DRN-5284320

The complaint

T's complaint is about a claim it made on its Accelerant business protection insurance policy, which Accelerant declined and then voided the cover.

T says Accelerant treated it unfairly. It wants Accelerant to cover its claim and reinstate the policy.

T is helped by a representative in this complaint, but I shall refer to all submissions as being T's own for ease of reference.

All references to Accelerant in this decision include its claims handlers.

What happened

T's business is a restaurant. Following a fire at its premises, T made a claim on its Accelerant business protection insurance policy for business interruption and cover for its contents that were damaged in the fire.

Accelerant appointed a loss adjuster to consider the claim. The loss adjuster reported that T was underinsured for the losses it was claiming for and that the representations T had made when it took the policy out were not correct in terms of the value of its contents, its turnover and the construction of the flat roof relating to its business premises.

In particular it was noted that T originally said that its contents were worth £2,000 when taking out the policy but was claiming for around £90,000 following the fire. For business interruption, although the policy initially offered cover for up to £500,000 worth of losses, T adjusted this down to £250,000 when it took out the policy. The sum it was later claiming for amounted to £374,000. When taking out cover, T was asked about what percentage of its business premises had a flat roof. T answered zero to this, but the loss adjuster said that around 74% of the roof was flat.

Accelerant considered the loss adjuster's findings and declined T's claim then voided the policy. They said T misrepresented their position when taking out insurance and that the misrepresentation was reckless, so they were entitled to take the position they did.

T on the other hand, said they received little or no guidance from their broker when taking out the policy about what information to give. They thought the fair thing for Accelerant to do was to pay their claim proportionate to the cover their policy did offer. T also said that it was unfair for Accelerant to take the position they had when they had settled their claim in identical circumstances for a related business operating out of the same premises where the same information was given when the policy was taken out. Finally, T has made the point that it doesn't own the roof in question, and this made no difference to its claim because it wasn't insuring the building anyway.

Our investigator considered T's complaint and upheld it. He said that Accelerant hadn't demonstrated with reference to underwriting criteria that it wouldn't have offered the policy to T if T had provided the correct information. Because of this he said Accelerant should

reinstate T's policy, remove the cancellation recorded on internal and external databases, assess T's claim in line with the remaining policy terms and pay it £350 in compensation for the inconvenience caused. Accelerant does not agree, so the matter was been passed to me to determine.

In January 2025 I issued a provisional decision in which I said:

"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 don't uphold T's complaint. Before I explain why I wish to acknowledge the detailed nature of the submissions made by each party in this complaint. Whilst I have read everything they've said, I won't be addressing each and every point. That's not intended to be disrespectful. Rather it represents the informal nature of the Financial Ombudsman Service. Instead, I'll focus on the crux of T's complaint, namely whether it was fair for Accelerant to decline its claim and void the policy in the way that they did.

It's not in dispute that T didn't provide the correct information about its profits, the value of its contents and what percentage of the roof relating to its business premises was flat. I appreciate T's submissions that it wasn't provided with much help from its broker about this but that's not a complaint I'm considering here.

When the policy was renewed, the relevant law was the Insurance Act 2015, under which there's a duty to make a "fair presentation" of the risk. This duty applied at each renewal of the policy. When buying or renewing the policy the party seeking insurance – in this case, T – was required to disclose every circumstance they knew, or should have known, which would influence a prudent insurer in deciding whether to underwrite a risk or what premium to charge. In addition to the legal position, the documents provided to T made clear how important it was to provide relevant information. T accepts that the information it provided was inaccurate. And it was specifically asked to confirm its gross profit, the value of its contents and whether the roof of its business premises was flat. Taking into account the statements in the form that T was asked to confirm, the warnings about disclosing information, the need to say if anything was incorrect, and the wider legal duty to disclose anything that would influence the insurer's decision about offering cover, my judgment is that T knew (or should have known) that Accelerant would have wanted to be told about its gross profit, the value of its contents and whether the roof of its business premises was flat. So, this should have been disclosed. By not telling Accelerant about this, T mispresented the risk and failed to meet its legal duty, namely the duty to make a "fair presentation" of the risk.

If the insured party fails to disclose this kind of circumstance, and the insurer can show it would have done something differently this will amount to a qualifying breach under the Act. If the qualifying breach is considered to be careless and the insurer would still have offered cover if the correct information had been given, then the correct remedy is for the insurer to settle the claim proportionality. But if the breach is considered to be deliberate or reckless and they would still have offered cover if the correct information had been given, then an insurer is not obliged to do what it would have done and settle the claim. Rather it's entitled to void it and it doesn't have to refund the premium to the insured.

