

The complaint

W and W, a company, complain about a claim they made on their Covea Insurance plc Tradesman & Professionals insurance policy.

In this complaint W and W are represented by Mr E, but for ease of reference I shall refer to all submissions as being W and W's own.

What happened

W and W applied for planning permission to develop a property. In response to that application, a neighbour objected to the development because they thought it would interfere with their right to light. W and W amended their plans to see if they could alleviate the neighbour's concerns, but the neighbour remained unhappy and threatened to bring a claim against them.

W and W instructed their own Solicitors to help them with this problem and later a surveyor. The surveyor took the view that there was no actual infringement to the neighbour's right to light at that time. In response to this the neighbour said there was a hypothetical infringement they were looking to protect themselves against if the development proceeded as intended.

Following this W and W asked Covea for cover to help them deal with the claim the neighbour was seeking to make. In response, Covea said there was no insured event. The did however later change their position and accepted that there was a claim that was capable of cover under the policy.

In doing so they said the claim should have been reported to them in August 2022 and W and W's failure to do so meant the late notification had prejudiced their position. Covea said this was because they could have instructed their own panel Solicitor who would have dealt with the claim and most likely settled it at a much lower cost to them. The fact that they lost that opportunity meant there was no cover available. Despite this they made an offer to settle W and W's claim.

The initial offer was for £25,000 inclusive of W and W's costs, a contribution to the neighbour's costs and damages payable to the neighbour. W and W didn't agree so Covea reviewed their position. This time they said they weren't liable to pay anything because W and W didn't obtain their consent before incurring fees and expenses.

W and W are unhappy with the position Covea have taken. They said the offer made to them was before matters concluded with the neighbour so didn't take account of everything they'd incurred. The dispute has now come to an end, and they say they have incurred around £31,000 in paying a settlement to the neighbour, legal costs of around £31,000, and about £52,000 worth of their Director's time in dealing with the matter. Because of this they referred their complaint to the Financial Ombudsman Service.

Our investigator considered W and W's complaint and concluded it shouldn't be upheld. He said the dispute started before cover was in place and the policy didn't provide cover in

these specific circumstances. As a result, the investigator said the offer made was more than Covea needed to do, so it wouldn't be fair to ask them to pay W and W any more than this. W and W didn't agree so the matter was passed to me to determine.

I issued a provisional decision in December 2023 in which I said the following:

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so, I don't uphold W and W's complaint. This is why.

The starting point is the policy terms. They say:

"We will cover You for loss Damage or liability or pay other benefits which fall within the operative Sections of Your Policy... provided that the loss, Damage or Injury which gives rise to the claim occurs ... during the Period of Insurance and is in connection with the business".

In making their submissions to the Financial Ombudsman Service, Covea have said that the dispute was ongoing before the policy started and as such, they weren't obliged to deal with the claim at all. I've considered this. W and W's policy with Covea didn't engage until May 2022. There was a previous policy in place, but this was cancelled in June 2021. So, there was a period of 11 months where W and W didn't have cover at all.

The issue I need to determine here is whether the loss, damage or injury which gives rise to the claim occurs during the period of insurance.

The policy doesn't define loss, but it does define "Damage" and "Injury". For "Damage" the policy says:

"Accidental physical loss, destruction or Damage unless otherwise excluded."

Whilst "Injury" is defined as "Bodily Injury and includes death, illness, disease, nervous shock, mental injury, mental anguish or psychiatric illness or sickness but excluding defamation."

As a general rule, you take out insurance cover for something which may or may not happen in the future. So, in my judgment, it isn't unfair in principle for an insurer to exclude claims for things which started to happen before cover began. There are special policies available which are designed to cover such disputes, but this isn't one of them.

The first indication of a potential claim was in September 2021 when the neighbour objected to the project on the basis it would interfere with their right to light. In December 2021 they instructed Solicitors to send a letter before action to W and W.

Given the definitions above, I think it's unlikely that the claim for proposed development amounted to either Damage or Injury. But I do think it amounts to loss. That's because the claim that was being made was for a loss of a right to light. In this case the loss needed to occur during the period of insurance. There was however no physical loss in that the development hadn't been built. The claim being made was for a loss that would have occurred if the development went ahead. But I don't think that matters. The fact is the claim was for loss and that claim was being made at a time where no cover was in place at all.

W and W have argued that initially the neighbour was initially claiming for an actual infringement to their right but then later said the infringement was hypothetical. Again, I don't think this matters. The fact is that loss was being claimed throughout- whether that loss was

actual or yet to come. The policy doesn't require the loss to be proven or conclusive- just that it will cover W and W for loss provided that the loss which gives rise to the claim happens during the period of insurance. In this case the loss amounted to a claim for a hypothetical infringement of the neighbour's right to light together with costs. And in my view, the earliest time the claim for loss was made is the determining factor in why I'm not upholding W and W's complaint. Even if I discount the neighbour's objection to the planning permission application, the initial letter before action was sent to W and W, five months before cover was in place. As such I don't consider the claim to be covered.

It follows that Covea didn't need to offer W and W anything in respect of their claim and the fact that they did so was more than I'd expect them to do. As such I don't think it's reasonable to require them to pay W and W anything more.

Because I've determined that this isn't a claim that was capable of cover, I haven't gone on to consider the other issues Covea relied on to decline the claim at different times because they don't make a difference to the conclusions I've reached. As such I won't be addressing those reasons in this decision."

I asked both parties to provide me with any more comments or evidence in response to my provisional findings. Neither have responded.

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.

Given the parties haven't provided me with any further comments or evidence in response to my provisional findings, I remain of the view that W and W's complaint shouldn't be upheld for the same reasons set out in my provisional decision.

My final decision

I don't uphold W and W's complaint against Covea Insurance plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask W and W to accept or reject my decision before 7 February 2024.

Lale Hussein-Venn
Ombudsman