DRN-3715627

The complaint

Mr W has complained that Aviva Insurance Limited (Aviva) unfairly declined a claim for damage to his home under a home insurance policy.

What happened

Mr W contacted Aviva to make a claim when he caused damage to his home and garden due to a manic episode. Aviva declined the claim due to an exclusion for loss or damage from a deliberate or criminal act. When Mr W complained, Aviva maintained its decision to decline the claim.

So, Mr W complained to this service. Our investigator upheld the complaint. He said Mr W's medical records showed he had reduced capacity of rational thought, so it wasn't a deliberate act and Mr W wasn't charged with a criminal offence. He said the exclusion wasn't relevant and so Aviva should assess the claim and pay it in full.

As Aviva didn't agree, the complaint was referred to me.

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.

Having done so, I uphold this complaint. I will explain why.

The policy has an exclusion for: "*Deliberate or Criminal Acts Any loss or damage or liability arising from a deliberate or criminal act by you or any other person living with you."*

It isn't in question that Mr W caused a range of damage to his home and garden. The issue is whether Mr W's state of mind was such at the time that he should be considered legally insane. The test for legal insanity is the M'Naghten Test. This says that for someone to avoid legal responsibility a person must show: (i) that he did not know what he was doing or (ii) if he did know what he was doing, that he didn't know what he was doing was wrong.

The same day Mr W damaged his home, he was sectioned under the Mental Health Act. Mr W's mental state was assessed, including his mental state when he damaged his home. Both parties are aware of what the medical evidence said and I don't think it is necessary for me to describe it in detail here. But the medical assessment provides a detailed explanation of why Mr W "*smashed up his house*" and caused damage to the garden and I think it's clear that his mental state was the key factor in this. According to the medical evidence, this had greatly affected his perception at the time of incident and his understanding of what he was doing. Given Mr W was sectioned for a period of time, I think this also strongly indicates the seriousness of the situation and the level of Mr W's mental impairment at the time.

I'm aware Aviva has said the medical evidence showed that Mr W had signs of mental health issues a few years before the incident. It said if this had been diagnosed at that earlier time, the incident might not have happened and the damage could have been prevented. What

Aviva has said is irrelevant to the issue that needs to be decided, which is whether, on the day of the incident, Mr W was legally responsible for his actions. Based on what I've seen, I think it's more likely than not that Mr W's mental state was so impaired that he didn't know what he was doing or that, even if he was aware of what he was doing, he didn't know that it was wrong.

So, I don't think it's fair or reasonable for Aviva to say that Mr W's actions were deliberate and for it to apply the exclusion. As a result, I don't think it was fair for Aviva to decline the claim on that basis. So, Aviva needs to settle the claim for damage to Mr W's property.

Putting things right

Aviva must settle the claim for the damage to Mr W's home and garden.

My final decision

For the reasons I have given, it is my final decision that this complaint is upheld. I require Aviva Insurance Limited to settle the claim for damage to Mr W's home and garden.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 14 November 2022.

Louise O'Sullivan
Ombudsman