisional decision. Accelerant has not replied or provided any further comments.

As Miss B has accepted my findings and there's nothing further from Accelerant for me to consider, there is no reason to change my provisional decision. So I'm upholding the complaint, for the reasons set out above.

### **My final decision**

I uphold the complaint and direct Accelerant Insurance Europe SA/NV UK Branch to

- settle the public liability claim in line with the policy terms; and
- pay £200 compensation for the inconvenience caused to N.

Under the rules of the Financial Ombudsman Service, I'm required to ask N to accept or reject my decision before 20 January 2025.

Peter Whiteley  
**Ombudsman**