

## **The complaint**

Mr H is a sole trader, trading as D. He's unhappy with what Covea Insurance plc did after he made a claim on his Tradesman and Contractor Insurance policy.

## **What happened**

In 2012 Mr H entered into a construction contract to build two properties. In February 2016 he contacted Covea about damp in the basement of one of the properties. Investigations at that time suggested the cause was a leak from a water softener which had been installed by a different contractor. Covea's loss adjusters didn't think this was something Mr H was responsible for. Covea denied liability to the claimants on that basis.

In January 2019 Mr H contacted Covea again because he'd received a letter from solicitors acting for the claimants which alleged work he'd carried out had led to water entering the basement. Covea said the policy didn't cover defective work but Mr H argued the work he'd carried out wasn't defective. Covea again appointed loss adjusters but turned down the claim in October 2019 on the basis the policy didn't cover damage to contract works or making good alleged defects.

Mr H had further discussions with Covea in December 2019 following the receipt of draft proceedings against him. He maintained the issue didn't relate to defective workmanship. Covea agreed to instruct an expert to review the updated evidence and received reports from them in January and April 2020.

In December 2020 Covea said it wouldn't be covering the claim because it thought the damage had occurred prior to the commencement of its policy. And it thought the claim wouldn't be covered in any event because of the exclusions in the policy relating to contract works or making good alleged defects. However, it accepted it could have explained that to Mr H earlier and letters could have been emailed rather than being posted to him. It offered to pay £200 in recognition of the inconvenience that caused.

Our investigator didn't think Covea was right about the start date of Mr H's policy. So she didn't think it had correctly turned down the claim on the basis damage occurred prior to this starting. But she agreed the policy didn't cover contract works and Covea was therefore right to have declined cover on that basis. However, she thought it should have been apparent to Covea from May 2018 this wasn't a public liability claim and that should have been made clear to Mr H then. She thought Covea should pay him £500 because that wasn't explained at an earlier stage.

Covea didn't agree. It accepted there were some customer service failings but said it did respond to Mr H's claim in October 2019. It thought there had been a delay of around four months here and didn't think further compensation beyond the £200 it had already offered was warranted. Mr H said Covea had accepted his claim and should be responsible for settling it. So I need to reach a final decision.

## 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 looked first at the terms and conditions of Mr H's policy. The public liability section does provide cover for sums "*you become legally liable to pay as Compensation and Costs and Expenses as a result of...damage to material property*". So that could potentially cover the issues that have arisen in this case.

However, that section goes on to explain damage is only covered where it occurs during the "*Period of Insurance*". And Covea says when it received details of the claim against Mr H in January 2019 that indicated the damage dated from October 2014 which was before his policy was first taken out. But I don't think Covea are correct in relation to the policy start date. Mr H has provided a policy schedule which shows he had cover with Covea from January 2014. So I don't think Covea were right to use that as a ground to turn down the claim.

However, I think the more important issue here is the claim made against Mr H is excluded by the terms of his policy. The public liability section says it doesn't cover any liability forming part of the "*Contract Works*". The definition of contract works includes "*temporary or permanent works completed or to be completed as part of any contract*". The policy also excludes costs arising from the need to repair or rectify Contract Works or defective work. And the policy only covers public and employer's liability and commercial legal expenses; it doesn't include cover for contract works.

In this case there was some discussion between Mr H and Covea over whether the claim against him related to defective work. That led to Covea carrying out further investigations. But regardless of that the claim does in any case appear to relate to works "*completed or to be completed as part of any contract*". That isn't something covered under Mr H's policy.

I appreciate that some of these issues may have arisen after practical completion of the work and could arguably fall outside of the contract works exclusion. But even if that is the case I think the claim would still be caught by the exclusion relating to costs "*arising*" from the need to repair or rectify contract works. So I think it was fair of Covea to turn down the claim Mr H made.

Mr H has said Covea accepted his claim and should therefore be responsible for settling it. I've reviewed the information he's provided in support of this. But while I appreciate there are references to Covea carrying out further investigation into what's happened I don't think it made any definitive commitment to accept the claim in full or make payment in respect of it.

However, I do think Covea should have identified at an earlier point the exclusions it subsequently relied on to turn down the claim. I accept when Mr H first contacted it in February 2016 it reasonably needed to carry out further investigation to establish whether the claim was covered by his policy. And given the evidence suggested Mr H wasn't liable for the damage caused I understand why it responded on that basis.

But I think Covea could also have made clear to Mr H at that time the policy exclusions as they relate to contract works. Mr H said in an email to its loss adjusters in June 2016 that the entire build and fit out of the property formed part of the original contract works and the suggested repairs related to those works. So Covea was clearly aware of the connection between the claim and the contract works from that date and could have highlighted the policy exclusions to Mr H at that time.

Alternatively, and as our investigator said, it appears Covea was advised in May 2018 by the loss adjuster this might not amount to a public liability claim. So there was an opportunity at that point for Covea to have reviewed matters and advised Mr H in relation to policy coverage. In fact it doesn't appear Mr H was told until February 2019 that his policy might not cover this claim (when issues relating to the exclusion for defective works were discussed with him). And a claim decline letter Covea subsequently issued wrongly suggested Mr H only had cover from 2015 when it's clear this was in place from 2014.

Covea has also accepted letters should have been emailed to Mr H and there was a delay in matters being progressed prior to a decline letter being issued. I think all that will have caused Mr H inconvenience at what was a difficult time with the threat of legal action against him. I think £500 is appropriate to recognise the impact on him of what Covea got wrong.

Mr H says because Covea didn't make clear to him this policy wouldn't cover his claim it prejudiced his position in pursuing the claim with another insurer. But I don't think that is the case; Mr H says he contacted his broker to make a claim on the other policy in 2017. I appreciate the advice he received at the time indicated that policy wouldn't cover him but the allegations made against him in January 2019 were different and he was aware from February 2019 that Covea had concerns as to whether its policy would cover the claim he was then making. His complaint about the decision the other insurer subsequently made is something I've considered in a separate decision against that insurer.

### **My final decision**

I've decided to uphold this complaint. Covea Insurance plc will need to put things right by paying Mr H £500. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 1 May 2023.

James Park  
**Ombudsman**