

The complaint

B complained through their representative that Ecclesiastical Insurance Office Plc trading as Ansvar Insurance (Ansvar) unfairly declined part of a claim for theft under B's commercial insurance policy.

What happened

In October 2017, B's representative told Ansvar about the theft of a boiler. The boiler was located outside, on one of the outer walls of the insured premises. B's representative made a claim through B's Connect insurance policy.

On 31 October 2017, Ansvar asked their loss adjuster to investigate the claim. The theft had caused an oil leak which contaminated the surrounding ground. Ansvar covered most of the claim, which related to the damage caused by the oil leak. But they declined to replace the stolen oil boiler.

B wasn't happy that part of the claim was declined, so they referred it to our service.

Our investigator didn't uphold the complaint. He said that Ansvar hadn't acted unfairly when they'd declined to replace the boiler under the claim.

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.

There are two questions I need to answer before I can decide on this complaint. First, was it fair and reasonable for Ansvar to consider the oil boiler to be "External metalwork"? And, if yes, was it fair and reasonable for Ansvar to enforce the endorsement on the policy which required external metalwork to be protected using SmartWater?

I've relied on the policy schedule issued on 9 October 2017, covering the period of insurance from 17 June 2017 to 16 June 2018 in this response.

External Metalwork

I've looked at the policy wording and note that "external metalwork" isn't defined. However, the definition for "buildings" includes the following:

The buildings at the premises used for your activities including:

...plant or equipment external to the buildings belonging to you, and for which you are responsible.

Having looked at the policy wording, I think it's reasonable for Ansvar to say that the oil boiler falls under the definitions of *Buildings*, as it could be "plant or equipment". And looking at the photo that shows where the boiler was placed, I can see it was outside. Considering that the oil boiler is made of metal I accept that it was reasonable for Ansvar to consider it as "external metalwork".

As the oil boiler was stolen, it was reasonable for Ansvar to say the theft fell under “*theft of external metalwork*”. This is covered by the policy, under Section 1, *4b Theft of external metalwork*. However it’s subject to an endorsement to the policy which was detailed in the policy schedule (endorsement 581):

THEFT OF EXTERNAL METALWORK

You are required as a condition precedent to our liability for damage by theft or attempted theft of external metalwork of the buildings to ensure that at the time of any damage you have:

- i) protected the external metalwork of the buildings with SmartWater, and*
- ii) displayed the SmartWater signage, and*
- iii) registered the use with SmartWater Technology Ltd*

B’s representatives said that they don’t believe the definition of metalwork under the policy was meant for an oil burner. They felt the “Theft of external metalwork” endorsement was meant to include metal in the fabrication of the building itself. They felt that this was supported by the Insurer’s technical team when they confirmed that they only added a further endorsement - “endorsement 097 – Excluding Theft of external boiler” after B’s claim. B’s representatives saw the addition of endorsement 097 as proof that the insurer felt endorsement 581 hadn’t covered the boiler. Ansvar responded to these points by stating that they sought to provide further clarity by amending the exclusions to specifically state external boilers to avoid any further confusion by the policyholders. Taking what everyone has said into account, I’m not persuaded that Ansvar did anything wrong when they found the oil boiler to be external metalwork. So I’m not persuaded that it was unreasonable for Ansvar to consider the theft of the oil boiler under the “Theft of external metalwork” section of the policy. So now I need to move on to the next question: Was it fair and reasonable for Ansvar to enforce the endorsement?

Was it fair to enforce the endorsement?

First, I should note that the SmartWater endorsement isn’t unusual in commercial insurance policies like this one. As to whether the enforcement of the endorsement was fair and reasonable, I need to decide if it’s relevant to the individual circumstances of the loss.

Ansvar have said that the purpose of having an endorsement of this nature is to protect against the theft of high-risk items which are naturally in an exposed position. They note that the attractiveness of the oil burner to theft has been evidenced by it having been stolen, showing that an endorsement such as this is relevant to the risk. B considered that SmartWater wasn’t available for concerns like theirs. They felt that this was an unusual request for such a small risk. So B felt that the requirement to use SmartWater was unreasonable. Looking on the SmartWater website I can see that they do offer security packages aimed at similar establishments. Taking what everyone has said into account, I find Ansvar’s argument more persuasive.

SmartWater technology involves registering with SmartWater, uniquely marking items so that they are traceable, and employing highly visible warning signage on and around the premises. This acts as a deterrent to potential thieves. So I’m persuaded that if it’d been used it could’ve prevented the loss. So it was fair for Ansvar to enforce the endorsement and to decline that part of the claim when B didn’t comply with the endorsement.

I know this will be disappointing to B. But I do think Ansvar acted fairly and reasonably when they declined part of B’s claim. So I can’t uphold the complaint.

My final decision

For the reasons given above, I don’t uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask B to accept or reject my decision before 23 February 2021.

Joanne Occleshaw
Ombudsman