DRN-4701259

The complaint

B, a limited liability company, complains about a claim it made on its Covea Insurance plc ('Covea') tradesman's policy, which Covea declined.

B is represented, but in this complaint, I shall refer to all submissions as being made by B or Mr B who is the person involved in the incident which is the subject of the claim being made.

What happened

Mr B was engaged in fitting new flooring at third party premises in June 2019. During the fitting he used a hot air gun to carry out the work. A fire ensued which was put out by the sprinkler system in the building. Damage was caused to the third-party building, which is the subject of B's claim under the policy.

Covea instructed a loss adjuster to consider the claim. They couldn't determine the cause of the fire as the third-party premises had been subject to repairs. As such they instructed an expert to do so.

The expert instructed concluded the cause of the fire was a likely fault with the heat gun which may have ignited materials left in the room. Based on this, Covea concluded that B had breached the conditions of the policy because they required that any combustible materials needed to have been removed to a distance of not less than 10 metres from the point of work.

B disagreed with both the expert's findings and the position taken by Covea. He disputed the evidence the expert said he'd gathered from Mr B. In particular Mr B said he felt pressured by the expert and that he wasn't clear about what was in the statement he'd signed because he has problems with reading. He also said there were no materials in the room at the time the fire ensued and denies that he ever told the expert this.

Given B's complaint, Covea agreed to obtain a copy of the fire report issued by the Fire Service about the cause of the fire. The fire report concluded the cause of the fire was a combination of the heat gun and glue that was being used by Mr B. Regardless of this Covea maintained their original position and determined that B's claim should be declined for the reasons previously given. They also said that B didn't have a fire extinguisher on site and didn't attempt to extinguish the fire.

B doesn't agree with the reasons Covea have given to decline the claim and fundamentally disagrees with what their expert has said as well as the methods used by the expert to procure the evidence he relied on, particularly because Mr B said he had reading problems and couldn't understand what he was signing. B also disputes the expert's account of how things transpired and that he examined the heat gun in question at all on the occasion the expert refers to in his report.

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.

I intend to uphold B's complaint. I'll explain why.

The starting point is the policy terms. They say:

"Application of heat and fire precautions
It is a condition precedent to Our liability that the following precautions will be complied with by You and/or any Employee and/or any of Your Sub Contractors whenever work is undertaken away from Your own premises involving the use of electric oxy-acetylene or other welding or flame cutting equipment blow lamps blow torches hot air guns tar bitumen or asphalt heaters or any other work involving the use or application of heat or the use of angle grinders….
(b) any combustible material (including materials to be worked upon or which have been worked upon and to the greatest extent practical any materials in the course of being worked upon) shall be removed to a distance of not less than 10 metres from the point of work and any combustible materials (including materials to be worked upon or which have been worked upon and to the greatest extent practical any materials in the course of being worked upon) which cannot be moved to be covered and fully protected by overlapping sheets of non-combustible material or equivalent protection".

"(c) there is to be kept available for immediate use at the site of the work either one portable multi purpose dry powder or Carbon Dioxide fire extinguisher with a minimum capacity of 4.00 Kilograms or a water fire extinguisher of not less than 8 litres capacity made to current European Standards and serviced in accordance with current European Standards".

So the issues for me to determine are whether Covea have done enough to show that, on balance, the policy conditions I have quoted above have not been met.

