

The complaint

Mr and Mrs C complain that Covea Insurance plc (“Covea”) have unfairly declined their subsidence claim and voided their residential property owners policy.

Any reference to Mr and Mrs C or Covea includes respective agents or representatives.

What happened

The background of this complaint is well known between parties, so I’ve summarised events.

- In August 2022 Mr and Mrs C took out a residential property owners insurance policy on a rental property they own.
- In November 2022 Mr and Mrs C say they noticed cracking at the property and made a subsidence claim to Covea, providing it with a structural engineer’s report (“SER”).
- In April 2023 Covea rejected the claim on the basis it said there was pre-existing damage to the home, and Mr and Mrs C had failed to make a fair presentation of risk – including cracking to the property and its upkeep and maintenance. It said it would not have insured the property had these facts been disclosed, so it said a misrepresentation had taken place, but it would refund Mr and Mrs C’s premiums.
- Mr and Mrs C say Covea hadn’t relied on appropriate evidence. They said the cracking had likely worsened over the time Covea was investigating, and they’d lost rental income as a result.
- Covea considered a complaint and awarded £50 compensation for delays. But stood by its outcome of the claim. It said images of the home from up to 8 years prior showed damage to the outside of the property. And it said the SER highlighted the property wasn’t maintained or redecorated on a regular basis.
- One of our Investigators looked into what happened and didn’t uphold it, saying:
 - Mr and Mrs C had failed to make a fair presentation of risk when taking out the policy – reflected in the questions asked by Covea that were inaccurately answered.
 - Covea had demonstrated it would never have offered cover if the condition of the property had been fairly presented.
 - Under the relevant Act, Covea was able to void the policy as it had done.
 - £50 was sufficient compensation in light of the delays from Covea.
- Mr and Mrs C disagreed.
 - Online images relied upon only show cracking some six years prior to the inception of the policy. So, this should not be relied upon.
 - The questions answered were accurate at the time – and there was no cracking when the policy was taken out.
 - The property was maintained and the SER comments had no bearing on a subsidence claim so should not be relied upon by Covea.

- The Investigator looked again. He said he had taken into account online images, but mainly relied on the SER comments and images provided by Mr and Mrs C – quoting many parts of the report that he said indicated significant cracking and issues across the property. The onus sat with Mr and Mrs C to present the material facts – which he believed they had failed to do.

Mr and Mrs C still disagreed, saying they would've had no expertise in whether the cracks present were subsidence related. And asked for an Ombudsman's decision. So, the matter has been passed to me.

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.

Having done so I'm not upholding this complaint. I'll explain why.

- Under the Insurance Act 2015 a policyholder has a duty to make a fair presentation of risk to an insurer when taking out the policy. This means they have to disclose:
 - everything they know, or ought to know, that would influence an insurer's decision to insure a risk and on what terms; or
 - enough information to put an insurer on notice that it needs to make further enquiries about potential material circumstances.
- In this case, Covea says Mr and Mrs C failed to present a fair presentation of risk.
- When determining if Mr and Mrs C met the above outlined obligations I've considered the questions put to Mr and Mrs C. This includes a statement which states:

“Neither this or any adjacent property show any visible signs of cracking”

This was answered “Agree”. Mr and Mrs C have since said they stand by the accuracy of this statement as there was no cracking when the policy was taken out.

- So, I've looked at the available evidence. The SER provided by Mr and Mrs C. This was sent in mid-November 2022 and discusses hairline cracks on all walls including doors and window openings, as well as ceilings of front rooms and elsewhere. It also discusses significant vertical and diagonal cracking in external basement walls and elsewhere. I've been given no other reports that undermine this and from the photos I've been provided it's clear the damage is extensive.
- Mr and Mrs C have indicated they would've been in no position to determine if such cracks were subsidence related. But the question doesn't discuss subsidence related cracking – it specifies visible cracking. And here the evidence supports that there was cracking across the property, and in places these cracks were significant. So, this doesn't change my mind.
- Given the timeframe between the policy being taken out and this report being completed, and the extent of the damage described which is clearly extensive, I'm satisfied Covea's position that the damage was present when the policy was taken out is reasonable. And simply, that the question related to visible cracking was most likely not answered correctly by Mr and Mrs C in light of the evidence available as a result. So I'm persuaded a misrepresentation has taken place and Mr and Mrs C did not present a fair presentation of risk as they were required to.
- Covea has provided this Service with evidence that shows it wouldn't have insured the property if it had known about the cracking. So, I'm satisfied the

misrepresentation in question is a qualifying one that would've impacted Covea's decision to insure them.

- Other evidence has been discussed – such as online records, and while I've considered all of these I'm focused on the SER as I'm satisfied this is sufficient in Covea fairly reaching its decision to void the policy.
- In line with the relevant law I would typically then have to consider whether the qualifying breach was deliberate, reckless, or careless. This is relevant as it will determine what remedies are available to Covea – and in essence whether it is able to retain premiums. In this case Covea has returned the premiums to Mr and Mrs C so I see no benefit to making further findings on this matter. So I'm satisfied Covea has fairly voided the policy and handled this in line with the relevant law.
- As I'm satisfied Covea has fairly voided the policy, the outcome of the claim has also now fallen away. Covea has made an offer of £50 to account for delays in reaching its outcome.

My final decision

For the above reasons, I'm not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C and Mr C to accept or reject my decision before 20 September 2023.

Jack Baldry
Ombudsman