

The complaint

Mr S and Mr S(2) complain Aviva Insurance Limited unfairly declined a claim made on their insurance policy following a fire.

The fire was at the property where Mr S lived and he has been the main correspondent in this complaint so, for ease of reference, he is the main party referred to throughout this decision.

What happened

The details of the claim are well known to both parties, so I won't repeat them again here. Instead, I'll summarise the background and focus on the reasons for my decision.

Mr S and Mr S(2) had a buildings and contents insurance policy underwritten by Aviva for a property Mr S lived in, under the terms of a trust.

On 1 August 2021, there was a fire at the property in the loft. On 21 August, Mr S contacted Aviva to make a claim on the policy.

When the Forensic Scientist (FS) from a firm attended on 2 September, the loft space had been cleared with a single aerial booster remaining. This was taken away by the FS and later analysed. Mr S told the FS he'd been growing cannabis in the loft. This was also discussed when Aviva's loss adjuster (LA) interviewed Mr S and the transcript of their conversation has been sent to this service.

Aviva said Mr S had no cover for the claim as he'd made a misrepresentation about his occupation. It also said he'd breached the terms and conditions of the policy for several reasons including the following:

- Aviva hadn't been notified about the claim as soon as it should've been, and Mr S's actions hindered the FS's investigations into the cause of the fire.
- Mr S failed to take all reasonable precautions to prevent loss or damage as the cultivation of cannabis in the loft was a likely fire risk.
- The policy excluded any loss or damage caused by criminal acts and the fire was caused by the cultivation of cannabis in the loft by Mr S.
- Mr S failed to cooperate and hadn't given complete and accurate answers.

It gave Mr S time to make any submissions on these issues before it came to a final decision on the claim. Mr S communicated with Aviva and complained about this, but it didn't agree to pay the claim nor uphold Mr S's complaint.

Mr S didn't think this was fair. He said the reasons used by Aviva were spurious and complained about the time it'd taken to respond to his claim and requests for information. He didn't agree there was enough evidence to show the cultivation of cannabis was the cause of the fire or agree he could've notified Aviva any sooner than he did due to ill health and not being clear about who would contact the insurance company. Therefore, he didn't think Aviva could rely on the above terms. He asked Aviva to see the FS's report and the LA's

transcribed conversation with him, and Aviva declined his request. Mr S then raised a Subject Access Request (SAR). When responding to the SAR, Aviva still declined to send Mr S the FS's report or the transcribed interview with the LA. Mr S feels the report must be favourable to him which is why Aviva is refusing to share it.

Mr S referred the matter to this service for an independent review. Aviva explained to our service it had agreed to send the exhibits from the FS's report to Mr S's chosen forensic expert. It also said Mr S had failed to answer a number of queries raised by it throughout the claim investigation.

The Investigator looked into matters and didn't uphold Mr S's complaint. They didn't agree Mr S had misrepresented his occupation. However, they considered Aviva's decision to decline the claim was reasonable based on the culmination of conditions breached by Mr S and the impact of them on Aviva's ability to assess the claim. They didn't agree the time it took Aviva to progress the matter was unreasonable given the steps it took to validate the claim nor that the decision not to share FS's report or the transcribed interview was unfair.

Mr S disagreed. He makes several points including the following:

- The FS told him the cause of the fire was the signal booster so the delay in notifying Aviva isn't relevant as the FS was able to make an assessment of the cause of the fire. He also doesn't agree the hydroponic equipment was to blame nor the criminal acts clause relevant as it wasn't the cause of the fire. Mr S says this is supported by the photos and video he took as well as his own assessment of the pattern of burning, and damage caused compared to the location he says the hydroponic equipment was in and position of the signal booster.
- Even if Aviva had been notified sooner, it wouldn't have been possible for the FS to see the equipment in situ – it was damaged by water and falling embers and debris. Also, the equipment had to be moved so the roof could be secured, and workmen could clear the area.
- If Aviva can't prove the fire was started by the electrical equipment supplying the cannabis plants or the report is inconclusive, he's been told it's liable for the claim and this is the situation he feels he's in now.
- The lights in the tent weren't operational at the time of the fire.

The Investigator and Mr S communicated about these points, but it didn't change the Investigator's mind. As agreement couldn't be reached, this matter has been passed to me for a 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.

Where there's a dispute about what happened, I've based my decision on what I think's more likely to have happened in light of the evidence.

I recognise I've summarised this complaint in far less detail than the parties and I've done so using my own words. I'm not going to respond to every single point made by the parties involved. No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here. Our rules allow me to do this, and it reflects the informal nature of our service as a free alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored it. I've given careful consideration to all of the submissions made before arriving at my decision and I'm satisfied I don't need to comment on every individual argument to be able to reach what I consider to be a fair outcome.

Having done so, I must tell Mr S that I think the Investigator has reached a fair outcome here. So, I don't uphold his complaint in this matter. I'll explain why.

Claim decision

The key terms in the policy Aviva relied on to decline Mr S's claim state as follows:

2. 'You and any other person this insurance applies to must take all reasonable precautions to prevent accidents, loss or damage and keep insured property in good condition.'

