DRN-6131817

The complaint

C, a limited company, complains about what Accelerant Insurance Limited did after it made a claim on its business protection insurance policy.

What happened

C is a car repairing business. In September 2023 there was a fire at its business premises which caused significant damage. C claimed on its policy with Accelerant. After investigating Accelerant said in January 2024 it had a number of concerns about the information provided by C when the policy was taken out. It said if the correct position had been disclosed it wouldn't have offered cover. It asked for a response from C to those concerns.

Further information was provided by C which addressed some of the issues. However, in September 2024 Accelerant maintained that other matters hadn't been correctly disclosed. In particular it said it hadn't been told the storage of flammable items wasn't in line with endorsements contained in the policy. If it had been made aware of that it wouldn't have accepted the risk and cover wouldn't have been agreed.

Our investigator didn't think Accelerant was entitled to void the policy. He thought C had complied with the duty of fair presentation imposed by the Insurance Act 2015. It told Accelerant it handled flammable substances when the policy was taken out and if Accelerant had wanted to know more about the storage of these it could have asked further questions about it. He wasn't satisfied Accelerant had shown it would have acted differently if it had been told about this. So he said the claim should be reviewed against the terms and conditions of the policy (which could include considering whether C had complied with the policy endorsements Accelerant had referenced).

C agreed with his outcome. Accelerant didn't. In summary it said

- The issue related to the quantity and storage of paints and flammables by C. The endorsements it had referenced were automatically applied to all policies like this. It explained why the paint storage arrangements C had in place were unsuitable and didn't comply with the policy warranties. And they were a condition precedent to cover being provided.

- It wouldn't have asked further questions about the use and storage of flammable as this was common practice in this sector and it applied the warranties it had referenced to ensure proper risk management was in place in relation to their use and storage.

- C hadn't adhered to these terms and conditions and didn't tell Accelerant flammable items were left out in the open on the shop floor after the business had closed for the day. If it had been made aware of that no cover would have been offered. It said this was a material fact that any prudent underwriter would want to be aware of as it affected the assessment and acceptability of the risk. The correspondence it sent to C made clear this was an underwriting decision.

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 in this case Accelerant has said it intends to void the policy (meaning no claim would then be payable). That relates to information it believes C should have provided when taking out the policy. So 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 C 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 circumstances.

Accelerant said in response to our inquiries it was the storage arrangements for paints and thinners (as evidenced in photographs) that fell outside of its requirements. It's also referenced waste disposal arrangements. And it says **i**f it had been aware of the correct position it wouldn't have agreed cover. I've therefore considered if that's something C should have disclosed information about in order to make a fair presentation of risk. In doing so I think it's reasonable to take into account whether Accelerant sought any particular information from C about these matters. So it's relevant to consider what questions it asked and how clear and specific those questions were.

I understand those questions are contained in a 'Market Presentation' prepared in April 2023 and reflected in the 'Statement of Fact' that was subsequently issued. I've reviewed that information. In that C agreed with a statement that said "*Trade waste stored in metal containers / removed weekly"*. The position on that was questioned after the claim was made but the information C then provided (and which Accelerant accepted) indicates the statement was correctly agreed with. And it doesn't appear C was asked for any other information about the storage of paint and thinners or other flammable liquids.

Accelerant says this was nevertheless something it should have been told about because it impacted the acceptability of the risk. But I think the information C already provided put Accelerant on notice this was something it might need to make further inquiries about. C told Accelerant its business involved body repairs with paint spraying and that included full body panels and touch up work. I think it would be obvious to a reasonable insurer that material associated with that was likely to be stored on the premises. So if Accelerant thought that was a potentially material circumstance it was on notice that was something it might need to enquire about.

In fact Accelerant says it didn't ask further questions about this because it addressed the risks associated with storage by including endorsements in the policy. And it says C hasn't complied with those requirements (because, for example, paints and thinners weren't kept in a metal cabinet). But whether that's correct or not it isn't an issue which relates to the fair presentation of risk. It's a separate question about whether C has complied with the terms and conditions of its policy.

So I'm not satisfied C was in breach of the duty to make a fair presentation of risk. In particular the Insurance Act makes clear the duty of fair presentation applies before a

contract of insurance is entered into. C can't therefore have failed to make a fair presentation in relation to policy endorsements that were included after that had taken place. That means there hasn't been a 'qualifying breach' as defined in the Act and the remedies set out in the Act where that is the case (including voiding the policy) aren't available to Accelerant.

I understand Accelerant didn't in fact void the policy as that process never concluded. I don't think it's entitled to do so. So it will need to consider the claim C made against the policy terms and conditions including the endorsements it contains. If there has been a breach here the question would then be whether it's fair in the circumstances for Accelerant to rely on that to decline the claim. If it does that's something which C could then make a fresh complaint about if it was unhappy with that decision.

My final decision

I've decided to uphold this complaint. Accelerant Insurance Limited will need to put things right by doing what I've said in this decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask C to accept or reject my decision before 24 March 2026.

James Park
Ombudsman