DRN-5647964

The complaint

Mr R complains Accelerant Insurance Europe SA/NV UK Branch has unfairly avoided his policy and so declined a claim he made on his commercial home insurance policy.

Mr R has been represented in bringing this complaint, but for ease I've referred to all comments and actions as being those of Mr R.

What happened

Mr R made a claim on his Accelerant insurance policy for damage caused to his hotel, following an escape of water. Accelerant asked for some information to validate the claim, one of the things it asked for was the Electrical Inspection Condition Report (EICR). Mr R provided it, but Accelerant wasn't satisfied the electrician who completed the report had the correct certification.

When looking at the questions answered when the policy was taken out, Accelerant thought Mr R had failed to make a fair presentation of the risk in relation to electrical inspections. It said had Mr R confirmed the property hadn't been inspected by a suitably certified engineer, it wouldn't have offered the policy. So, it avoided it (treated it as though it never existed) and therefore declined to cover the claim for the escape of water. It returned the premium Mr R had paid.

Mr R complained. Accelerant didn't agree to change its position and so Mr R referred the complaint to the Financial Ombudsman Service for an independent review.

Our Investigator ultimately considered Accelerant had fairly declined the claim. She was satisfied Accelerant had shown there was a qualifying breach under the Insurance Act 2015. She said given Accelerant had returned Mr R's premium, it had effectively treated the misrepresentation as a 'careless' one rather than reckless or deliberate. And as that was most favourable to Mr R, she wouldn't ask it to do anymore in relation to the avoidance of the policy. But she thought Accelerant should have communicated the outcome sooner to Mr R, and so for the distress and inconvenience caused, she recommended it pay him £100 compensation.

Mr R asked for an Ombudsman to consider matters. He said the question asked by Accelerant hadn't been clear and as such, it should be read more favourably to him. And if it was, then he can't be seen to have failed to provide a fair presentation of the risk.

As the matter hasn't been resolved, it has come to me to decide.

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 crux of the matter is whether it was fair for Accelerant to decline the claim and void the policy on the basis there was a misrepresentation.

This was a commercial policy. Under the relevant law (the Insurance Act 2015) Mr R had a duty to make a fair presentation of the risk. This means he had to provide either:

- disclosure of every material circumstance which they knew or ought to have known; or
- failing that, disclosure which provided enough information to put a prudent insurer on notice that it needs to make further enquiries for the purpose of revealing those material circumstances.

The Insurance Act says the policyholder "ought to know" what should reasonably have been revealed by a reasonable search of information available to them. So the policyholder should take reasonable steps to check any available information and consider if there's anything they ought to disclose.

When Mr R took out the policy with Accelerant he was asked:

"During the last five years has the electrical installation been inspected and certified by a NICEIC, ECA, NAPIT or SELECT (Scotland) engineer qualified in electrical inspection and testing?"

This was a question of fact – either it had been inspected by a certified engineer or it hadn't. Any representation as to a matter of fact needs to be substantially correct. Mr R answered 'yes' to this, but Accelerant has now established that the contractor wasn't certified with any of the bodies listed in the question for testing electrics. So the answer given was not correct.

So, having established that the answer was not correct, I've then considered if Mr R breached his duty to make a fair presentation of the risk.

Mr R says he answered yes because the engineer he used *was* NAPIT registered, albeit for installations only, rather than inspections. But Mr R says he noted the engineer also had a qualification, provided by a different body ("C") for electrical testing. So he thought because he had an electrician who was NAPIT certified, and that electrician had a qualification to carry out testing, he could answer the question as "yes".

Accelerant's position is that Mr R's electrician, according to the relevant register, was not registered to carry out testing in either a domestic or commercial setting. The question specifically set out that the engineer had to certified by an engineer registered with one of the bodies noted in the question.

Key for me here is that Mr R was required to take reasonable steps to check any available information. It seems to me Mr R only found out the electrician had a qualification from C for testing electrics after Accelerant declined the claim. I say that because his representative, who Mr R engaged once his policy was avoided and claim declined, told this Service *"we established that (the electrician) holds a certificate…"*

So it seems to me Mr R wouldn't have known, when he answered yes to the question, about that qualification. There's nothing on the EICR document itself which confirms the qualifications or certifications of the electrician, so I'm not persuaded it shows Mr R made a fair presentation of the risk.

And, even if I'm wrong about that, and Mr R did check the electrician's qualifications when taking out the policy, then I find he could have reasonably checked if that electrician was registered with any of the bodies named in the question for electrical testing.

Had he done so, he'd have found that the electrician wasn't registered with those bodies for testing electrics. If Mr R was unsure then if the electrician's certificate from C was enough to be able to answer "yes" to the question, he should have checked with Accelerant before answering the question. The Act also says, if Mr R doesn't disclose material circumstances, that he must disclose enough information to put a prudent insurer on notice that it needs to

make further enquiries, Mr R didn't do that. In answering "yes" without consulting Accelerant it did not put it on notice that further enquiries were needed.

Whilst Mr R says the question is unclear, the Act doesn't give consideration to how clear the question was in deciding if a policyholder made a fair presentation. Whilst I still think it's fair and reasonable for an insurer to ask a clear question to find out what it wants to know, I'm satisfied it has done this here. It wanted to know if the electrics had been tested by someone suitably certified under the named schemes. Mr R said they had been, when they hadn't. I'm not persuaded the presence of a qualification from C means Mr R reasonably answered the question that was asked of him. As such I find Mr R did not make a fair presentation of the risk when he took out the policy.

The next part to consider is then whether the breach was a qualifying one; Accelerant needs to show it would have done something differently if it had been given fair disclosure. Here, Accelerant has shown, through its underwriting criteria, that it wouldn't have agreed to insure the property had it known that the EICR wasn't carried out by an engineer registered with one of the professional bodies. As such, I'm satisfied it has shown there was a qualifying breach.

Where there is a qualifying breach, the Act sets out certain remedies for an insurer, depending on whether the breach was deliberate, reckless, or neither of those. The Act allows an insurer to avoid a policy, and so decline all claims, as Accelerant has done in this case. It also, for deliberate or reckless breaches, allows the insurer to retain the premium. Whilst Accelerant hasn't specifically set out its reasons, I can see it hasn't sought to treat the breach as deliberate or reckless because it has returned Mr R's premium. As this is the most favourable outcome to Mr R (given an insurer can, under the Act retain premiums for a deliberate or reckless breach) I'm not going to look at this any further.

I appreciate the difficult position this leaves Mr R in, but for the reasons set out above I can't reasonably say Accelerant had acted unfairly. I'm satisfied it was fair for Accelerant to conclude there was a misrepresentation, and it has followed the remedies set out in the Act.

I accept it took a long time for Accelerant to issue its outcome to Mr R, which much have caused frustration to him. And it seems to be in all the circumstances that Accelerant should have been able to progress matters quicker. For the unnecessary distress and inconvenience caused, I'll require Accelerant to pay £150 compensation to Mr R.

My final decision

My final decision is that I direct Accelerant Insurance Europe SA/NV UK Branch to pay Mr R £100.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 25 December 2025.

Michelle Henderson
Ombudsman