I've considered whether Accelerant has shown that the breach was a qualifying breach. In order for this to happen they would need to demonstrate they would have done something differently. In this case Accelerant have provided comments from their underwriters to show that although no additional premium would have been charged for £500,000 worth of business interruption, had the contents claimed for been correctly insured then the policy premium would have increased from around £20 to £720 roughly. Their underwriter has also said that a 40% premium loading would have been applied to the contents if it had been

declared that around 74% of the roof was flat. So, I'm satisfied that there was a qualifying breach in this case.

The issue then remains as to whether the breach itself was deliberate or reckless. T says its failure to disclose the information asked of it accurately might simply have been a mistake and that there wasn't a deliberate or reckless breach of duty. Accelerant has considered the breach to be reckless in this case. Having considered this carefully, I agree this was reckless. The discrepancy in the value of contents confirmed to Accelerant was significant, such that there was an £88,000 difference in value. And the value declared by T amounted to just under 2% of the contents it actually claimed for. So, I don't think it's something one would make a mistake about when declaring the value of its contents. And I've not seen anything that explains why T would have thought that the figure declared was correct at the time it took out the insurance. So even if I thought the difference in gross profit disclosed then later claimed for or the information given about the flat roof didn't amount to a deliberate or reckless misrepresentation, the qualifying breach in respect of contents alone is something T must have been aware of. And failing to disclose their correct value in these circumstances was reckless. So, on this basis alone, Accelerant was entitled to void the policy and retain the premiums.

Taking account of the relevant law, the policy terms and all the circumstances, I think Accelerant's decision was fair."

I asked both parties to provide me with any further comments or evidence they wanted me to consider in response. Both parties have now responded. Accelerant accepts my provisional findings, but T does not. T argues that the qualifying breach was careless rather than reckless and has made detailed submissions about why it considers this was the case. T also says it's unfair that Accelerant offered to refund the policy premium in line with a careless breach but later took the position that the breach was reckless.

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 considered everything both parties have said and in particular, T's submissions, I remain of the view that T's complaint shouldn't be upheld.

T says that its actions shouldn't be considered to be reckless, but rather careless. It says so because it is owned by a restauranteur from another country, that English is not his first language and that he knows nothing about insurance. T says it relied on the advice of the insurance broker that arranged the insurance for it and that it was up to the broker to ask the right questions of it to arrange a suitable policy. T says that whilst it was careless in not checking the sums insured, it trusted its broker and relied on its advice.

I've thought about this, and I can't know what conversations T had with its broker about the insurance or what questions it might have asked it if it didn't understand the documents that had been supplied by Accelerant for T to complete. And those documents made clear the importance of giving accurate information and the consequences of that. So, whilst I accept that T might have relied on its broker for advice, the onus was on T to supply accurate information about the value of its contents. And given the discrepancy in the figure supplied to Accelerant and the sum actually claimed for, I can't conclude the breach was simply careless. The difference of £2,000 in the value of its contents versus £90,000 is simply too large to have been capable of being missed in my view. And if T wasn't sure what disclosures were being made on its behalf my expectation would have been that it would have arranged for the documents sent to it to be translated or asked specific questions about

what they meant. In the absence of T demonstrating that in this complaint, I can't say that the breach was careless.

T also says that to have been reckless it must have been aware of the risk and implications of declaring inaccurate sums but nevertheless turned a blind eye. T says it didn't do this but instead relied on its broker, the advice received from that broker was deficient, but it wasn't aware of this. I appreciate that that might be how T felt but as I said Accelerant have demonstrated that they highlighted importance of declaring the correct information and the possible consequences of that in the documents sent to T through their broker, so I don't agree that T was not made aware of this. And whilst I understand that T is unhappy about the level of service provided to it by its broker, this isn't something I can take into account when determining this complaint. That's a separate dispute and one which is best addressed in a complaint about its broker. If it hasn't already done so, T can bring a complaint about this accordingly.

T also makes the point that there was an expectation Accelerant would have presented its evidence to support that the breach was reckless before delivering its decision. The fact that Accelerant offered to return the premium was in T's view a clear sign that it was treating the breach as careless rather than reckless. T says it's unacceptable that Accelerant later determined the breach was reckless after it submitted a complaint.

I don't agree with this. Accelerant was entitled to act outside the framework applicable to the Insurance Act 2015 so if it initially refunded the premium and later reviewed things and then came to the conclusion that the breach was reckless, it was entitled to so provided its conclusion was founded in evidence. In this case my findings are that the breach was so significant that it couldn't have been anything other than reckless, so I think that Accelerant were also justified in reaching that conclusion. But even if Accelerant hadn't justified their conclusion, my determination is that the breach was reckless, so how they went about reaching their decision makes no difference to the outcome of my findings.

My final decision

For the reasons set out above, I don't uphold T's complaint against Accelerant Insurance Europe SA/NV UK Branch.

Under the rules of the Financial Ombudsman Service, I'm required to ask T to accept or reject my decision before 21 February 2025.

Lale Hussein-Venn
Ombudsman