

The complaint

Mr W's complaint is about a claim he made on his Covea Insurance plc commercial trade insurance policy, which was declined.

Mr W says that Covea acted unfairly. He is helped by a representative on this complaint but for ease of reading I shall refer to all submissions made on his behalf as being his own.

What happened

In October 2021 Mr W made a claim on his Covea public liability insurance policy for help with some work his business had carried out for a customer earlier that year. Mr W's business had installed a pump station for storm and foul water. The tank installed subsequently imploded. It was believed that this was because it was laid on pea gravel rather than a concrete base. Because of this Mr W looked to Covea to cover the cost of putting things right for his customer.

Covea considered the claim and concluded that it was excluded under the policy because it related to defective work. Mr W challenged Covea's position. He said he'd never been provided with a copy of the policy terms and the policy certificate he held said it covered him for the consequences of defective workmanship. He also asked for Covea to appoint an expert to determine the cause of the tank imploding. Covea refused and said that if Mr W wanted this, he would have to pay for it himself.

Mr W then referred his complaint to this Service. In response Covea said they had arrived at their decision to decline his claim too quickly. They offered to reconsider things. They also told Mr W they would appoint a loss adjuster to consider the problem his customer was experiencing.

After considering things further Covea declined the claim again without appointing a loss adjuster. They said there was no cover under the policy for defective workmanship. Mr W was unhappy with this. He said the stress caused by Covea's refusal to meet the claim led to him experiencing anxiety and insomnia which he needed to see a Doctor for. He also stopped taking on new work and instead decided to work independently for another company.

Our investigator considered Mr W's complaint and concluded that it should be upheld. She acknowledged that the policy terms exclude defective work, but both parties agreed that Mr W wasn't sent these. She pointed out that the documents Mr W said he was sent by Covea were confusing; the key facts document set out that the cost of rectifying defective workmanship was excluded whilst the certificate of public liability stated the policy provides legal liability cover for the consequences of defective workmanship. Because of the ambiguity in the documents, she concluded they should be interpreted in favour of Mr W. Consequently she directed that Covea cover the claim and pay Mr W £150 in recognition of the trouble and upset caused to him by their actions.

Mr W accepted the investigator's findings but Covea didn't. They said the certificate of public liability didn't form part of their contract with Mr W and that he was sent enough information

to direct him towards the policy terms, which set out that defective workmanship was excluded by the policy. The investigator considered this further and remained of the same view she'd initially reached. She said that Covea hadn't provided a copy of the email they said they'd sent Mr W which directed him to the policy wording nor any instructions relating to the policy document. She also thought that the content of the public liability certificate meant the position was ambiguous and as such the terms should be interpreted in Mr W's favour.

Covea asked for an extension of time to reply to the investigator which she agreed to, but they didn't provide any further responses. In the absence of a response beyond their initial objection to the investigator's view, the matter has been passed to me to determine.

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.

The starting point in any dispute of this nature would ordinarily be the policy terms. In this case they say:

"We shall not be liable under this Section in respect of:

- 1. the cost of recalling removing repairing replacing reinstating or in any other way making good*

or providing compensation in place of

(a) any Product if such liability arises from any defect therein or the harmful nature or unsuitability thereof

(b) defective work"

In this case Mr W says he was never provided with a copy of the policy terms and didn't realise he hadn't been sent them by Covea until his claim was declined. Covea don't dispute that. So, I've looked at what Mr W was sent. In particular, he received a copy of the policy summary. Page 4 of that document sets out a table showing that the following are excluded:

"(a) rectifying defective workmanship;

(b) repairing or replacing faulty goods supplied or work carried out".

Taken in isolation, this document would lead a policyholder to believe they weren't covered for the claim that Mr W was making. Matters are however complicated by the fact that Mr W was also sent a certificate of public liability. That says:

"We confirm that the above numbered policy provides legal liability cover for:...

7. Consequences of defective workmanship or materials."

The word *"Consequences"* is not defined in this document. In the absence of that, I think that document would naturally give the impression to Mr W that he would be covered for a claim like the one he was making- namely to make good the pump and resultant damage to Mr W's customer's property, rather than something else.

Where there is ambiguity, we usually interpret the insurance in favour of the party who didn't draft the contract. In this case that would be Mr W. Covea has made the point that the certificate of public liability didn't form part of Mr W's contract of insurance. I've thought about this, but I've also taken into account what they've said about the document being provided as common market practice to enable policyholders to provide proof of insurance to a main contractor. So, whilst the document wasn't intended to form part of the insurance provided by Covea, it did serve to cause enough confusion both to him and potentially prospective contractors about what he was covered for. And in the absence of Covea providing Mr W with the correct policy terms when he renewed the insurance, I think that it's fair and reasonable to interpret the content of the certificate in favour of Mr W.

In reaching this conclusion I've taken account of the fact that Covea recognised the certificate was one which caused confusion. I say so because it recently provided Mr W and presumably all its policyholders with new certificates which omitted reference to consequences of defective workmanship being covered and instead referred policyholders to the terms of the policy.

I've also had regard to the fact that we'd reasonably expect policyholders to check through the documents they were sent to ensure they understood everything they'd been sent and request a copy of any documents that were missing. From what I've seen, Mr W was sent a variety of items but not the policy terms. The only document that refers him to them is the statement of fact which says: *"A Policy Summary and a copy of the Policy Wording are available from Your broker upon request."* As I've said above, the policy summary was sent to Mr W, but the wording wasn't. Mr W could have asked his broker for a copy of the policy terms. But I'm not persuaded this would have made much difference. They would only have echoed the content of the policy summary, which was at odds with the certificate of public liability. Because of this, I think the position would still have been confusing to Mr W or any other reasonable policyholder or contractor, such that the terms should be interpreted as I've set out above.

When reaching my conclusions, I've taken into account the trouble and upset Mr W says Covea caused him and the impact he's told us it had on him. Like the investigator, I agree that an award of £150 is appropriate in the circumstances. This compensates Mr W for Covea's actions before the complaint was brought to us. When reaching this figure I've balanced the award against the fact that the decline of the claim would've caused Mr W stress and inconvenience but it's not something that I would reasonably consider would cause a policyholder to cease trading entirely, such that I would award compensation for this.

Putting things right

In light of my findings, Covea should:

- Cover the cost of Mr W's claim as if it was covered under the terms of the policy, after deducting the most relevant excess;
- Pay Mr W £150 in compensation for the trouble and upset caused by its actions.

My final decision

I uphold Mr W's complaint and direct Covea Insurance plc to comply with my award of fair compensation set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 9 December 2022.

Lale Hussein-Venn
Ombudsman