

The complaint

Miss C complains that Covea Insurance plc has voided (cancelled back to its start date) her contents insurance policy and declined to consider her claim for damage caused by an escape of water.

What happened

Miss C took out a contents insurance policy with Covea in July 2019. In October 2019 she made a claim to Covea after her washing machine leaked a substantial amount of water in her flat. Covea proceeded with the claim and, during the validation process, Miss C mentioned that she had had a major flood loss in either 2015 or 2016 (she was unable to remember which) whilst she had contents insurance with another insurer (H). Miss C said that had resulted in the loss of many of her possessions.

Covea appointed a drying expert that assessed the contents for damage. Some of Miss C's damaged contents were deemed 'beyond economic repair' (BER). A list was drawn up. Miss C asked that some of those items were left behind in her flat but others were removed in good faith by Covea and, ultimately, disposed of. Covea paid Miss C an amount (£1,250) on account so she could replace her damaged mattress and bedding.

Due to poor health, Miss C was unable to assist Covea with the value/make/models of the damaged items. So, as part of the validation process, Covea contacted H to see if it could assist with providing information about the items that it had replaced as part of the flood claim a few years earlier.

During its investigations it came to light that Miss C had had her previous policy with H voided for fraudulent activity and had also failed to declare to Covea a number of other claims she'd made. Covea told Miss C that it intended to investigate these claims further; Miss C said she was happy for it to contact H.

H told Covea about five claims Miss C had made since October 2016. It also said it had voided Miss C's policy because it'd been able to show that the last claim had been made fraudulently. H said it'd sent a letter (by recorded delivery) to Miss C explaining that it was voiding her policy and why. Shortly after H conveyed its decision to Miss C she made a complaint about it but it then heard nothing further.

Covea checked Miss C's policy documents and noted that she'd taken the policy out through a broker and had been asked about how many claims she'd had in the last five years; she said she had had two claims. It also noted that she'd answered 'no' to the question about having any previous policies cancelled or voided.

Covea wrote to Miss C in November 2020 to tell her that had discovered that she'd had previous claims that she hadn't told it about and a policy previously voided. It said that had this information been disclosed to it at the time the policy was applied for then it would've declined to cover Miss C. For this reason, Covea said it had decided to void her policy from inception and treat it as though it never existed meaning her claim would be considered no further. It also said it'd arrange for her premiums to be refunded.

Miss C complained to this service. She told our investigator that she could have lived with her water damaged items if she'd really had to but now, because Covea had disposed of them, she couldn't get them back nor was it paying her anything towards them. She said it

had paid her £1,250 but the total value of the goods Covea had disposed of was £20,000. Miss C also explained that because of her health issues, and the medication she took, she got confused with details and recollections.

Our investigator looked into Miss C's complaint and said that he'd listened to the sales call from the broker and was satisfied that Miss C had made a 'qualifying misrepresentation' that allowed Covea to void her policy. But he said he couldn't agree with Covea that the misrepresentation had been deliberate or reckless, rather he thought the evidence indicated it was careless. That being the case, he said that it must return her premiums. Our investigator said that Covea had told him it'd asked the broker to refund her premiums and that it'd said that it hadn't passed the refund onto Miss C because there were some premium arrears she owed it, so it'd offset the refund against them.

Our investigator went on to consider Miss C's complaint about her BER items and he said that although Covea had acted in good faith when it removed and disposed of the damaged items, if it hadn't done so, they could've been returned to Miss C. So he recommended that Covea pay Miss C a sum equivalent to what it would've paid her if the claim had gone on to be successfully settled minus the amount it'd already paid for the mattress. Whilst he noted that Miss C said the items that'd been removed were collectively worth about £20,000 he said there was no evidence provided in support such a valuation. Our investigator said Covea should pay the average value of the items disposed of.

Covea disagreed with our investigator's findings. It said that whilst it sympathised with Miss C's health issues and had done everything it could to support Miss C throughout, it thought the correct decision had been taken to void the policy. It said Miss C had benefitted from an interim payment – to which she wasn't entitled as the policy had since been voided. Covea said the refund was up to the broker to pay but it also said there was some confusion around whether the broker had cancelled the policy (presumably for non-payment of premiums) prior to Covea communicating the voidance. It said that if it was the case that the policy had been cancelled then it was unlikely it would issue a refund if Miss C owed it a debt. It also said that if the policy had been cancelled before Covea notified it of the voidance then the only voidance Miss C would need to declare going forward was H's.

