DRN-4917965

The complaint

S complains Allianz Insurance Plc unfairly declined a claim they made for fire damage under their complete business commercial insurance policy.

S is a limited company and is represented by one of its directors in bringing the complaint. For ease I've referred to all comments from the director as being those of S.

What happened

S occupies a leasehold property; there was a fire which affected the building in June 2021. The fire damaged some stock that was outside of the building and the fire then spread into the main building.

S made a claim on its commercial insurance policy. Allianz assessed the claim but ultimately declined it at the end of 2021. Allianz thought the fire had started by S' employees burning rubbish outside, which had gotten out of control. It didn't think S, when taking out the policy, had given a fair presentation of the risk. But it said it wouldn't avoid the policy (treat it like it was never in force) it instead would rely on its policy conditions – relating to waste management - to decline the claim. Those conditions said waste kept outside of the building must be kept in a lidded container, or one no less than five metres from the property, prior to its collection.

S complained to Allianz, it said it was unfair for it to decline their valid claim. They said their waste was kept in a skip, and it was unfair to decline the claim based on the position of the skip. They denied claims that there rubbish left outside of the skip and said they didn't keep stock outside. They said the only reason there was, on the day of the fire, was because they were rearranging it, so had to temporarily place some items outside of the building. Allianz didn't agree to change its position on the claim. It did accept that updates could have been given more regularly; it offered £300 to recognise the inconvenience caused by that. Unhappy with Allianz's response, a complaint was brought to the Financial Ombudsman Service.

Our Investigator didn't think Allianz had acted unfairly, so he didn't recommend it cover the claim. He said whilst he agreed Allianz's communication could have been better, he thought £300 was sufficient to cover the inconvenience caused.

S asked for an Ombudsman to consider the matter. It said in summary:

- The skip was in a safe location and wasn't material to the cause of the fire or the damage.
- They don't allow staff to burn rubbish on site.
- The drum found by the forensic expert had been used previously to clear garden waste, not to burn waste from the building.
- There was no 'waste' outside of the warehouse, this was stock that had been temporarily placed outside whilst it was being reorganised.

As S has requested, the matter has come to me to decide.

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.

As this is an informal service, I'm not going to address every point or piece of evidence provided by S or Allianz. Instead I've focussed on those that are key to the outcome I've reached. But I want to reassure both parties that I have read and considered everything submitted.

There are two policy conditions Allianz has relied on to decline the claim;

"18 Waste Condition
The Insured must ensure that:
a All hazardous and/or combustible trade waste from manufacturing processes such as sawdust, shavings, clippings or cuttings be swept up and bagged daily and removed from the Building at least once a week.

b All waste stored external to the Building pending collection
should be stored in:
i non-combustible, closed, lidded containers
or
ii waste containers kept at least 5 metres from any building or other property and removed from the Premises when the containers are full."

Allianz said waste wasn't removed weekly and waste kept in a non-lidded container wasn't positioned five metres away from the building. It also said whilst the policy doesn't mention burning of rubbish specifically, waste disposal by any other means than set out, is in breach of the waste condition. Its view was that this was material to the loss, as had the waste conditions been met, the fire likely wouldn't have happened, and wouldn't have spread.

I consider the key condition here is in relation to waste condition b. There's no dispute the skip S use didn't have a lid, so I've considered if S met the condition that it must be five metres away from the building. I've seen a report from Allianz which measured the distance to the main building at 4.4 metres. S says this isn't fair to decline a claim on the basis of 60 centimetres. However, the condition refers to the skip being five metres away from *any* building or other property. The photograph I've seen of the skip is around 50 centimetres away from another building on the site, which I understand is an additional single storey storage space. So I consider there is a breach of the waste condition here.

S says this isn't material to the loss because, whilst there is evidence that the contents of the skip caught alight, it wasn't the skip catching fire that caused the fire or caused the damage to the main building.

However, even if I accept S' argument on this point, Allianz has said whilst the policy condition doesn't specifically exclude burning, it is implied, since the policy sets out how waste must be disposed of.

I consider this to be a reasonable interpretation of the waste condition. The condition refers to where waste must be stored before *collection*. So I consider collection of the waste to be the only permitted way – under the policy - to dispose of it.

S says it doesn't permit its staff to burn rubbish, and it didn't instruct anyone to do so. However, I can see from witness statements collected that it appears S was aware that someone did – or might have - burned rubbish on the day of the fire. And the forensic fire report concludes the most likely cause of the fire was the burning of waste materials. It found an oil drum, with holes in the side, which showed signs of oxidisation. The forensic expert concluded this was most likely where the fire originated, and the drum was being used to burn waste materials.

S says that drum was only on the premises as it had been used by some contractors to burn garden waste some time prior to the fire, but it hadn't been used by S to burn waste. Whilst I've considered S' comments, I'm more persuaded by those of the forensic fire expert in relation to the likely start of the fire being by burning waste using the drum, even if S told its staff not to do so.

So I consider Allianz acted reasonably, on receipt of that forensic report, to say there was a breach of the waste condition – in that it was implied waste couldn't be disposed of by burning. And I find that is material to the loss, since without the burning of the waste material, the fire wouldn't have spread to damage the premises which has given rise to the claim.

So it follows that as the breach of the condition is material to the loss, Allianz's decision not to meet the claim is fair and reasonable.

I can see that it took a number of months for Allianz to reach a decision on the claim, and it's accepted its communication over this time could have been better. However as S is a limited company, we're restricted to what compensation can be awarded, since a company can't experience distress. So I consider Allianz's offer of £300 for the inconvenience caused in its poor communication – bearing in mind I find its overall claim decision to be fair - is enough to compensate S.

As Allianz has already made a fair offer to pay S £300 to settle the complaint, my final decision is that Allianz should pay £300 to resolve matters, unless it has done so already.

My final decision

My final decision is that Allianz Insurance Plc needs to pay £300 to resolve the complaint unless it has done so already.

Under the rules of the Financial Ombudsman Service, I'm required to ask S to accept or reject my decision before 16 August 2024.

Michelle Henderson
Ombudsman