DRN-4575270

The complaint

Y, a limited company, complains Allianz Insurance Plc turned down a business interruption and contents claim it made.

What happened

Y is a dry cleaners. In May 2017 there was a fire at its premises which caused significant damage and meant it was unable to trade. It claimed on its policy. Allianz thought Y was in breach of a policy condition which said items should be allowed to cool fully before being stacked. And a report from a forensic investigator found the most likely cause of the fire was self-combustion of tea towels caused by them still having residual heat in them. It thought Y's breach of the condition had increased the risk of the loss which took place in the circumstances in which it did and turned down the claim.

Y provided a report from a different investigator who thought the cause of the fire was "*more than likely electrical and caused by a faulty plug*". Allianz referred that back to its investigator who didn't change his view and explained why he didn't think an electrical fault was the likely cause of the fire. Y provided a further report from another investigator which said "*whilst there is some evidence that self-heating of laundered items may have occurred at the premises, I am of the opinion that there is not sufficient evidence to conclude this was the cause of the fire".*

Allianz agreed to further investigation being carried out (including obtaining evidence from the fire brigade). A report produced for the fire brigade following examination of tea towels said their condition was "*consistent with a self-heating event*". Allianz's expert also contacted the manufacturer of the roller iron which Y used who told it "*everything comes off the press warm*". The expert's view remained that, on the balance of probabilities, "*the cause of the fire was self-heating of the laundry*". Allianz didn't change its position on the outcome of Y's claim.

Our investigator said it wasn't our role to determine the cause of the fire but to decide if Allianz had acted reasonably in declining the claim. He noted it had expert reports in support of its position which was supported by evidence from the fire brigade. And there had been a previous incident a few weeks prior to the loss where smoke was seen coming from a trolley containing tea towels.

He accepted Y had provided its own expert opinions but while those had considered alternative causes of the fire a second report didn't rule out the possibility of it being caused by items not being allowed to cool fully. He was satisfied Allianz had shown the policy condition hadn't been complied with and had fairly turned down the claim.

Y didn't agree. In summary it said:

- Witness statements clearly indicated items were allowed to cool prior to being stored and prior to the May fire tea towels were fully dried prior to being put through the roller without heat being applied to iron them. So they were cool when they came off the roller and prior to being stored.

- Allianz hadn't given a clear explanation of what the term 'cool fully' meant and if the items were warm because of the temperature in the building then that wouldn't breach the condition because they wouldn't have been heated by a process. And it was possible for self heating to occur without an external heat source causing that.

- It's expert (who it said was more experienced than Allianz's) had concluded the cause of the fire couldn't be determined and a possible fault with an electrical appliance could not be eliminated as a cause. And it provided extracts from a barristers opinion in support of its position.

- The policy didn't exclude cover for self-combustion of items so even if that was the cause of the fire that wouldn't in itself give Allianz grounds to decline cover.

So I need to reach 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.

The relevant rules and industry guidelines say Allianz has a responsibility to handle claims promptly and fairly. It shouldn't reject a claim unreasonably.

I've looked first at the terms and conditions of Y's policy. That does provide cover for "*loss, destruction, damage, injury, liability or dispute (as described in and subject to the conditions and exclusions of this Policy or any Section of it) occurring or arising in connection with the Business during the Period of Insurance or any subsequent period for which the Insurer agrees to accept a renewal premium".*

I think Y are right to say the policy doesn't specifically exclude damage caused by the self-combustion of items. But it does contain a condition precedent to liability within the dry cleaners extension section which says "*All items which have undergone any process at the premises must be allowed to individually cool fully before piling, stacking or packaging".*

I appreciate there's been some discussion over what the meaning of *'cool fully*' is. Y has referenced the doctrine of contra proferentem and thinks any ambiguity in the contract should be interpreted in its favour. However, that has a more limited role in relation to commercial contracts (which applies here as is as Y is a limited company).

In any event I don't think it's necessary to apply the doctrine of contra proferentem in the circumstances of this case because I think the term is capable of being understood without needing to do that. In interpreting policy terms I think in principle the words of the policy should be given their ordinary meaning and reflect the intention of the parties and the commercial sense of the agreement. A key point is how the words would be understood by a reasonable person – in other words, the ordinary policyholder. In the absence of a specific definition I think it's appropriate to apply the commonly understood meaning of a term.

I think a reasonable interpretation in this case is that the items are cool to the touch and therefore capable of being safely put away; in my view that supports the commercial sense of the agreement as it's the risk of combustion from items being stored where that isn't the case the condition is seeking to mitigate.

In that context I've thought first about whether Allianz has correctly concluded Y was in breach of this condition. I appreciate Y's position is that items were allowed to cool fully prior

to being stored. And I recognise that's supported by witness statements from its employees. For example, I can see that one of Y's employees said tea towels were put on a tumble dryer cycle "*which includes a 10-15 minute cooling cycle and the tea towels are dry and cool at this stage*". And they are then taken to the roller iron where they are "*fed through quickly on a high speed pre set programme*". Another employee said "*there is no heat in this process and the tea towels are cool when they come out of the roller*".

