

The complaint

Mr H complains about Accelerant Insurance Europe SA/NV's decision to void his commercial landlord's insurance policy and refuse to pay the claim.

References to Accelerant include its agents.

What happened

The details of the claim are well known to both parties, so I won't repeat them again here. Instead, I'll summarise the background and focus on the reasons for my decision.

In April 2022, there was a fire which caused extensive damage to a commercial property made up of three units insured by Mr H with Accelerant. Mr H made a claim on his policy.

Accelerant carried out some initial inspections at Mr H's property. Following this, Accelerant wrote to Mr H in May 2022 about some concerns it had. This was due to a number of unsatisfied and satisfied County Court Judgments (CCJs) relating to Mr H and a company which he was a director of. At the time the policy was taken out by Mr H in November 2021, Accelerant said six CCJs weren't disclosed to it.

Accelerant said under the terms of the policy and relevant law, it was entitled to avoid or cancel the policy back to the renewal date. It invited Mr H to provide comments for them to consider. Mr H responded to Accelerant to explain the following.

1. Mr H was not aware of the CCJs until 13 May 2022, when Accelerant brought them to his attention.
2. In relation to the three outstanding CCJs against him personally - two were now satisfied and the other wasn't his responsibility so he'd sent the paperwork to show this to the party who has the benefit of the CCJ.
3. In relation to the one satisfied and two outstanding CCJs registered against a company which he's a director of - two were before he took over control and the most recent (August 2021) related to his tenant.

Accelerant provided a copy of a CCJ search for Mr H and the company. This shows:

- All the CCJs against Mr H personally are recorded against him at the home address used by him on the policy and registered as his home address since 2013.
- The latest CCJ recorded against the company was done at a time when Mr H's address was its trading and registered office address as well as Mr H being its director.

So, Accelerant believed Mr H was aware of at least four of the CCJs at the time he took out the policy with it in November 2021. Accelerant said these should've been disclosed at the time. Had he done so, Accelerant wouldn't have offered cover on any terms. So, it was entitled to avoid the policy and wouldn't be accepting Mr H's claim. Accelerant returned all premiums paid to Mr H.

Mr H brought his complaint to our service. The Investigator didn't recommend we uphold Mr H's complaint. He said from the information provided by Accelerant Mr H ought to have been aware of at least three of the personal CCJs, as they were registered to his personal address. And the CCJ from August 2021 against the company he was a director of was also registered to his home address. Whilst Mr H says the CCJ against the company should be against a different party, the Investigator explained it still should've been disclosed by him until this is resolved. As the CCJs weren't disclosed, and Accelerant's underwriting guidance is clear it wouldn't have offered cover if it had been given accurate information, the Investigator said it had acted in line with the Insurance Act 2015.

Mr H didn't agree with the Investigator and repeated what he'd said previously about not being aware about the CCJs.

This matter has now been passed to me for a 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.

Where there's a dispute about what happened, I've based my decision on what I think's more likely to have happened in light of the evidence.

Having done so, I must tell Mr H that I think the Investigator has reached a fair outcome here. So, I don't uphold his complaint in this matter. I'll explain why.

Mr H had a commercial policy, which was taken out with Accelerant in November 2021. Because of this, the relevant law I must consider is the Insurance Act 2015. This places a duty of fair presentation on the parties to an insurance contract. This duty is also referred to in the policy terms and conditions. The effect of the duty is an insured party is required to disclose every circumstance they know, or should have known, which would influence an insurer in deciding whether to underwrite a risk and on what terms, including price.

Accelerant thinks Mr H failed to make a fair presentation of the risk and made what's known as a qualifying breach. Under the Insurance Act 2015, a qualifying breach is a breach for which the insurer has a remedy against the policyholder because it would either not have sold them the policy (which Accelerant says would have happened here) or would have done so, but on different terms.

I've looked at the question relevant to CCJs which Mr H was asked when he took out the policy in November 2021. This question is set out below.

'Has the Proposer, any Director or Manager of the Proposer (if a company), or any partner (if a firm);

- *Ever been declared bankrupt, been the subject of more than one county court judgement (CCJ or Scottish equivalent), winding up order, insolvent liquidation or administration (voluntary or mandatory) or have made any composition or arrangement with creditors or been a director or partner of a company which has gone into insolvent liquidation, receivership or administration?'*

The answer given by Mr H was 'No' and there was no disclosure of anything related to CCJs.

So, what I need to decide is whether it's more likely Mr H was aware, or should have been aware, of the presence of CCJs and disclosed them to Accelerant in November 2021.

Mr H said he wasn't aware of the CCJs. However, by November 2021, I think Mr H would've been reasonably aware at least three CCJs had been obtained against him personally and one CCJ against the company he was the director of. I say this because his home address was the address registered against the four above mentioned CCJs. It therefore seems more likely to me this was the address used by the claimants and the Court when issuing documents related to the proceedings. I also note one of the CCJs was satisfied in 2017 and I consider it unlikely to have been satisfied without Mr H being aware of it. Therefore, this is information Mr H should've made Accelerant aware of when asked about CCJs.

Accelerant has shared with this service an extract from the relevant underwriting guidance and confirmed it wouldn't have entered the policy with Mr H under any terms had it known the true information about the CCJs. This means I'm satisfied it was a qualifying breach.

The Insurance Act 2015 sets out the actions available if the duty to make a fair presentation of the risk to the insurer has been breached. In this situation, Accelerant is entitled to avoid the policy (treat the policy as though it never existed) and refuse to deal with any claims. This is what it did here. Accelerant says it refunded Mr H the premium, so it doesn't need to do anything more.

In summary, Mr H reasonably would've been aware of at least four of the CCJs, as I've explained above, and this needed to be disclosed to Accelerant when taking out the policy in November 2021. Had this been disclosed, Accelerant wouldn't have offered the commercial insurance policy to Mr H. Therefore, I won't be interfering in Accelerant's decision to avoid Mr H's policy and decline his claim.

I recognise Mr H will be disappointed with this outcome. But my decision ends what we – in trying to resolve his dispute with Accelerant – can do for him.

My final decision

For the reasons set out above, I don't uphold Mr H's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 18 October 2023.

Rebecca Ellis
Ombudsman