

The complaint

Mr R complains that Highway Insurance Company Limited (HIC) declined his claim following a fire at his home. Mr R had buildings and contents insurance underwritten by HIC.

What happened

Mr R's home was damaged after Mrs R set fire to some belongings in the garden. He claimed under his policy for a significant amount of fire damage.

After receiving the expert report on the cause of damage, HIC declined the claim. It said Mrs R hadn't taken reasonable care, and the policy doesn't provide cover for deliberate acts.

Mr R complained to HIC because he said the damage wasn't caused deliberately. He said the fire was extinguished, and it was no different to using a fire pit. Mr R thought Mrs R had taken reasonable care. However, HIC maintained its decision to decline, so Mr R brought his complaint to us.

Our investigator thought HIC had unfairly declined the claim. She said Mrs R had only intended to burn specific items and she extinguished the fire before leaving it unattended. Therefore, our investigator didn't think the fire damage was deliberate or that Mrs R had been reckless.

HIC didn't agree. It said while Mrs R may not have intended to cause additional damage, the fire she lit was the start of a chain of events. HIC didn't think it was reasonable to compare the circumstances with lighting a candle or barbecue because any claim for that would unlikely be declined for the same reasons given that they had a practical purpose.

I issued a provisional decision in December 2023 explaining that I was intending to not uphold Mr R's complaint. Here's what I said:

provisional findings

The cause of the fire is not disputed. Mrs R placed some items on a garden tabletop and set fire to them. I understand Mr R is unhappy with some of the facts recorded in the report prepared for HIC. But, as they don't affect my consideration of the complaint, I won't refer to that matter here.

Mr R doesn't think HIC fairly declined his claim. So, my role is to look at why HIC declined the claim and decide whether its reasons for doing so were in line with the policy and fair in all the circumstances.

HIC relied on five separate parts of the policy to decline Mr R's claim. In summary, it said the policy conditions required Mr R to take reasonable care to avoid loss or damage, and that cover was excluded for damage or loss caused by deliberate acts by Mr R or his family.

Having looked at the statements provided, Mr R confirmed Mrs R started the fire deliberately and she was his family.

The policy says:

Your policy does not cover:

(m) Dishonest/wilful/deliberate acts Loss or damage caused by dishonest, criminal, wilful or deliberate acts by You or any member of Your Family

While HIC agreed that she may not have intended to cause damage, it said the damage was caused by Mrs R's deliberate act. So I'm satisfied that HIC reasonably relied on this policy exception.

I understand Mrs R only intended to burn the specific items she placed on the tabletop. However, HIC didn't agree with Mr R's view that it's the same as using a firepit or similar. That's because a firepit is designed for its practical purpose. On consideration, I think HIC's response is reasonable.

I don't think there's any implication that Mrs R intended to cause damage to the house and garden, but I think HIC fairly relied on the following policy condition:

4. Precautions

You must take care:

- To keep Your home in a good state of repair; and*
- To avoid or limit any loss, damage, Accident or injury.*

A garden table is not a receptacle to burn things in, so any damage resulting from doing so is reasonably foreseeable. Therefore, it can't reasonably be said that care was taken to avoid or limit any loss or damage.

Mr R said Mrs R extinguished the fire, which is taking care not to cause damage. The fire report states that the fire originated from the garden table and that doesn't appear to be disputed. Therefore, it's more likely than not that the fire wasn't fully extinguished. Again, that indicates reasonable care wasn't taken.

It's clear that the damage was an unfortunate outcome, and I appreciate that Mr R doesn't think HIC's decision to decline his claim is fair. But, having considered the overall circumstances, I can't reasonably say that HIC did anything wrong, or treated him unfairly, by declining the claim for the reasons it gave. Had it not been for the smaller fire which Mrs R started deliberately, the damage wouldn't have occurred. I see no reason to ask HIC to do anything more.

I asked both parties to send me any further comments and information they might want me to consider before I reached a final decision.

Responses

HIC had nothing further to add.

Mr R didn't agree with my provisional decision. He provided several pages of comments, photos of the fire damage, and details of similar complaints and court findings.

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.

To begin with, I'll explain why I won't go into detail about the complaints and court cases Mr R referenced in his response. I haven't disregarded them - I looked at each complaint Mr R listed. However, I reached my decision based on the specific circumstances of Mr R's complaint, which aren't an exact match for the complaints he referenced.

My role is to reach a decision taking into consideration all the evidence available, any relevant rules, and the overall circumstances, to determine whether HIC handled Mr R's claim fairly and in line with the policy. So, while I've looked at the information Mr R provided in relation to other complaints, I'm not persuaded that they make a difference to my consideration of his complaint.

That said, I understand Mr R provided the details to highlight his concerns about how HIC interpreted actions as deliberate and without reasonable care.

Rather than responding to each comment Mr R made, I'll consider his complaint as a whole.

There's no dispute that Mrs R started a fire on the garden table. But Mr R said the table-top fire wasn't the cause, or the point of origin, of the subsequent fire. He said the fire expert thought the fire was caused by embers landing on furniture - a view that was supported by scorch marks on the artificial grass further along the garden.

Looking at the evidence, I note Mr R told the expert the marks on the grass were in fact just discolouration, not scorch marks. On review, the fire expert agreed. The furniture in question was the seating around the table, so I'm not persuaded embers landing on the furniture can reasonably be separated completely from the table-top fire.

Mr R commented that the fire couldn't have been caused by the table fire because the cards and photos which Mrs R set alight weren't completely destroyed. But the photos show that the table is hardly recognisable, unlike the other furniture items, and the fire expert's report and photos show the origin of the fire to be the table and the surrounding area. On balance, the evidence indicates that the larger fire, more likely than not, was caused by the fire Mrs R lit on the garden table.

HIC declined the claim because the policy excludes cover for loss or damage caused by a deliberate act, including by family members. Mr R has explained that everything is in his name so he can't be held responsible for Mrs R's actions. I don't agree. The policy clearly includes the actions of family members, so I can't say that HIC unfairly considered Mrs R's actions.

I've noted what Mr R said about taking reasonable care to prevent damage. He said he closed the patio doors and roof windows to prevent the fire entering the house. I agree it's likely he prevented further damage by doing so. But the question is whether he took reasonable care to prevent any damage before the fire took hold.

Mr R was aware of the table-top fire, and the evidence persuades me that HIC fairly concluded he didn't take reasonable care to prevent further damage. Statements reported by the fire expert are that Mr R told Mrs R, before he went to bed, to stop burning the cards. I can't say that amounts to taking reasonable care to prevent further damage. And while Mrs R's intention is unlikely to have been to cause a larger fire, the fire expert concluded that the deliberate application of a naked flame to the cards and photos was the most likely cause. I think it was reasonable for HIC to rely on the expert report.

Mr R highlighted various parts of the fire report which he said were inaccurate. For example, the fire report stated the fire was on a small glass-topped garden table, whereas it was a metal-topped garden dining table. He also said the fire report incorrectly referred to his pergola as a gazebo. I note that Mr R raised these points directly with HIC.

Although Mr R said the expert report contained errors, they don't make a material difference. Whether the table was small or large, glass or metal, it doesn't change the fact that Mrs R placed cards and photos on top, and set them alight deliberately.

Overall, I'm satisfied that HIC declined Mr R's claim fairly, for the reasons it gave, based on expert evidence, and in line with the policy terms and conditions. Therefore, I see no reason to require anything of HIC in respect of this complaint.

My final decision

For the reasons I've explained above, and in my provisional decision, my final decision is that I don't uphold Mr R's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 2 February 2024.

Debra Vaughan
Ombudsman