

The complaint

Mr R complains Advantage Insurance Company Limited has unfairly declined a claim he made under a home insurance policy after a fire destroyed the property.

What happened

The details of the complaint are well known to both parties, so I won't repeat them in detail again here. Instead, I'll provide a summary of the main events that I believe led to this complaint.

A fire broke out in Mr R's property in February 2023, which destroyed it.

Mr R made a claim to Advantage under the home insurance policy. Advantage arranged for the circumstances of the fire to be investigated, which included obtaining a report from the Fire Brigade.

The report from the Fire Brigade noted that there were remains of high-powered lamps, soil, and plant material and, that there was no evidence the main building had been habitable. It stated the Police had concluded it was likely cannabis had been grown at the property but due to the intensity of the fire no plant samples were available to be tested.

The fire report also commented that an illegal connection to an electricity cable underground was present by a Portakabin at the rear of the property.

The report recorded the probable cause of the fire as an electrical fault but confirmed no specific evidence of a causative fault was identified.

Advantage also arranged for an inspection of the property remains to be undertaken and as part of its investigations it also arranged for Mr R to be interviewed.

Having concluded its investigation Advantage declined Mr R's claim. It said that as the fire resulted from illegal activity at the property, which it believed Mr R was aware of, a policy exclusion applied which meant it did not need to meet the claim.

Mr R disagreed with this, he confirmed that he was out of the country at the time the fire happened and maintained that he was unaware of any illegal activity at the property. He also pointed out that there was no definitive cause of the fire.

Mr R complained to Advantage however it did not change its position on the claim. Mr R brought his complaint to this service.

An investigator considered the complaint but explained to Mr R she didn't think Advantage had acted unreasonably in reaching the decision it had.

Mr R disagreed and asked for an ombudsman to review the complaint. In doing so he reiterated many of the points already made to the business.

My provisional findings

I issued my provisional findings on 20 January 2025, in which I said I intended to uphold the complaint for the following reasons:

“Advantage has provided some of its evidence to this service in confidence. We can accept confidential information for consideration, and having reviewed the reasons for this, I have accepted this. While I recognise Mr R has not had sight of some of the evidence Advantage seeks to rely on, I can assure him I have considered it very carefully.

Advantage has said that while the policy provides for damage caused by fire, an exclusion in the policy means that Mr R’s claim is not covered. That exclusion says the following:

“Deliberate loss or damage

Any loss, damage, liability or bodily injury caused, or allowed to be caused, deliberately, willfully, maliciously, illegally or unlawfully by you, your family or anyone lawfully in your home.”

I must therefore consider, based on the evidence Advantage has provided if I think it has applied this exclusion in a fair and reasonable way.

My interpretation of the policy term is that it can be read in two parts. For it to be applicable, in the first instance, Advantage must demonstrate there was illegal activity which caused the loss or damage.

I think it’s appropriate here to consider the Fire Brigade’s conclusion of the cause of the fire.

It appears it started in the main building and the probable cause was put down to an electrical fault. However, it is important to note that the report was clear that no evidence of a causative a fault was identified.

Given the report doesn’t identify a causative fault, it is difficult for Advantage to conclude that an illegal action was the cause of the fire. So, on the fact of it, the evidence doesn’t support Advantage’s application of the policy exclusion.

However, given the report did outline a probable cause, I’ve gone on to consider Advantage’s position that illegal activity did cause the loss or damage. But, in doing so, I must then consider the second part of the exclusion which it that Advantage must also show that it is more likely than not, Mr R either did or had knowledge of those actions.

There has been no suggestion by Advantage that either a family member or someone else lawfully in the home was responsible, so in this decision I’ve only considered its points about Mr R.

Advantage has said that Mr R knew of or, was involved in the cultivated cannabis at the property.

While it was mentioned in the Fire Brigade report that cultivation of cannabis was suspected this was not confirmed. The intensity of the fire was such that nothing was able to be tested so it can only be alleged that cannabis was being grown. Mr R has said that he used to work in agriculture and propagated plants in the Portakabin, so this could explain the existence of pots, soil and lamps in that location.

Even if I accept it is more likely than not cultivation of cannabis was taking place at the property, I need to be persuaded Mr R had knowledge of this or actively took part in it.

Mr R has provided confirmation that he left the country in early January 2023. Having reviewed the evidence he has provided to me; I am satisfied that was the case. So, there was a period of around four weeks before the fire started where the property was unoccupied. So called 'Cannabis Farms' can be set up relatively quickly by experienced criminals, so it is possible that the set up took place within that time by persons unknown.

Advantage has said Mr R hasn't demonstrated the date he returned to the U.K however it is also aware that it didn't need to provide for alternative accommodation for Mr R immediately after the fire as he was abroad.