In respect of the BER items, Covea said that whether the claim was paid or not, Miss C would never have been able to use these items and would've had to have replaced them at her own cost. So, it said, it was unfair to be asked to pay for items which it had not been paid to cover (because of the voidance).

Our investigator looked at what Covea had said but wasn't persuaded to change his mind. He said that potentially, Miss C could've re-used some of the items if they'd not been disposed of. He said that unless Covea could show they were all unusable at the point of disposal, then Miss C had been disadvantaged.

Covea went back and looked at the claim again and found an email from its drying experts containing a list of BER items left on site at Miss C's request (five items in all). It also said that even if it'd not covered the claim then the BER items would've been disposed of by Miss C as they were no longer fit for purpose. It said if Miss C now claimed she would've made use of some of the items then why did she agree with the BER list before the disposal.

Covea also said that there was evidence (in the form of a phone call between Miss C and the broker) that indicated Miss C was selective with the information she was providing to the broker which, it said, indicated she was acting either deliberately or recklessly in the way she presented her claim and insurance history. It said it couldn't accept Miss C's point that she was unable to disclose H's voidance because she knew nothing about it because it was clear, from the fact she'd raised a complaint with H about it, that she did.

The complaint was passed to me and I issued a provisional decision in April 2022 recommending that the complaint was upheld in part. I made the following provisional findings:

“Like our investigator, I also think this complaint should be upheld, in part, but for different reasons. I’ll explain why.

The policy avoidance

As Covea says that Miss C misrepresented her insurance history when taking out the policy it has decided to void her policy back to the date it started. The relevant law in circumstances such as these is The Consumer Insurance (Disclosure and Representations) Act 2012, known as CIDRA. CIDRA says that when taking out an insurance policy a consumer needs to take reasonable care not to make a misrepresentation. If they don’t then the insurer can take certain steps providing the misrepresentation is a ‘qualifying misrepresentation’.

I can see from the statement of fact – which records the questions asked during the sale and the answers given – that Miss C said she’d had only two claims in the last five years and that she’d never had an insurance policy declined, cancelled or refused. In fact, from the information provided by H, I can see Miss C had five claims within the last five years and also had her policy with H cancelled on the grounds of fraud. I note too that during the sales call with the broker, the importance of answering questions accurately was stressed and understood by Miss C.

Miss C has said she didn’t mention that she’d had a policy voided because she was unaware that was the case. But I’ve seen the letter from H informing her (and the tracking receipt from Royal Mail) that her policy was to be voided (and why). And I also note that she almost immediately complained to H about its decision. So I can’t accept that she was unaware of the voidance as she wouldn’t have been able to complain about something she knew nothing about. So, I think it’s clear that misrepresentation occurred and that reasonable care wasn’t taken to provide accurate answers to the questions asked.

I now have to consider whether that misrepresentation is a qualifying misrepresentation and I’m satisfied that it was. Covea has provided us with information to show that it wouldn’t have offered Miss C a policy if it’d known about the voidance of the H policy and the fact Miss C had made five claims. Having established that to be the case, I then have to decide if the misrepresentation was made deliberately, recklessly or carelessly. In all three circumstances, Covea is entitled to void the policy. It can also retain the premiums if the misrepresentation was deliberate or reckless but must return them if it is was careless.

A qualifying misrepresentation will be deliberate or reckless if Covea can show the policyholder:

- Knew the information they were providing was untrue or misleading or did not care whether it was untrue or misleading; and*
- Knew that the matter to which the misrepresentation related was relevant to Covea, or did not care whether or not it was relevant to Covea.*

Within Covea’s claim file, there’s a report dated October 2020 from its appointed agent. Amongst other things, this report noted:

“Although Miss [C] appeared to be trying her best to be helpful, as can be seen her account was somewhat disjointed and there were clear gaps in her knowledge and recollection which she attributed to both the passage of time and the effects of her mental health and the medication she is taking. She also suggests that more recently, in July 2020, she had been diagnosed as [having a specific mental health condition]. You will see she has, as you requested, provided a list of her medications, a number of which would appear to be likely to affect her coping ability and recollection...”

