

The complaint

Mr H complains Covea Insurance Plc unfairly avoided his landlord insurance policy and declined his storm claim.

Mr H has been represented for the claim and complaint. For simplicity I've referred to the representative's actions as being those of Mr H. Similarly I've referred to the actions of Covea's agent's as being its own.

What happened

In 2015 Mr H took out a Covea landlord insurance policy for a property he let out. The policy renewed each year. Its final renewal was in June 2021. In February 2022 Mr H claimed for storm damage against that policy. During the claim Covea discovered the property had a felt roof. It said this hadn't been declared when Mr H's policies were taken out. It said if it had been, it wouldn't have offered any cover. So it avoided (treated as though had never existed) each policy back to 2015 and tried to refund all the premiums. As this meant there was no cover in place, it declined the storm claim.

Covea responded to a complaint from Mr H. It didn't change its position. Mr H wasn't satisfied so came to this service. He says he declared the roof was flat but couldn't be expected to know it was felt. He also complains that a delay in decision making by Covea resulted in additional damage (up the 50% of the total damage) to his property. Mr H wants Covea to pay the claim, reimburse legal fees, reinstate the avoided policies and pay compensation for the delay in coming to its decision.

Our investigator felt Covea's decision to avoid the policies, refund the premiums and decline the claim was fair and reasonable. He also said whilst Covea could have made its claim decision earlier he wasn't persuaded the delay was responsible for any additional damage. Mr H didn't accept that outcome, so the complaint was passed to me to decide.

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 realise this will be frustrating for Mr H, but having done so, I'm not upholding his complaint.

As this is an informal service I'm not going to respond here to every point or piece of evidence Mr H and Covea provided. Instead I've focused on those I consider to be key or central to the issue. But I would like to reassure both that I have considered everything provided.

The first policies were taken out in 2015 and 2016. It's commercial insurance, so the Marine Insurance Act 1906 applies. After that, the Insurance Act 2015 (IA15) is the relevant legislation. Our investigator felt it was fairer, because of Mr H's circumstances, to apply the principles of Consumer Insurance Disclosure and Representations Act 2012 (CIDRA). I agree it's reasonable to do that for the initial two policies – pre-IA15. For the policies after

that, for completeness, I've considered the principles of both CIDRA and IA15. However, my outcome under any of the three pieces of legislation is the same – that it was fair and reasonable for Covea to avoid the policies.

An insurer can take certain action, like avoiding a policy, if a qualifying misrepresentation has been made in line with CIDRA. The first thing to consider is whether there a misrepresentation.

Covea's provided screen shots of the 2015 online sales journey. It says Mr H was asked to agree or disagree to this statement.

'The building is of standard construction. This means it has:

- *brick, stone or concrete walls*
- *timber or concrete floors*
- *a slate, tile or concrete roof.'*

Mr H agreed his property is of standard construction. Covea says that's incorrect as the roof isn't made of any of the three listed materials – instead it's felt. It says if he had correctly answered '*not agree*' he would have been presented with a list of alternative materials. That list included the materials for Mr H's roof - felt on timber. There's also been reference to 'mineral felt' being the correct material. Covea says in the absence of that option '*none of the above*' should have been selected.

I've considered Mr H's point that as the property is of standard construction the question asked is unclear. I might agree with him if he was only asked if it was of '*standard construction*'. But instead a definition, for '*standard construction...*' was provided. For the roof material it requires '*a slate, tile or concrete roof*'. The building's roof material wasn't one of those listed – so for the purposes of the question and given definition it wasn't of standard construction. So it's fair to say there was a misrepresentation with the answer '*I agree*'.

But for Covea to take any action, like avoid the policy and decline a claim, there would need to be a qualifying misrepresentation. For that a few things are required. Firstly there must have been a failure to take reasonable care not to make a misrepresentation. CIDRA sets out several things to be considered when deciding if this happened.

One is how specific and clear the questions asked were. Another is any relevant explanatory material. I've considered Mr H's various points about flat roofs and standard construction. But as I've said the question provides specific criteria for roof material considered as 'standard construction'. I think it's clear and specific.

Mr H' said he's not knowledgeable about construction so couldn't be expected to know the roof material wasn't one those listed. I might not expect a reasonable consumer to be aware of hidden, disguised or less significant material. But I would be reasonable for them to be aware of the main materials used on their property – or if they weren't to take reasonable steps to find out.

