DRN-5157366

The complaint

Mrs A complains about Covea's decision that a claim she made after a fire at her property was covered by the malicious damage peril in her policy and so subject to a £10,000 limit.

What happened

The background to this case is well known to both parties, so I'll give only a brief description here, concentrating on the key issues in the case.

Mrs A has a property owner's insurance policy, underwritten by Covea, which covers a house she owns and lets out through an agency.

She made a claim in February 2023 after a fire at the house which caused extensive damage. She asked Covea to pay for the repairs and to cover loss of rent in the relevant period.

Covea accepted the claim and appointed a loss adjuster and a forensic expert. Their enquiries showed that there had been a cannabis farm in the loft of the property, which was where the fire started.

Covea accepted the claim was covered but told Mrs A they were regarding the damage as being the result of malicious acts, which was a specific peril set out in the policy terms.

The terms also say that the maximum Covea will pay out where damage is caused by malicious acts is £10,000. And that's what Covea offered Mrs A in settlement of her claim.

Mrs A wasn't happy with this. The repairs costs are likely to be somewhere around £250,000-£300,000. So, she made a complaint to Covea.

Covea maintained their position, on the basis that the setting up of a cannabis farm was a malicious act and that was likely the cause of the fire in this case.

So, Mrs A brought her complaint to us. Our investigator looked into it and thought Covea's decision on the claim was unfair. She said the fire was almost undoubtedly unintentional, so it wouldn't be reasonable to call it a malicious act. And she asked Covea to re-consider the claim under the fire peril. The fire peril has no internal limits in the policy terms.

Covea disagreed and asked for a final decision from an ombudsman.

I agreed with our investigator that the complaint should be upheld. But I came to that conclusion for different reasons. I also thought Covea should compensate Mrs A for her trouble and upset.

So, I issued a provisional decision. This allowed both Mrs A and Covea a chance to provide further information or evidence and/or to comment on my thinking before I issue my final decision in this case.

My provisional decision

In my provisional decision, I said:

> "I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.
>
> There's no dispute here about the terms of the policy. Covea will cover damage or loss caused by fire and damage or loss caused by malicious acts, but in the latter case, the cover is limited to £10,000.
>
> I'll summarise Covea's arguments about this case. If I haven't quite done them justice, Covea will no doubt let me know in response to this provisional decision.
>
> Essentially, they say that, in law, damage or loss caused by a malicious act can include damage that wasn't directly intended by the perpetrator but arose as a result of recklessness on their part.
>
> In other words, if the setting up of a cannabis farm in someone's property is a malicious act, then the consequences of that act can be considered to be malicious.
>
> In this case, it was a malicious act to set up the farm and, although the individual(s) concerned didn't intend for the property to be burnt, the fire was nonetheless the result of the initial malicious act.
>
> This contrasts with our investigator's view. She said, in brief, that damage should only be considered malicious when it was the direct and intended result of the individual's actions.
>
> Covea go on to state that the fire in Mrs A's property was very likely the result of the setting up of the cannabis farm because it was very likely caused by the tenant manipulating the electricity supply in the loft.
>
> Covea have also provided reference to a previous decision by this service – from 2016 – which sets out that damage resulting from the setting up of a cannabis farm, even if not directly intended, can be considered to be malicious.
>
> I don't necessarily disagree with Covea's legal argument. And I don't disagree with the previous decision from our service that they referenced.
>
> Whilst all of the complaints we deal with are considered on their own merits, I think we'd usually say that if damage occurs as a direct result of the setting up of a cannabis farm, then it may be considered malicious damage, whether or not the consequences were absolutely intended by the perpetrator.
>
> A good example might be a wall collapsing (unintentionally) as a result of attempts to alter it to accommodate cannabis-growing paraphernalia.
>
> However, as things stand, I don't think Covea can use that legal argument to determine that Mrs A's claim was for damage caused by malicious acts. I'll explain why.
>
> First, the evidence about the cause of the fire is, at best, very unclear.
>
> The fire brigade who attended the incident did not carry out a forensic investigation into the causes of the fire. I don't know why that is that case, but it is.

The loss adjuster and/or forensic expert appointed by Covea spoke to the fire brigade and obtained their (informal) report. And I don't think it was unreasonable to conclude that the seat of the fire was in the loft and that there were plants (likely cannabis) growing in the loft.

