

The complaint

Ms B and Mr C are complaining that Covea Insurance plc avoided their commercial property insurance policy and declined a claim they made for a leak to their roof.

Mr C has acted on behalf of Ms B and himself throughout this claim and complaint.

What happened

In May 2022 Mr C contacted his broker to report a leak to his flat roof and asked if this was covered under the commercial property insurance policy it had arranged for him and Ms B. The broker said it would contact Covea – the insurance provider – to make further enquiries as it said it wasn't aware the roof was flat.

Covea investigated the claim and, in October 2022, it wrote to Mr C to say it was avoiding the insurance policy because it said it wouldn't have insured the property had it known the roof was 60% flat. However, it acknowledged it had taken a long time to make this decision and offered to pay £500 in compensation. Mr C didn't think Covea's decision was fair so he referred his complaint to this Service.

Our investigator upheld this complaint as he said Covea hadn't shown it would've acted differently had it known about the flat roof. So he thought it should remove any record of the policy's avoidance and reconsider the claim.

Mr C accepted the investigator's opinion. However Covea didn't respond, so the complaint was passed to me to decide.

Since then, Covea responded to provide evidence that it says shows it wouldn't have insured Ms B and Mr C had it known the true nature of the roof's construction. So the investigator then changed his opinion. He thought that the true nature of the roof hadn't been presented to Covea and he was satisfied Covea wouldn't have provided the insurance had this been done. So he didn't think it was unfair for Covea to have avoided the insurance policy.

Mr C didn't agree with the investigator. He said the roof was a mansard roof and not flat. So he didn't think agree he'd provided incorrect information.

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 law in this case is the Insurance Act 2015. This required Ms B and Mr C to make a fair presentation of the risk to Covea so that it had enough information to assess the level of risk it was willing to provide and on what terms.

And if they fail to do this, Covea has certain remedies provided the failure to make a fair presentation is – what the Insurance Act describes – as a qualifying breach. For it to be a

qualifying breach Covea has to show it would have offered the policy on different terms or not at all if Ms B and Mr C hadn't made the breach.

If the qualifying breach was reckless or deliberate and Covea can show it would have at least offered the policy on different terms, it's entitled to avoid the policy. If the breach wasn't deliberate or reckless, then to avoid the policy, Covea must show it would not have offered the policy at all if it wasn't for the breach.

If Covea is entitled to avoid the policy, it means it doesn't have to deal with any claims under it. If the qualifying breach wasn't deliberate or reckless and Covea would have charged a higher premium if the consumer had made an actual fair presentation of the risk, it will have to consider the claim and settle it proportionately if it accepts it.

Covea doesn't think Ms B and Mr C acted deliberately or recklessly. So, in essence, there are two questions that I first have to ask to decide whether Covea's decision was fair and reasonable:

1. Did Mr C fail to make a fair presentation of the risk; and, if so
2. Has Covea shown it wouldn't have provided the insurance policy had it been given a fair presentation of the risk?

I shall consider each point separately.

Fair presentation of the risk

Ms B and Mr C took out the insurance policy through a broker. So it was the broker's responsibility to carry out the fair presentation of the risk on their behalf. However, I'm only considering Covea's actions in this case. Ms B and Mr C will need to refer to the broker directly if they have any concerns about anything the broker may or may not have done.

In this case, Covea has set out in the statement of fact the information it asks. The statement of fact says:

"The Property is of "standard construction" having walls built only of brick, stone or concrete and a roof constructed of slate, tiles, concrete or metal."

The roof was not entirely constructed of slate, tiles, concrete or metal as it's partly constructed by felt and timber, so I don't think there Ms B and Mr C made a fair presentation of the risk.

Has Covea shown it would have acted differently?

Covea has explained to Ms B and Mr C that it doesn't provide insurance where the roof is more than 50% flat. Mr C disputes that the roof is more than 50% flat and he says it's a mansard roof which isn't fully flat. However, the relevant issue isn't whether the roof was flat or not, but whether the Covea would have provided the insurance had it known the true nature of the roof's construction – it's the construction of the roof that's in question here.

Covea has provided me with confidential, business sensitive information to explain how it assesses risk. I'm afraid I can't share that information with Ms B and Mr C, but I've considered it carefully. When doing so, insurers take into account a large number of factors. And I'm satisfied that, had Ms B and Mr C explained that the roof wasn't of standard construction – i.e. that it was not entirely constructed of slate, tiles, concrete or metal as it's partly constructed by felt and timber – Covea has shown that it wouldn't have provided the insurance policy.

Can Covea avoid the insurance policy?

Ultimately, given I'm satisfied that Ms B and Mr C didn't do a fair presentation of the risk to Covea and Covea has shown it wouldn't have offered the policy if Ms B and Mr C hadn't made the breach, it would be considered a qualifying breach under the Insurance Act 2015. As I said above, Covea doesn't consider the qualifying breach to be deliberate or reckless, but it has shown it wouldn't have provided the insurance if the breach hadn't taken place. The Insurance Act 2015 sets out that Covea can avoid the insurance policy in these circumstances. So I can't say that Covea has acted unfairly.

However, I also recognise that Covea has caused significant delays and confusion in the handling of this claim. Covea has recognised this and offered £500 in compensation. This is in line with what I would have awarded, so I think it's fair.

My final decision

For the reasons I've set out above, it's my final decision that I think Covea Insurance plc's offer to pay £500 in compensation is fair. I make no further award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms B and Mr C to accept or reject my decision before 2 December 2023.

Guy Mitchell

Ombudsman