It has also referenced the Fire Brigade report that says initially the Fire Brigade thought that

Mr R was in the property due to the presence of a vehicle. Advantage has suggested that the Police located Mr R in a different part of the U.K. at the time of the fire, and so, reassuring the fire fighters that no one was present in the property. However, this appears to be a misunderstanding. The vehicle itself was registered to a family member who lived elsewhere, it is my understanding it is that person and address the Police were referencing.

Based on all the evidence available to me, I'm persuaded it is more likely that not Mr R was out of the country on the date of the fire, and he left in early January. And, given the period that the property was empty prior to the fire, I'm not satisfied that Advantage has persuasively established that Mr R was involved in or, had any knowledge of the alleged cannabis cultivation.

It has been established that there was an illegal connection to the mains supply of electricity in a ditch located near to the Portakabin. The Portakabin was located near to the rear of the main building. However, as I have referenced above, to fairly apply the exclusion in the policy Advantage need to provide persuasive evidence that Mr R undertook this act or had knowledge of it.

Having reviewed all the information available to me, I'm not persuaded Advantage has done so. It has not provided any evidence which definitively confirms when the illegal connection took place. Nor has it provided persuasive evidence that Mr R undertook or knew about this connection.

If, for arguments sake, it is accepted cannabis was being cultivated at the property, based on what I have outlined above, it is also possible that the illegal connection also took place at that time – when Mr R wasn't in the country.

Mr R has said the main building was being renovated at the time and he was living in temporary accommodation onsite with any electricity needs being provided by a generator. It has been confirmed a generator was onsite and Advantage hasn't provided persuasive evidence to disprove Mr R's version of events.

Having considered all the evidence available to me, I'm not satisfied Advantage has fairly applied the exclusion to decline the claim. I intend to direct Advantage to review the claim in line with the remaining terms and conditions of the policy.

I recognise that this whole matter has been distressing and worrying for Mr R, but I must balance that by considering how much of that is down to Advantage's actions rather than the fire itself.

Insurers are entitled to make reasonable investigations and claims such as this one, can take some time to work through. However, while I have concluded Advantage hasn't fairly applied the exclusion, I must consider how long it took for it to reach that decision.

Advantage formally let Mr R know of its concerns six months after the fire, and it took a further two months to decline the claim. Looking at the evidence I have on file, I think there were some delays in this process and as such it should have been able to deliver its outcome to Mr R slightly earlier than this. For example, it doesn't appear an instruction was sent for a property inspection until two months after the fire, I would have expected this to have taken place sooner.

Overall, however, I think the impact to Mr R was limited during this time, he wasn't living in the main building at the time of the fire and as such, still had a place to stay. I think

Advantage should make a payment of £500 compensation to recognise the impact of its delays here. As I recognise it still would have caused Mr R considerable distress and worry.

Mr R chose to instruct a representative to liaise with Advantage on his behalf. While I understand why he did this, I won't be making any award related to any fees he has or may incur do to this. The issues raised by Advantage are not overly complex or such that would require a professional to understand and respond to.

Award limit

As both parties are aware, where we uphold a complaint, an ombudsman can award fair compensation to be paid by the respondent business up to the relevant award limit. That limit is determined by the date of the act or omission by the business as well as the date the complaint is referred to our service. In this case, the limit is £415,000. If we think fair compensation is more than our award limit, we can recommend that the business pays the balance, but the business wouldn't be obliged to do this, even if the consumer accepted our decision.

However, the following are excluded from the award limit:

- any interest on the amount payable under a money award; and*
- any costs awarded (and any interest awarded on those costs).*

For the avoidance of doubt, the reference to "costs" here concerns the costs of a complainant bringing a complaint to the Ombudsman Service.

Here the total amount is yet to be decided as it's not yet been calculated, so I'm not able to award a specific total amount (or recommend a specific amount beyond that). If my final decision remains the same as my provisional decision, then I'll be directing Advantage to reconsider the claim in line with the remaining terms, conditions, limits and excesses, without relying on the exclusion, as I've outlined above.

I should make it clear that I consider this to be a direction and not a money award. However, the effect of this direction is that the policy will be subject to the £415,000 limit on a money award in relation to this claim. If, having considered this claim, Advantage decides that it is appropriate to settle aspects of it, the £415,000 limit will apply to the total amount payable.

Advantage's reliance on the exclusion within the policy has the impact of bringing all payments and expenses, or other payments potentially to be made by Advantage in respect of the claim, into dispute.

Advantage would need to pay Mr R, if he accepted my decision and assuming it goes on to accept the claim, up to that maximum amount.

If any settlement exceeded that amount, then I'd recommend Advantage pay Mr R the balance up to the applicable policy limits for each section of cover. But that recommendation wouldn't be part of my determination or award. Advantage doesn't have to do what I recommend.

And it's unlikely Mr R would be able to accept my decision and go to court to ask for the remaining balance. So, if my final decision is the same as my provisional decision, Mr R may want to get legal advice before deciding whether to accept the decision.