However, the forensic expert – appointed by Covea – had this to say:

> *"…I consider it entirely plausible that the fire could have been caused by the actions of an individual in the loft, which might include smoking activities."*

He goes on to say that no formal fire investigation took place and that he is:

> *"…not aware that any physical evidence was identified to indicate as such (i.e., no physical evidence of electrical fault was found)."*

And he says:

> *"I do not consider that it is possible to say whether it is more likely that the fire was caused by either the equipment used to facilitate the growing of plants or the associated temporary electrical installation in isolation."*

He also says that he can't rule out a failure with the fixed, pre-existing wiring in the loft.

The expert concludes that it's likely the fire was caused in some way by the activity going on in the loft. But importantly, for me, he's unable to say whether the cause was an electrical fault caused by the setting up of the farm, an electrical fault in the existing wiring, or other activity such as smoking in the loft.

If Covea are to regard the peril in this case as malicious acts, they need to show, with some degree of likelihood, that the fire was caused by some alteration to the property brought about in order to set up a cannabis farm. And on the basis of their own forensic expert's evidence, I don't think they can do that.

Secondly, whilst I have no doubt about the credentials of the legal advice Covea sought on this case, I do have to point out that Covea's customers are not experts in case law on insurance matters or indeed, the legal definition of the term "malicious".

As Covea are aware, our role is always to consider what is fair and reasonable. And, when we consider customers entering into insurance contracts, we ask ourselves what it might have been reasonable for the customer to assume about the cover they were buying.

If there is ambiguity in the terms, we will usually say that the benefit of the doubt should go to the customer. The insurer writes the policy - and is the expert after all.

The policy terms, in this case, have no definition of the term "malicious acts". By contrast, Covea have fairly dense and technical legal advice stretching to several pages to show why an unintended consequence may be the result of a malicious act even if that consequence wasn't intended by a (reckless) perpetrator.

I have to ask myself, when Mrs A bought the policy, would she have known what Covea intended to be covered by the term "malicious acts" – and/or what they didn't intend to be covered? Unless she's a qualified lawyer or insurance professional (or has access to legal advice similar to that obtained by Covea), I very much doubt it.

> So, I don't think it's fair for Covea to put an undefined term in their policy documents – and later to rely on it to minimise a claim settlement – when that term needs several pages of legal advice to properly interpret.
>
> I understand what Covea's intention may have been. But I don't think that would be understood by their customers, as things stand in terms of what's said in the policy documents.
>
> And I have no doubt Covea could formulate that intention much more clearly – and in terms that could be easily understood by the customers – in their policy terms, should they wish to do so.
>
> So, in summary, I'm minded as things stand – and in the absence of any further information or evidence in response to this provisional decision – to uphold Mrs A's complaint. And to require Covea to re-consider the claim under the fire peril, in line with the remaining terms and conditions of the policy.
>
> I'm so minded because Covea have not established the likely cause of the fire and so can't attribute it to malicious acts. And because the policy terms are ambiguous and Mrs A may well have thought, when buying the policy, that incidents such as this would be covered under the fire peril.
>
> I'm also minded to require Covea to pay Mrs A £250 in compensation for her trouble and upset. She's spent more than a year with the worry of believing that Covea are not going to pay for the repairs to her property, for reasons that I don't think stand up (for the reasons I've set out above). Given what's at stake, the worry and distress suffered by Mrs A has been considerable.
>
> I know Covea have other concerns about the claim. And there may be a question about whether the property was underinsured.
>
> It's possible then that Covea will legitimately settle the claim for less than the full repair cost. It's not for me to get into that now, because those other matters haven't yet been fully considered by Covea – or indeed Mrs A.
>
> However, but for what I'm currently minded to say were Covea's errors in the handling of this claim, Mrs A would have known the final outcome much sooner – and the period of stress for Mrs A would have been much shorter. And so, I think compensation for her trouble and upset is justified."

So, I concluded that I was minded to uphold the complaint and to require Covea to re-consider the claim under the fire peril – and pay Mrs A £250 in compensation for her trouble and upset.

The responses to my provisional decision

Mrs A didn't respond to my provisional decision.

Covea *did* respond, but only to say they had nothing further to add. They didn't say whether they agreed with the proposed outcome or not.

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 haven't been given any reason to change my mind by either party to his case. And the outcome therefore remains the same.

I'm issuing this final decision now to make the outcome legally binding, should Mrs A choose to accept it.

Putting things right

I set out in my provisional decision what I was minded to require Covea to do to put things right for Mrs A.

As I say, there's no reason for me to change that outcome, which is set out again in the section below.

My final decision

For the reasons set out above and in my provisional decision, I uphold Mrs A's complaint.

Covea Insurance plc must:

- re-consider the claim under the fire peril; and
- pay Mrs A £250 in compensation for her trouble and upset.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs A to accept or reject my decision before 19 December 2024.

Neil Marshall
Ombudsman