Given the content of the report I don’t think it would be fair or reasonable to conclude that the misrepresentation Miss C made was reckless or deliberate. I also say this because it seems

that Covea only became aware Miss C had once had a policy with H because she brought it up in the interview with Covea's appointed agent. If her intention had been to deliberately deceive Covea and the broker about the voidance of her policy with H then I doubt she would have mentioned it during the interview. So I think the misrepresentation Miss C made to Covea should be considered to have been a careless one.

That means the premiums should be returned to Miss C however, there appears to be some confusion about what has happened to the policy and the premium refund. Miss C's contract is with the broker. It is through the broker that her policy with Covea was arranged. It is to the broker that she pays the premium. It's reasonable to assume from the information available (but no doubt Covea will correct me if I'm wrong) that the broker will have forwarded the annual premium onto Covea at the start of the policy year. It seems – given the broker's comments – that it then collected the premium in monthly instalments from Miss C.

So although Covea has returned the premium to the broker, the broker has retained it in order to offset some of Miss C's outstanding premiums. As the policy has been voided however, such a situation is clearly not fair because Miss C can't owe premiums on a policy that never existed. But she should only receive a refund of any premiums she has actually paid during the lifetime of the policy. And there's some evidence that she was in arrears on her payments to the broker.

I don't know how many premium instalments Miss C did pay whilst the policy was on risk between 20 July 2019 and 18 November 2020, and that isn't something I can look at here. That's a matter for Miss C to raise with the broker.

I can also see that it seems that the broker had, in fact, cancelled the policy with effect from 20 February 2020, presumably because the monthly premiums were in arrears. Covea has told us that from the point the policy was taken out to the point it was cancelled (a period of 8 months) the broker had contacted Miss C about payment on at least 6 occasions.

Whether the policy was cancelled or voided, I don't think Covea needs to do anymore in relation to refunding the premium to Miss C. It has credited the broker the premium in full so Miss C should now contact the broker directly if she paid any of her premium. If she has paid anything, given that Covea has told the broker that the policy needs to be recorded as voided rather than cancelled. she could be entitled to a refund. But that's a matter she will need to now raise with the broker.

Disposal of damaged contents

Covea told us that it didn't think it would be fair to compensate Miss C for the disposed water-damaged items because, when it disposed of those items, it was acting – at that point in the claim - in good faith. I agree Covea was acting in good faith when it disposed of the water-damaged items. At the point it did so, Miss C had agreed to their removal and disposal and there was no indication that the claim would not proceed to settlement.

Despite this being the case however, if Covea had not disposed of those items during the course of the claim, then they could have been returned to Miss C when the policy was voided and the claim declined. So I am of the view that Covea is responsible for the destruction of the damaged contents it removed as BER.

But I can't reasonably require Covea to pay the average value of those items; that wouldn't be fair. That's because there is no policy in existence and Covea has no liability for the claim. The fair resolution to this situation is to put Miss C back in the position she would have been (or as close to that as possible) but for Covea's error in disposing of the items before

the claim was concluded. For me to require Covea to pay the average value of the items disposed of wouldn't achieve this; that would place Miss C in a better position than she should be but for Covea's actions.

If Covea had retained the BER items it could've returned them in their damaged condition to Miss C. But as the actual items no longer exist, I can't make Covea return them. Covea says the items were all BER, and I agree, but that doesn't mean they had no value; the items, at disposal, may have retained some residual value. In order to put Miss C back in the position she should've been, Covea will need to calculate the residual value of the items it removed and disposed of as BER. Once it has done so, I think that it is only fair that it deducts the payment on account it made to Miss C early in the claim so that she could replace her bed. Miss C should be aware that because the policy was voided, she wasn't entitled to receive that payment. If there is a balance to be paid, Covea should then add interest at this service's usual rate of 8% simple per year from the date it voided the policy to the date it settles my award."

Miss C responded to my provisional decision and said that she had tried to resolve the situation herself before making the claim to Covea and she said she'd told Covea that she had tried to do so because she'd had bad experiences making a claim in the past. So, she said, this was evidence that she hadn't tried to hide her previous claims from Covea. Miss C also said she'd spoken to Covea when she was in hospital because she was keen to try and co-operate and that she was now going to have a black mark against her name even though she'd not intended to deceive Covea.

