

The complaint

H complains Covea Insurance plc unfairly declined a claim against its commercial insurance policy.

H thinks the claim should be met.

What happened

H's property flooded in August 2020, so a claim was raised. It said severe localised flooding occurred causing damage to several other properties.

Covea considered the claim but declined it. They say H reported water entered the property through a well inside it, causing damage. They referred to the policy terms and said cover for damage caused by a change in the water table is excluded.

Covea also say H should have disclosed there was a well inside the property. As had it done so, they would have applied a term that excludes cover for water damage in relation to the well.

H didn't agree. It says the claim should be met as it's been demonstrated severe flooding occurred, which it thinks rose above the threshold of the doors and entered through a drain. It says, whilst it initially reported water could have entered through the well, that wasn't the case.

H complained, but Covea maintained their position. They agreed local flooding occurred but didn't think the claim should be met. So, H brought a complaint to our service.

An investigator here considered the complaint but didn't recommend it be upheld. As such, H asked for an ombudsman to decide, and the case was passed to me for a decision. After the complaint was passed to me, H provided further evidence from an independent engineer, amongst other things, which I considered as part of my provisional decision, I issued on 3 March 2022. I've set out my provisional decision below.

'What I've provisionally 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.

A key finding I must make is whether I think Covea declined the claim fairly. Having considered things, I currently don't think they have. I'll explain why.

Although H reported water had entered the property through the well, I'm not persuaded that's what happened here on balance. I accept why Covea relied on in part H's initial report of what happened, but I currently find the independent report given by H most persuasive.

For clarity, the report says:

“Upon arrival at the property, we encountered water throughout the shop to a level of up to 4 inches deep in the lower level areas.

The business owner had initially assumed the flooding had been caused by water rising in the well, but we concluded this to be an impossibility due to 2 key factors:

- 1) The well opening was completely sealed shut with 1.5” thick glass cover and was watertight due to having being sealed in with sanitary grade silicone. The lid was later cut out to inspect the well overflow, but the sheer amount of water found in the building that morning could not have been caused by water ingress seeping through any potential gaps.*
- 2) The well also contained an above mentioned 1” overflow pipe, which was installed to drain the well into the main drainage pipe in the event the water level rose too high. We also tested the overflow to ensure there was no blockage.”*

The report goes on to say the lid was removed during the visit, and water had not breached the level of the overflow pipe, which was around three courses of brickwork from the opening. The engineer says, in their expert opinion, it’s an impossibility that water entered through the well. Rather, flooding of H’s property was due to either an excess of surface water, or due to drains backing up.

I’m more persuaded in this case by the expert evidence over the initial report of what H thought had caused the damage when it contacted Covea by phone.

As such, I haven’t been satisfied Covea declined the claim fairly. I currently think H has demonstrated localised flooding occurred, and the terms relied on by Covea to decline the claim were applied unreasonably. It appears more likely H’s property was flooded – which isn’t disputed by either party – due to an excess of surface water flooding and/ or the drains backing up. Therefore, I currently intend to direct Covea to pay the claim.

I’ve also considered whether H should have disclosed the well located within the property, and the steps Covea say they would have taken had it done so.

H had a duty to make a fair presentation of risk, which means it had to disclose enough information to enable Covea to make further enquiries about potential material circumstances.

Covea says had the well inside the property been disclosed, they would have applied a term that excludes damage due to an ingress of water in connection with the well. They would not however, have required H to pay an additional premium. Therefore, I’m currently satisfied this is a qualifying misrepresentation. I say this because I think Covea has reasonably demonstrated that, had they been made aware of the well, they would have done something different.

However, for the reasons given above, I don’t think this qualifying misrepresentation is material to the loss H reported here. I haven’t seen strong persuasive evidence from Covea to show H’s property flooded because of water ingress in connection with the well, or a change in the water table. Rather, I’m more persuaded by H’s evidence, that flooding occurred due to excess surface water and/ or by drains being backed up. Therefore, as mentioned above, I currently think Covea should pay the claim.

My provisional decision

My provisional decision is I uphold this complaint. I intend to require Covea Insurance plc to pay H’s claim.’

Responses to my provisional decision

H accepted my provisional decision, but Covea didn't.

Covea raised concerns regarding the new evidence provided by H on the most likely cause of damage. They say H raised an entirely new circumstance having initially reported that the cause of damage was the well inside the premises. They also say H carried out the conversion of the premises and made the well a feature, and therefore ought to have known, when raising the claim, the well was sealed, and this wasn't the cause.

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.

Covea's position on the matter was H failed to disclose a well inside the premises, which allowed water to enter and cause damage, due to a rise in the water table. H did initially say it felt the well was the cause, so I understand why Covea arrived at this decision.

That said, along with the independent report Covea raised concerns over, H also contacted the Environmental Agency who said the incident that occurred in the location of H's premises in August 2020 was due to thunderstorms and intense heavy rainfall, that led to surface water flooding – not a rise in the water table.

This information in my view strengthens the evidence presented by the independent engineer that the well wasn't the cause of damage. Rather, it's more likely than not, H's premises flooded due to excess surface water and/ or the drains being backed up. H says water breached the threshold of the doors and entered through a drain which, on balance, I find plausible. I say this given the volume of water reported both inside the premises and shown within photographs provided by H of the local area, and the comments from the Environmental Agency and the local council.

I understand Covea's concerns regarding the time between the incident occurring and H providing the independent report – and what H had initially reported. However, I've not seen any strong supporting evidence from them to discredit the contents of the independent report, or the expertise and credibility of the engineer.

I must explain my provisional decision wasn't based on the consideration of this independent report in isolation. I also looked at the dimensions of the well, amongst other things.

This shows it was designed with an overflow pipe underneath the 1.5 inch glass lid the independent engineer says was sealed and effective at the time of their inspection, to take water out and away from inside the well should the water level rise. I've also seen photographs of the well with the lid appearing to be sealed when the premises flooded, and after it was said to have been removed for inspection, which shows the location of the overflow pipe.

The engineer says they checked the overflow pipe and found this to be in normal working order, and in any event, the water inside the well hadn't breached the level of the overflow pipe. And in their expert opinion, the volume of water found within the premises could not have come from water seeping through any potential gaps between the thick glass and silicone – they say it was sanitary grade silicone.

Overall, I accept this is a finely balanced case. And part of my consideration was the initial information provided by H to Covea. I do however find there to be more persuasive evidence that severe localised flooding – which isn't disputed occurred – was the cause of the damage. I remain more persuaded that H's premises flooded due to an excess of surface water and/ or by the drains backing up.

Putting things right

Having considered all the information presented by both parties following my provisional decision, I remain that Covea should pay H's claim.

My final decision

My final decision is I uphold it. I now require Covea Insurance plc to pay H's claim.

Under the rules of the Financial Ombudsman Service, I'm required to ask H to accept or reject my decision before 12 May 2022.

Liam Hickey
Ombudsman