DRN-5417461

The complaint

Mr A complains in his capacity as director of a limited company, (which I'll refer to as "S"), that Accelerant Insurance Europe SA/NV UK Branch ("Accelerant") took the decision to avoid S's policy, treating it as though it never existed, following what Accelerant considered to be a misrepresentation made by S when the policy was taken out.

Any reference to Accelerant in this decision includes its appointed agents and authorised representatives.

What happened

In 2023, there was a fire at S's premises. A claim was made under S's policy with Accelerant and during the course of its investigations, Accelerant found that a misrepresentation had been made in relation to the financial background of S's director, Mr A.

Accelerant said that if it had known Mr A was the director of a separate company which had CCJs entered against it, and had also been the director of another company which had been liquidated, it wouldn't have offered cover to S on any terms.

It asked S to provide further information, which it did – but Accelerant didn't change its mind and avoided the policy. It said S hadn't made a fair presentation of the risk, which was required of it when taking out commercial insurance, and that Accelerant was therefore entitled to treat the policy as though it never existed, refunding the premiums S had paid.

Mr A didn't think Accelerant's decision was fair, so he made a complaint. He said S had provided a fair presentation of the risk when disclosing all the relevant information to its broker. It also said the questions Accelerant had asked didn't apply to Mr A, as, according to the Statement of Fact, the questions only applied to the "proposer" or "any named persons". And as the party named on the policy schedule was S, Mr A's associations with other companies weren't relevant.

In its response, Accelerant said it had reviewed the accuracy of the information provided and it noted that the quote which was provided to S's broker contained a warning about the need for fair representations to be made, and that failure to do so could result in the insurer refusing to pay a claim or reducing the amount paid. It also referred to the policy preamble which said the policy was voidable in the event of a misrepresentation.

Mr A didn't accept Accelerant's response, so he referred S's complaint to this service. Our Investigator considered it, but didn't think it should be upheld. He said he was satisfied that the broker, on S's behalf, hadn't given a fair presentation of the risk at policy inception, and that the CCJs in question would've triggered a referral to a senior underwriter to assess the risk, which would've led to Accelerant declining to provide any cover.

Mr A didn't agree with our Investigator's view. He said, among other things, that Accelerant hadn't shown that the alleged breach was material and that the term "proposer" applied to the entity insured and did not encompass S and its director more broadly.

He also said that even if there had been a breach of the duty to make a fair representation of the risk, the remedies available to Accelerant were proportionate to the breach. His view was that avoidance of the policy was an extreme remedy which should be reserved for situations in which there had been a deliberate or reckless non-disclosure, not an innocent one.

Our Investigator considered the additional points raised, but maintained his view, so the complaint has now come to me for an Ombudsman's 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.

As this is an informal service, I'm not going to respond here to every point raised or comment on every piece of evidence Mr A and Accelerant have provided. Instead, I've focused on those I consider to be key or central to the issue. But I would like to reassure both parties that I have considered everything submitted. And having done so, I'm not upholding this complaint. I'll explain why.

S took out a commercial insurance policy with Accelerant. The relevant legislation for me to consider is therefore the Insurance Act 2015 (the "Act"). Under the Act, commercial policyholders have an obligation to volunteer the right information to an insurer when taking out a policy, i.e. they have a duty to make a fair presentation of the risk. This means a commercial customer has to disclose either:

- Everything they know, or ought to know that would influence the judgment of an insurer in deciding whether to insure the risk and on what terms; or

- Enough information to put an insurer on notice that it needs to make further enquiries about potentially material circumstances.

The Act also says that a policyholder ought to know information that should reasonably have been revealed by a reasonable search of information available to them. I've checked the Statement of Fact to understand what information was provided and in this document, I can see that the policyholder was advised of the following:

"We are assuming for the purpose of this quotation, the following information:

You, the Proposer or any named persons on this policy have not been:

- *Convicted of or charged (but not yet tried) with any offence other than driving offences;*
- *The subject of a County Court Judgement (or Scottish equivalent);*
- *Declared bankrupt or are subject to bankruptcy proceedings, any voluntary or mandatory insolvency;*
- *Declined or refused insurance cover or had cover cancelled in respect of any covers to which the insurance relates;*
- *The subject of recovery action by customs and excise or the Inland Revenue;*
- *Prosecuted within the past 5 years or served prohibition or improvement order under Health and Safety legislation…"*

The question asked at the time the policy was taken out also referred to *"the Proposer or any Person named on this policy".* But there's a clear dispute about what the term "Proposer" means here. While there's no specific definition for the term, I don't think its precise definition is the key factor in this case – what's more important is what the question shows about the

information that was required. And I think it shows that information about any relevant CCJs was expected and should've been disclosed to Accelerant. For me to conclude that there was a breach of the duty to make a fair presentation of the risk, I'd need to be satisfied that everything that was known or ought to be known, which would've influenced the insurer's judgement about the risk, was disclosed – as well as enough information to make the insurer think it would need to make further enquiries.

From what I've seen, I think it's clear that Accelerant kept the question sufficiently broad, in order to cover all possible scenarios that would affect its assessment of the risk. It didn't define the term "Proposer" – but its underwriting guide further persuades me that it expected information about the financial background of any key individuals involved, such as directors. I say this because the guide refers to *"any CCJ filed within the last 5 years"* and goes on to say how this would affect its assessment of the risk and the cover it would provide.

The fact that Mr A has said that sufficient information about his financial background was disclosed to the broker, means I think he knew it was relevant information which would've influenced the insurer's judgement of the risk. And I agree with that position. The voidance letter sent to Mr A also points out that he is the 100% shareholder of S as well as the 100% shareholder of the separate company which was subject to the CCJs. So it's clear that his financial background would've been relevant. The relevant background information wasn't, however, passed on to Accelerant, so I think there was a misrepresentation and Accelerant made the decision to quote based on incomplete information.

In order for Accelerant to be entitled to take any action following a breach of the duty to make a fair representation of the risk, the breach has to be a "qualifying" breach – i.e. Accelerant would need to show it would've done something differently had S made a fair presentation of the risk in its disclosure. It says it wouldn't have offered cover to S on any terms whatsoever had it known about the adverse financial background information relating to one of S's directors. The underwriting guide shows me that the majority of the CCJs which were ultimately disclosed would've exceeded the allowed thresholds, which means, had Accelerant known about them, the application for insurance would've been referred to a senior underwriter for a further assessment of the risk. And I'm satisfied, given the information that emerged about the CCJs and associated businesses, and given the contents of the underwriting guide, that this wasn't a risk Accelerant was willing to cover. So I think it's fair to conclude that the breach was a qualifying one.

It follows therefore, that Accelerant was entitled under the Insurance Act to avoid the policy (treat it as though it never existed) and refund the premiums paid.

I've taken into account what Mr A has said, including his comments about the need for proportionality, but these don't change my view. The remedies under the Act for a deliberate or reckless breach are different to those for a careless one. I've seen nothing to persuade me that the breach was deliberate or reckless, and indeed there is no allegation from Accelerant that the breach was deliberate (which would've entitled Accelerant to keep the premiums paid). So I'm satisfied Accelerant has applied the correct remedy for a breach that wasn't intentional, which is to avoid the policy and return the premiums paid.

So, taking everything into account, I don't consider Accelerant has acted unfairly in avoiding the policy and refusing to deal with the claim.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask S to accept or

reject my decision before 20 June 2025.

Ifrah Malik
Ombudsman