Covea replied to my provisional decision to say that, whilst it didn't agree with the outcome, it was prepared to accept it. It also shared with us its review and valuation of the BER items from the claim. It provided us with a spreadsheet that showed the total valuation of the BER items was £787. Covea said that, as a consequence, it wouldn't be making any further payment to Miss C. Covea also said that it had no choice about how to categorise the voidance (i.e. whether it was reckless, deliberate or careless) on the external claims database. So it said the voidance had been recorded as 'breach of conditions'.

In response to Covea's calculations Miss C said that she didn't think the payment she received for the mattress and bedding (£1,250) should be offset against the total for the items BER because it (the £1,250) was for items that should not have disposed of in the first place. She said Covea shouldn't have disposed of her mattress and bedding so it was only fair that it had paid her to replace those items. She said it wasn't fair for it to now use that payment to offset the overall total owed to her for the items deemed BER.

The complaint was returned 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.

I've thought about what Miss C said in response to my provisional decision but unfortunately it hasn't persuaded me to change my mind about her complaint. As I said provisionally, I appreciate there was no deliberate attempt on her part to mislead Covea. But it is an unfortunate consequence of making a misrepresentation – even a careless (unintentional) one – that there will be a marker against her name and that she will need to declare the voidance to any future insurer.

Covea has provided a spreadsheet that lists out the BER items and the value it has attributed to each one. There are 27 items in all and the total value attributed to all the items

is £787. As I explained in my provisional decision, although I appreciate that Covea was acting in good faith when it disposed of those items deemed BER, if it hadn't done so then they could've been returned to Miss C when the policy was voided and the claim was declined. Miss C has suffered a loss of the BER items and the fair resolution in a situation such as this is for her to be put back in the position she would've been in (or as close as is possible) but for Covea's error in disposing of the items before the claim was concluded.

If everything had happened with the claim as it should have then Covea would've returned the BER items to Miss C when the claim was declined. Miss C would've been left with items in their damaged state. Unfortunately, just because Covea disposed of the damaged items in error, Miss C isn't entitled to new replacement items (or an equivalent cash amount). So Miss C was never entitled to receive a cash amount of £1,250 from Covea for her damaged mattress and bedding. However, she did in fact do so. And she is in a better financial position as a consequence than she otherwise should've been.

So whilst I've thought about what Miss C has said about not offsetting the amount she received from Covea for the mattress and the bedding from the overall total of the BER items I can't fairly agree with her that doing so would be reasonable. I know Covea disposed of her mattress and bedding but it disposed of a *damaged* mattress and bedding. It didn't dispose of an *undamaged* mattress and bedding. As Miss C should be placed back into the position she should've been in but for Covea's error, I can't reasonably require Covea to ignore the payment it made her. That wouldn't be putting Miss C back into the position she should've been in but for Covea's errors. Miss C wasn't entitled to receive the full replacement value of the mattress and the bedding. She is only entitled to the residual value of these items in their damaged state.

And unfortunately for Miss C the total valuation of all the BER items falls below the amount Covea has already paid out to her in error. As I said provisionally, Covea needed to calculate the residual value of the items it disposed of as BER. Then, it could deduct the amount it had paid Miss C in error (£1,250). Since my provisional decision was issued, Covea calculated the residual value of the BER items to be £787. It is clear that this amount is less than the sum Miss C had already received so there is no balance for Covea to pay and no interest to be added.

I've seen a screenshot of the external claims database and note that the voidance has been recorded as a 'breach of conditions'. I don't think that Covea need to do any more in this respect.

As neither party has provided any other comments in response to my provisional decision, my provisional findings now form part of this, my final decision.

Putting things right

On this occasion I am not requiring Covea to do anything more. That is because Covea has now shown how the voidance was recorded on the external claims database and I'm satisfied that is a fair record. So it need take no further action in this respect. Further, it has also now calculated the residual value of the contents items it disposed of and has shown that there is no balance due to Miss C. So there is nothing for me to require it to pay.

My final decision

My final decision is that I uphold this complaint in part. But I'm not requiring Covea Insurance Plc to do anything more as explained in the '*putting things right*' section above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss C to accept or reject my decision before 24 June 2022.

Claire Woollerson
Ombudsman