But as this is a provisional decision, the outcome, or any of the points above could change based on the responses I receive from both parties.

My provisional decision

Intended Decision and award: I intend to uphold the complaint. I think that fair compensation should be calculated as below. My decision is that Advantage Insurance Company Limited should pay Mr R any amount produced by that calculation – up to a maximum of £415,000.

Intended Recommendation: If the amount produced by the calculation of fair compensation is more than £415,000, I intend to recommend that Advantage Insurance Company Limited pays Mr R the balance.

Part 1

A. Reconsider the claim in line with the remaining terms, conditions, limits and excesses of the policy. It is not able to rely on the cited exclusion to decline the claim further.

B. Make a payment of £500 compensation to Mr R.

Part 2

Should it go on to accept the claim Advantage Insurance Company Limited should:

C. Consider the buildings part of the claim in line with the remaining terms, conditions, limits and excesses, in order to calculate this part of the claim settlement.

D. Consider the contents part of claim in the line with the remaining terms, conditions, limits and excesses, in order to calculate this part of the claim settlement.

E. Consider claims under any other sections of the policy line with the remaining terms, conditions, limits and excesses, in order to calculate this part of the claim settlement.

F. Pay Mr R fair compensation, up to a maximum of £415,000, to be calculated using the following formula: $B + C + D + E$

Part 3

G. Advantage Insurance Company Limited must pay the compensation awarded in B within 28 days of the date on which we tell it Mr R accepts my final decision. If it pays later than this, it must also pay interest on the compensation from the deadline date for settlement to the date of payment at 8% a year simple.

H. Income tax: if Advantage Insurance Company Limited go on to make a payment of interest and consider it's required by HM Revenue & Customs to deduct income tax from any interest paid, it should tell Mr R how much it's taken off. If requested, it should also provide

him a certificate showing the amount deducted, so he can reclaim it from HM Revenue & Customs if appropriate”.

Responses to my provisional decision

Mr R said that he accepted my provisional decision. He commented that he disputes the reference in the Fire Brigade’s report to the main house not being habitable, but he recognises that does not impact my decision. He also asked I reconsider if he could be awarded any costs towards fees for representation, he mentions Advantage put forward complex legal arguments as to why he could not see certain documentation which it would have been difficult for him to respond to without help.

Advantage responded saying it disagreed with my intended decision. In summary it made the following points:

- It reminds me that the standard of proof for my decision is the balance of probabilities and not the criminal burden of beyond all reasonable doubt.
- It has been established that illegal activity had taken place at the property which it says was causative of the fire.
- It disagrees with my interpretation of the evidence regarding the owner of the vehicle being located and says that as Mr R hasn’t proved when he returned to the U.K it can’t be certain he was out of the country at the time of the fire. It comments that it didn’t provide alternative accommodation as Mr R said he was staying with friends.
- It isn’t possible to say with any certainty, Mr R was out of the country at the time of the fire.
- It maintains Mr R likely would have known about the illegal connection to the mains electricity supply as it believes this existed prior to him leaving the country.
- It believes the cultivation of cannabis at the property was well established and therefore likely existed prior to Mr R leaving the country.

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 recognise that both parties feel very strongly about what has happened and I’ve carefully considered all of the points that have been made.

I’ve reconsidered the evidence around Mr R’s whereabouts at the time of the fire. I’m satisfied with the reasoning I have provided in my provisional findings and my conclusion that, more likely than not, Mr R was out of the country.

In addition, I note that in Mr R’s recorded statement to Advantage he confirms he returned home around one week after the fire and also there is reference to him being questioned about his reasoning for not returning earlier. In other documents Mr R’s reasons for not returning to the U.K. earlier were also commented on. As such it appears it was accepted during the course of the claim investigation, that Mr R was not in the U.K. at the time of the fire.

As I’ve explained in my provisional findings, Advantage has asked for the information it has provided to be kept confidential, which I’m happy to accept. However, in asking for this Advantage must recognise that it has denied Mr R the opportunity to comment on this information or suggest alternative scenarios/explanations to the conclusions Advantage has reached.

In order for me to consider if Advantage has reached a conclusion that is fair and reasonable, in this case I must look at whether in the absence of Mr R's input, Advantage itself has considered all possible scenarios for what happened.

Advantage has reminded me that I must reach my decision on the balance of probabilities. To do that I need to be persuaded that the scenario and conclusion that it has reached, regarding Mr R's alleged knowledge of the illegal activities, is that which is most likely to have happened.

Here, Advantage has only provided its reasoning as to why it believes Mr R would have had known of the cannabis cultivation and the illegal electricity connection and, why it believes both activities predated his departure from the U.K. in early January. It has not provided commentary on other alternative scenarios or potential different explanations for what it has found or, its rationale as to why it has discounted the same, in favour of its preferred position.