7. 'As soon as you [the Insured] are aware of an event or cause that is likely to lead to a claim under this policy, you must:

...

b. contact us as soon as reasonably possible and provide all the information and help we need to settle your claim.'

Under section 8 which lists the exclusions, the policy confirms there's no cover provided for *'Any loss or damage...arising from your criminal act.'*

Here, there's no dispute an illegal activity had taken place. Mr S accepts he was cultivating cannabis in the loft of the property. What is disputed by Mr S is whether this was the cause of the fire. He also doesn't agree his failure to report the claim sooner and his clearance of the loft contents impacted Aviva's ability to assess the likely cause of the fire.

When the fire was first discovered, the fire brigade attended. It didn't carry out a full investigation or inspect the area in detail. However, in the report from their attendance, it lists *'excessive and dangerous storage'* as a factor contributing to the start of the fire and the main cause being *'faulty fuel supply – electricity'*. It also states the source of ignition and item that first started the fire are unknown.

Following its notification, Aviva appointed a FS who prepared reports after visiting the property and carrying out a detailed examination of the signal booster. However, when the inspection took place, the FS noted there was no evidence of the hydroponic equipment in the loft and most of the loft contents had been removed. The reports haven't been shared with Mr S and so I summarise several key conclusions of the FS below:

- The cultivation of cannabis indoors presents several risks, including electrical faults.
- The point of origin of a fault with the equipment used for the cultivation of cannabis can be identified in some cases by examining it.
- The signal booster was subject to a detailed examination and there was no evidence of an incensive fault.
- The patterns of fire damage aren't reliable evidence to determine the cause of the fire and there was insufficient remaining physical evidence to do so.

Mr S has set out in detail why he considers the signal booster to be the cause of the fire and his actions didn't impact Aviva's assessment of the claim. But he hasn't submitted any expert evidence in support of this. So, whilst I've considered everything he's said, I find the expert evidence from the FS to be more persuasive. And, based on the expert opinion of the FS, I don't consider it's possible to conclude what the more likely cause of the fire was. That said, I'm satisfied Aviva's ability to properly assess the cause of damage was prejudiced by Mr S's actions, including:

- The delay between the fire and Mr S notifying Aviva of the claim; and

- Mr S clearing the loft and property of the hydroponic equipment and loft contents.

This is in breach of the policy terms.

Notwithstanding the reasons given by Mr S for the delay in notifying Aviva of his claim, I'm satisfied it would've been reasonable for him to contact Aviva much sooner than he did. And, certainly, before he cleared the property of the loft contents.

Mr S says the contents were cleared so remedial works could take place to prevent further damage. And it was in all the parties' interest for the work to be completed without delay. But Mr S and Mr S(2) were required to notify Aviva of the claim as soon as the fire had occurred, in accordance with the policy terms. And Aviva is well versed in dealing with the aftermath of events like this on behalf of the policy holder - it's what a home insurance policy is for. So, I don't consider Mr S's explanation is sufficient to justify the things he did nor impact of them on Aviva.

I note Mr S also says the property had to be cleared for the forensic investigation to take place. But this wasn't Mr S's decision to make. And I consider it likely a forensic investigator would be experienced in inspecting a fire damaged property with the damaged items in situ. Even if a full inspection wasn't immediately possible by an expert, Aviva would've been able to document the condition of the property after the fire and preserve any damaged items which needed further examination by a FS. I consider Mr S's actions deprived it of this opportunity.

In light of the above, I don't consider Mr S and Mr S(2) complied with the terms of the policy they had with Aviva. This prejudiced Aviva's ability to assess the claim, as it was entitled to under the policy. It follows I'm satisfied Aviva's decision to decline Mr S and Mr S(2)'s claim in this matter was in line with the policy terms and I see no reason to interfere with it.

Delays

I acknowledge Mr S is unhappy with the time Aviva took in this matter. However, it's not unreasonable for Aviva to take time to consider matters before approving work, for example, by reviewing the claim itself, seeking advice – internally and externally, obtaining specialist reports, appointing a LA and asking the consumer for further information.

From the information I've been sent, I can see this is a significant part of what it was doing even when it may have seemed as though no progress was being made. It's also important to balance this with the fact it was likely to be a significant claim which Aviva was reasonably likely to take more time to investigate, consider and review.

Taking the circumstances of this matter into account, I don't uphold this complaint point.

SAR compliance

Mr S says Aviva has unfairly refused to send him the FS's reports or the transcribed interview with the LA even after he made a SAR.

Aviva relies on exemptions within the legislation which it says apply to these documents, including the legal privilege and negotiations. I haven't seen any evidence to say Aviva has acted unfairly or unreasonably in relying on these exemptions, so I don't uphold this complaint point.

I think it's important to explain we're an informal dispute resolution service and it's not my role to regulate Aviva's compliance of data protection laws. This is for the information commissioner's office.

I recognise Mr S and Mr S(2) will be disappointed with this outcome. But my decision ends what we – in trying to resolve this dispute with Aviva – can do for them.

My final decision

For the reasons set out above, I don't uphold Mr S and Mr S(2)'s complaint in this matter.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S and Mr S to accept or reject my decision before 30 November 2023.

Rebecca Ellis
Ombudsman