

## The complaint

Mr S is a sole trader, trading as T. He complains about the decline of a claim made under a commercial insurance (Coffee Shop and Tea Room) policy with Allianz Insurance Plc.

## What happened

The background to this complaint is well known to T and Aviva. In my decision, I'll focus mainly on giving the reasons for reaching the outcome that I have.

T's premises suffered a theft in June 2024. Various damage was caused to the premises and money taken. T made a claim on a commercial insurance policy and Allianz declined it. T then made a complaint and as they remained unhappy with the response from Allianz, they referred it to our Service for an independent review.

Our Investigator considered the complaint and recommended that it not be upheld. As T didn't accept, the complaint has been referred to me for a final 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.

Our Service is an alternative, informal dispute resolution service. Although I may not address every point raised as part of this complaint - I have considered them. This isn't intended as a discourtesy to either party – it simply reflects the informal nature of our Service.

I recognise that T is a commercial enterprise, but they're also a small business that's been the victim of a crime and I'm sorry to hear of the impact of this theft.

I'm only considering the actions of Allianz here when considering this claim and not the sale of the policy by any broker acting independently or on behalf of Allianz. T would need to raise any issue with the sale of the policy separately with the relevant responsible business if they believe it wasn't suitable for their needs.

I've considered the recent news article T provided about the prosecution in relation to the crime that gave rise to this claim.

*Have Allianz fairly and reasonably investigated and considered this claim in line with the policy terms?*

Allianz provided two main reasons for declining this claim and I'll address each of them below. They've not referred to any warranties or conditions for the decline. Under the 'material damage' (theft) section of the policy:

*"(7) Theft or attempted theft involving entry to or exit from the Buildings at the Premises by **forcible and violent means** [bold added for emphasis by Ombudsman] or actual or threatened hold up assault or violence..."*

For T's benefit, the intention of this term is to limit an insurer's risk exposure where a theft has occurred and types of scenarios such as premises not being secured or where appropriate security precautions haven't been taken. From the investigation notes:

*"...You confirmed that there are two keys to the front door of the cafe. You carry one on you at all times, which you use on a daily basis. Whilst the other 'spare' key; was attached to a lanyard, hung on a hook behind the counter in the cafe. [bold added for emphasis by Ombudsman] You confirmed that the suspect appears to have taken the key at some stage, whilst being allowed behind the counter."*

When I've considered how Allianz have applied the policy terms to this claim, I find they've done so fairly. I say this because neither force or violence were used to gain entry. A key was used by the perpetrator. The remainder of this term isn't relevant to this scenario (as no actual or threatened hold up occurred).

For completeness, I've also considered if there are any mitigating factors that would mean it was unfair of Allianz to apply the policy terms as they've done. But no evidence has been provided by T that any reasonable security measures were in place that would help identify/mitigate any impact in this type of scenario. On the basis that T has told us they had two employees (Mr S and his partner) and the perpetrator helped on occasion, it would be reasonable to assume that a missing key (when only two people had reason to have access to it) might give rise to concern.

Given the specific circumstances of the claim here, I've also considered if theft by deception is relevant to the loss. On balance, if the alleged perpetrator was on T's premises with permission and then got hold of a key that was easily accessible and no security checks were in place – I can't reasonably say this loss has occurred through deception.

I find that Allianz can fairly decline this claim and can fairly rely solely on this term - because it's not in dispute that there were no signs that entry and exit to the premises were through forcible and violent means. Instead, it seems a secondary key was taken and used.

#### *Theft or attempted theft by an employee*

I've found that Allianz can fairly rely on the above term, in isolation, to decline the claim. But for completeness, the other exclusion relied on was theft or attempted theft by an employee. T has argued that the perpetrator wasn't an employee as they weren't paid and seemingly did occasional work in exchange for meals. I've then considered the policy definition of an employee:

*"Employee includes:*

*"iii. Any trainee or person undergoing work experience*

*iv. Any voluntary helper". [my emphasis]*

I'm satisfied that Allianz can also fairly rely on the above exclusion. I say this because although T doesn't consider they were an employee, they've described how the perpetrator was someone who had been doing unpaid jobs at T's premises in exchange for meals and work experience. I also note the news article reference to employee.

#### *Other considerations I've made*

For completeness, I've also considered if any other section of cover should apply and if the claim might succeed on that basis. But unfortunately for T, the claim also fails under 'Additional covers - 2. money', as similar exclusions apply.

I note our Investigator has referred to the above terms and how they were drawn to T's attention at the time of taking out this policy. Whilst I don't find the above terms particularly unusual for this type of commercial policy, I recognise that they cause a limitation to claims. But I'm satisfied, based on the evidence provided by Allianz, that the key relevant information was sufficiently presented and drawn to T's attention. As mentioned earlier in my decision, any complaint about the sale of the policy needs to be raised separately.

Finally, I note T's comments about this policy failing to indemnify them after they've been a victim of crime. The reason I find the claim has been fairly declined is because in the specific circumstances of the loss event, Allianz have shown that they can fairly rely on the relevant policy exclusions. I'm pleased to hear that the perpetrator was caught. But the insurance claim/indemnity process is independent of the justice system and the perpetrator pleading guilty doesn't mean Allianz need to pay this claim.

### *Summary*

I find that Allianz's decision to decline this claim was fair and reasonable. It follows I don't uphold this complaint.

My decision will disappoint T, but it brings to an end our Service's involvement in trying to informally resolve their dispute with Allianz.

### **My final decision**

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask T to accept or reject my decision before 7 January 2025.

Daniel O'Shea  
**Ombudsman**