Had Mr R been given the opportunity, I think it is more likely than not, he would have been able to put forward alternative reasoning and question the logic/rationale that Advantage has provided.

Based on the evidence that has been made available to me, I'm still not satisfied Advantage has provided persuasive evidence that shows, on the balance of probabilities, its account of how Mr R may have known about the illegal activities is more likely than not that which happened.

In the absence of the analysis of other possible scenarios or counter arguments, it can only be said that Advantage has put forward a possible explanation, but not the only explanation. It has also not demonstrated how those situations are most likely in comparison to others.

For example, it has pointed to the amount of soil left in the remains of the portakabin to suggest the cannabis cultivation had been ongoing for some time. However, it hasn't provided other evidence which would support this theory or considered an alternative scenario. For example, that it is possible existing plant material may have been moved into the property, from somewhere else, within the timeframe that Mr R was absent.

It has also suggested the illegal connection of electricity existed prior to Mr R's departure; however, it is relying on circumstantial information to support this. It has not provided supportive evidence from the Network company itself or has it considered alternative explanations for its theory.

It isn't my role to prove or disprove the theories/suggestion that Advantage have about what happened at the property. As it is seeking to rely on an exclusion in the policy to decline the claim, it is Advantage's responsibility to show that it has applied that term fairly and reasonably. Based on everything I've seen, for the reasons provided in my provisional decision and those set out above, I've not persuaded that it has done so. As such, I will be upholding Mr R's complaint and directing Advantage to reconsider the claim.

Having considered everything I also remain of the opinion that Advantage should pay Mr R £500 compensation to reflect the impact its delays in dealing with the claim had on him.

I've thought further about whether Mr R should receive costs for fees he has incurred for representation however I'm still of the opinion that it was his choice to seek the support that he did. While I accept Advantage did raise an argument regarding the confidentiality of documentation, this isn't something this service was unable to answer or consider, nor did it prevent Mr R from raising his complaint about the declined claim. I won't therefore be

making any award for costs in respect of fees incurred.

My final decision

My final decision is that I uphold Mr R's complaint against Advantage Insurance Company Limited.

Where I uphold a complaint, I can award fair compensation to be paid by a financial business of up to £415,000, plus any interest and/or costs/ interest on costs that I think are appropriate. If I think that fair compensation is more than £415,000, I may recommend that the business pays the balance. In my provisional findings I set out the impact of the award limit would have on Mr R's complaint.

Decision and award: I uphold this complaint. I think that fair compensation should be calculated as below. My decision is that Advantage Insurance Company Limited should pay Mr R the amount produced by this calculation – up to a maximum of £415,000. Plus, interest on the amounts produced by the awards set out below at a rate of 8% simple per year. I've clarified the dates this should be paid from below.

Part 1

A. Reconsider the claim in line with the remaining terms remaining terms, conditions, limits and excesses of the policy. It is not able to rely on the cited exclusion to decline the claim further.

B. Make a payment of £500 compensation to Mr R.

Part 2

Should it go on to accept the claim Advantage Insurance Company Limited should:

C. Consider the buildings part of the claim in line with the remaining terms, conditions, limits and excesses, in order to calculate this part of the claim settlement.

D. Consider the contents part of claim in the line with the remaining terms, conditions, limits and excesses, in order to calculate this part of the claim settlement.

E. Consider claims under any other sections of the policy line with the remaining terms, conditions, limits and excesses, in order to calculate this part of the claim settlement.

F. Pay Mr R fair compensation, up to a maximum of £415,000, to be calculated using the following formula: $B + C + D + E$

Part 3

G. Pay Mr R 8% simple interest per year on any payment made to him as a result of F. Calculated from the date Advantage Insurance Company Limited originally declined the claim to the date payment is made to him.

H. Advantage Insurance Company Limited must pay the compensation awarded in B within 28 days of the date on which we tell it Mr R accepts my final decision. If it pays later than this, it must also pay interest on the compensation from the deadline date for settlement to the date of payment at 8% a year simple.

Income tax: if Advantage Insurance Company Limited go on to make a payment of interest and consider it's required by HM Revenue & Customs to deduct income tax from any interest

paid, it should tell Mr R how much it's taken off. If requested, it should also provide him a certificate showing the amount deducted, so he can reclaim it from HM Revenue & Customs if appropriate.

Recommendation: If the amount produced by the calculation of fair compensation is more than £415,000, I recommend that Advantage Insurance Company Limited pays Mr R the balance.

This recommendation is not part of my determination or award. Advantage Insurance Company Limited doesn't have to do what I recommend. It's unlikely that Mr R can accept my decision and go to court to ask for the balance. Mr R may want to get independent legal advice before deciding whether to accept this decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 2 April 2025.

Alison Gore
Ombudsman