In addition Mr H received a pre-purchase home survey that referred to the felt. I accept that material couldn't be viewed from the ground. But if he wasn't sure he could have made enquiries or inspected it himself. So it's fair to say Mr H failed to take reasonable care not to make a misrepresentation.

But the principles of CIDRA also require an insurer to show that without the misrepresentation it wouldn't have offered cover - or would have only done so on different terms. Covea's provided underwriting criteria to show it wouldn't have offered cover, in June

2015, if Mr H had answered '*not agree*' and had said the roof was constructed with felt. So I'm satisfied there was a qualifying misrepresentation.

As far as I'm aware the process for taking out the 2016 to 2021 policies differed. A renewal policy statement and statement of fact was provided to Mr H for these years. I've seen the documents provided for each year 2015 to 2021.

They all explain Mr H should get in touch if any changes are required. The statement of fact requests that Mr H review the facts given. They set out that the cover is based on the information he's provided. Mr H is warned he may not be covered if any of the facts are not correct. Immediately below is a series of questions or statements.

The first question is the same as that set out above for 2015. A pre-populated '*I agree*' is given. Mr H didn't make contact to change that. For the same reasons I've set out above it's reasonable to say Mr H failed to take reasonable care not to make a misrepresentation. For the same it's fair to say he breached the IA15 duty to make a fair presentation of the risk – he didn't disclose everything he ought to know. I'd say the same for the Marine Act's requirement for the insured to disclose everything they should know.

The roof being felt, rather than slate, tile or concrete, would have been revealed by a reasonable search of information available to Mr H – including the survey or by arranging a roof inspection.

It's worth noting that the avoidance with the most significance for Mr H is the June 2021 renewal. That's the policy his claim is made against. He's shown an invoice for a roof repair from a few months earlier. It lists '*repair felt roof*'. So even if he was unsure of the roof material earlier, this would have informed him ahead of that renewal.

Mr H has said he provided Covea with enough information about the roof for it to realise it should make further enquiries. But it had asked him about the roof material. It's reasonable for it to rely on the information he had given in response.

Covea's shown, for each of the renewals, that had it been given the correct information it wouldn't have offered cover. So having considered the principles of CIDRA, IA15 and the Marine Act, I can't say its decision to avoid the 2016 to 2021 policies, refund the premiums and decline the 2022 claim was unfair.

Mr H feels Covea is responsible for additional and unnecessary damage to property. In summary he says repairs were delayed for around two months while he waited for Covea to make its decision on the claim. He complains he received no emergency assistance to prevent water continuing to enter the property. He feels the repairs should have taken around three weeks. He's said Covea's failures here resulted in additional damage to the property and loss of rental income.

I've found it was reasonable of Covea to avoid the policy the claim was made against. So I can't consider its actions against the terms of the policy. But I can consider if it acted fairly and reasonably. Even if it had told Mr H of the avoidance of the policy on first day of the claim Mr H would have needed to find alternative funding for the repairs and loss of rent. So I can't fairly require Covea to cover those – unless I felt additional or unnecessary loss resulted from it acting unreasonably. I've considered if any delay in telling him of the avoidance resulted in any additional loss.

I can see Covea took until around June 2022 to formally tell Mr H of the avoidance and decline. That's longer than I'd expect. However, when Mr H made the claim in February 2022 Covea said, due to demand, it was unable to carry out emergency repairs. So

it asked Mr H to get these carried out by his own contractors – unfortunately due to workload it was a few weeks until they were unable to make the property watertight.

This means Mr H was in the same position he would have been if Covea had avoided the policy at the very outset of his claim – he would have had to arrange the repairs himself. So I can't see that any delay in it making that decision has caused further damage to the property.

I should also add that even if I accepted Covea was responsible for some delay in making the property watertight I couldn't fairly, based on the evidence provided, say it was responsible for additional damage. Mr H explains in an email, dated only five days after the claim, that water had now penetrated all the floors and ceilings had now collapsed. Considering the short time from the initial loss it would be very difficult to separate out any additional damage Covea could be said to be responsible for.

So for the reasons given above I'm not going to require Covea to cover any repair costs or pay for any additional damage.

My final decision

For the reasons given above, I don't uphold Mr H's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 29 August 2023.

Daniel Martin
Ombudsman