DRN-5727729

Financial Ombudsman Service

The complaint

Mr P is complaining Aviva Insurance Limited has declined a claim he made on his commercial property insurance policy.

Mr P has been represented by a representative in the handling of this claim and complaint. But for ease of reference I shall refer to anything the representative has said on Mr P's behalf as being said by Mr P.

What happened

In May 2024 Mr P's property – that he rents out as a nine-bedroom House in Multiple Occupation – was damaged by a fire. So he looked to claim for the damage against his commercial property insurance policy. However, Aviva declined the claim as it said the fire had been started deliberately. Mr P thought this was unfair as he said there wasn't anything to show the fire had been started deliberately. And he highlighted no one had been charged for arson.

I issued a provisional decision upholding this complaint and I said the following:

"I intend to uphold this complaint and I'll now explain why.

Mr P's property was damaged by fire and Mr P's policy covers loss or damage from fire. But Aviva sets out that the policy specifically excludes loss or damage caused deliberately:

"General Exclusions applying to Sections 1 and 2

3. *Malicious loss injury or damage Any injury loss or damage caused deliberately maliciously or wilfully by You or Your tenants or Domestic Employees."*

Aviva has referred to the Police report which suggests the fire was started by one of the tenants in the property. And it says this suggests he started it deliberately. While I note it's comments, I'm not persuaded Aviva has given enough to show this individual deliberately started the fire.

The Police report's suggestion the individual started the fire seems to be based on the fact that he was seen running from the room and was hiding in the bushes. However, it also suggests that the tenant for the room where the fire started had been targeted for a period of time. But this doesn't set out anything to show the fire was deliberately started – merely a suspicion. And I also haven't seen anything to show the Police pursued a charge of arson against this individual.

Crucially, I also note the fire forensic report concludes:

"It seems possible that the fire might have been caused by a deliberate act (i.e. arson). However, I am not aware of any other evidence to support such a suggestion at this time."

The fire investigator also provides a number of alternative ways upon which the fire could have started. And he concludes:

"I consider it possible that the fire might have been caused by (in no particular order), i), a deliberate act, ii), carelessly discarded smoker's materials, or, iii), a fault with an electrical device. At this stage I am uncertain which is the more likely without making additional enquiries."

It's, ultimately, Aviva who is looking to rely upon the exclusion clause. So it's Aviva's responsibility to show the exclusion clause applies – not for Mr P to show it doesn't apply. And, given the forensic investigator said there wasn't enough to say the fire was started deliberately, I can't fairly conclude Aviva has given me enough to say it can fairly rely upon the aforementioned policy term.

So, it follows therefore, that I think Aviva should reconsider the claim under the remaining term of the policy – including any claim for loss of rent.

It's clear this matter has been very upsetting for Mr P. I understand he has owned the property for 25 years. While naturally Aviva is not responsible for the damage, but it has caused further upset in unfairly declining the claim. And I think it should pay him £500 in compensation."

Neither party responded to my provisional 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.

As neither party has given me anything more to think about I see no reason to reach a different conclusion to the one I reached in my provisional decision. So I uphold this complaint for the reasons I set out in my provisional decision.

My final decision

For the reasons I've set out above, subject to either party providing me with further information, I intend to uphold this complaint and require Aviva Insurance Limited to do the following to put things right:

1. Reconsider Mr P's claim under the remaining term of the policy – including any claim for loss of rent;
2. And pay Mr P £500 in compensation.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr P to accept or reject my decision before 28 August 2025.
Guy Mitchell
Ombudsman