However, the view of Allianz's expert was that "*there would be residual heat in laundry items taken from the dryer even after undergoing a cooling cycle*". I appreciate that contradicts the information provided in statements from Y's employees. But I'm mindful of the fact those statements were provided after the fire had taken place and that could have impacted the testimony given.

And Allianz's expert then conducted further research into the roller iron including speaking to the manufacturer. They told him heat was applied to tea towels when passed through the press and "*everything comes off the press warm*". The operating instructions for the press give a range of temperatures at which it operates which are from 143-193 degrees Celsius.

He also noted Y's employees had said items were left to air after being passed through the roller iron to prevent condensation forming when they were then packed in polythene bags. His conclusion was that "*condensation would only occur if the laundry was at a higher temperature than the ambient air temperature, when it had completed being processed and was ready for packaging*". He was clear in his view that items wouldn't be cooled fully after undergoing the tumble drying and pressing process.

It doesn't appear the more recent reports from Y's expert evidenced a contrary view on this point. The expert did comment on this but her conclusion was "*I am not saying that [Allianz expert] is incorrect in his determination regarding the condensation formation, however in my opinion I do not think there is enough evidence to use this as confirmation the items were not allowed to cool fully*". But she did acknowledge that conclusion was reached without information from the manufacturer of the roller iron. And that's subsequently been provided.

Taking all of that into account, and on balance, I think Allianz has done enough to show that Y was in breach of the condition precedent requiring items to be allowed to cool fully before stacking and packing. However, the Insurance Act 2015 says an insurer can't turn down a claim on the basis of non-compliance with a term (including a condition precedent) if the non-compliance couldn't have increased the risk of the loss which actually occurred, in the circumstances in which it did. That doesn't apply to conditions which define the "*risk as a whole*" but does apply to those which relate to a particular type of loss or a loss at a particular location or time (risk mitigation clauses).

I think the condition precedent in this case could reasonably be regarded as a risk mitigation clause and Allianz hasn't suggested it isn't. In any event, and in line with the requirement in the relevant rules that an insurer should not turn down a claim unreasonably, we'd normally expect an insurer to show it had been prejudiced by a breach of a condition in a policy to fairly turn down a claim.

I've thought about how that applies here. I appreciate there has been considerable discussion across different reports as to the possible cause of the fire. But that isn't something I need to determine in order to decide if Allianz acted fairly. The question is whether the breach of condition (which I've established has taken place) couldn't have increased the risk of the loss which actually occurred in the circumstances in which it did. The Law Commission gave as an example of that a requirement for a policyholder to install window locks (which they didn't do) whose property was subsequently damaged by a flood. In that case the breach of condition would be unrelated to the loss that occurred.

I don't think that's the case here. The evidence in this case includes:

- A fire brigade report which said "*The cause of this fire was most likely due to a self-heating event within stored tea towels".*

- A report provided for the fire brigade which concludes "*charring damage observed on the cotton rich tea towels and the oil extracted from them were both consistent with a self heating event".*

- A report from the expert appointed by Allianz which concludes "*on the balance of probabilities I consider that the cause of the fire was self-heating of the laundry"*.

I appreciate Y has provided reports of its own which identify other possible causes for the fire. Those include a fault with an electrical appliance and arson. But I can see those possible causes are considered in the report from Allianz's expert and reasons given for why he concludes these are unlikely to be the cause.

And Y's expert herself acknowledged "*there is some evidence that self-heating of laundered items may have occurred at the premises*". I appreciate her overall conclusion was that the cause of the fire should nevertheless be recorded as undetermined. And I acknowledge she appears to have wider experience in fire investigation claims that Allianz's expert. But even if she's right about that her report doesn't identify a clear and more likely cause of the fire which is unrelated to the breach of the condition precedent by Y. So it doesn't show the breach of that condition couldn't have increased the risk of loss in the circumstances in which that took place.

The evidence from the other reports suggests there is in fact a more direct link between the breach and the fire because they conclude it was likely self-combustion of the stored tea towels which led to it. Allianz's expert also explained why he thought spontaneous combustion of those items was unlikely to have taken place without an external heat source being the initial trigger for it. So I think Y's non-compliance with the condition precedent has increased the risk of loss (in the circumstances in which that happened).

However, it does appear an updated report from Allianz's expert hasn't been shared with Y (though I understand some supporting information referenced in it was). I think Allianz should provide that report to Y if it requests it. And I'd expect Allianz to consider any new information that Y is able to provide in response to that. But in my view, based on the evidence currently available, Allianz has correctly and fairly turned down the claim Y made.

My final decision

I've decided not to uphold this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Y to accept or reject my decision before 29 March 2024.

James Park
Ombudsman