It's not in dispute that Mr B was using a hot air gun when carrying out the work immediately before the fire. But in order to establish that B breached the policy condition, Covea would also need to show that, on balance, Mr B removed any combustible materials to a distance of not less than 10 meters from the point of work. I think the starting point to determine this would have been the contemporaneous evidence relating to the cause of the fire. Given the Fire Service attended the scene, I don't think it was reasonable that Covea didn't seek this evidence in the first instance. I appreciate however that they did later take it into account, but it didn't change their view things. Given the only contemporaneous evidence available in this case was the findings of the Fire Service, I've thought carefully about what they've said. Their report suggests that the cause of the fire was a combination of the heat gun and glue that was being used by Mr B. But I note that Mr B and Covea's expert both disagree with this- particularly because it's maintained by both parties that no combustible glue was being used in the process of the work being carried out. Given that the evidence from both parties is consistent on the types of materials used in the work being carried out and the Fire Service report lacks any real detail determining why they thought this caused the fire, I too am not persuaded that it adequately establishes the cause of it. What I am however more interested in is the absence of any reference to evidence to specific materials other than glue being the cause the fire, which I would have expected to see if this was applicable.

I've thought about this in line with the expert report commissioned by Covea and what Mr B says. I appreciate Mr B's testimony is that he didn't think the heat gun was inspected when the expert first said he did, but I don't think it's in dispute that the heat gun was eventually inspected and that the expert identified a fault in the gun itself. What is of note in all the evidence I've seen is that there is nothing conclusive that supports there were materials in the room in which Mr B was working. The expert refers to the possibility that there *'may'* have been materials there.

Covea's position seems to hinge on the written statement given by Mr B. Mr B has given detailed testimony about the manner in which he says his signed statement was procured by the expert and more importantly that he couldn't read what he was signing. He is very clear there were no materials in the room despite what the signed statement says. Looking at the written statement itself, the wording mirrors the language contained in the expert report. It doesn't seem to be in any doubt that the expert drafted the statement for Mr B and what it says is essentially a mirror image of what the report says about what Mr B said. But even if I take into account what both documents say, I think that both the report and the statement are uncertain about whether materials were in the room at the time of the incident. This is supported by what the expert says when he refers to the likelihood that if there were some materials in the room, they would have been blown away before igniting a fire. Taking that into account, I don't think there's any reason not to apply the same logic to equally light items such as cloths.

Whilst I agree that it was acceptable for Covea to rely on the expert's report and the written statement at the time, I think they should have considered things further when Mr B explained his reading difficulties to them and the fact that he couldn't read the account the expert drafted for him, which he then signed. And I think that if they'd read the statement in line with the expert's report thoroughly, this would have caused them to consider that 1. there might not have been materials in the room and 2. if there were, it's likely they would have been blown away by the heat gun. Because of this, I think it's unfair for Covea to decline B's claim on the basis that there were materials within 10 meters of the point of work.

Turning now to the issue of the fire extinguishers, the policy only requires there to fire extinguishers with the specifications noted in the terms, kept available at the site. It's not in dispute that there were nearby extinguishers at the site, and I've not seen anything to say they didn't comply with the policy specifications, so I'm satisfied that this condition was met. What Covea seems to be suggesting is that Mr B did not use the extinguisher in place to put out the fire. But the policy does not place a duty on B to take such risks. And there's no evidence that if Mr B had done so this would have been effective anyway. In this case the fire was put out by the sprinklers in the building which were arguably more effective given their location and the way in which they operated. I'm not convinced that Mr B would have even known where to direct an extinguisher, had he chosen to take that risk himself, given his evidence has always been that smoke rose up from behind him, following which he evacuated the building. So, I don't think it was reasonable for Covea to suggest this condition was breached by B.

For the reasons set out above, I'm not satisfied that Covea have established B breached any of the policy conditions in this case. Because of this they should put things right as I've set out below. B should note that I can't consider the stress caused to Mr B as a result of B's claim being turned down because this is B's complaint and B is a limited liability company. As such, it isn't capable in law of suffering stress.

Putting things right

Covea should:

- Reconsider B's claim in line with the remaining policy terms.
- Pay B £200 in compensation for the inconvenience caused to it by not seeking all the available evidence from the outset including the report of the Fire Service and unreasonably turning down the claim.

My final decision

I uphold B's complaint against Covea Insurance plc and direct them to put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask B to accept or reject my decision before 21 May 2024.

Lale Hussein-Venn
Ombudsman