

## **The complaint**

Mr M and Ms S are unhappy with how Covea Insurance plc has dealt with a claim they made under their buildings insurance policy following a water leak.

At times Mr M and Ms S have been represented and at others Ms S has dealt with things. For ease of reading, I'll refer to her only.

## **What happened**

I'll summarise the main points about this dispute:

- Ms S got in touch with Covea in August 2021 after she noticed water entering the basement of her home. She arranged for a contractor, T, to carry out a drainage survey. It identified damage to the drainage system and thought the resulting leak was causing water to enter the basement. Ms S paid T for the investigation and to carry out the drainage repairs it recommended.
- Covea agreed the drainage investigation and repairs were covered by the policy. After deducting the £100 excess, it offered around £1,400 towards the cost of these things. This is what it would have cost Covea, rather than Ms S, and left her with a shortfall of around £300. She accepted the payment whilst the dispute continued.
- Ms S queried what steps Covea would take to investigate the basement internally, including the tanking system. After much discussion, Covea appointed a company, B, to consider this in October 2021.
- B said the internal damage and tanking should be declined because there was a long term problem with water ingress, possibly exacerbated by recent rainfall. However, bearing in mind the other evidence gathered during the claim, Covea thought the internal damage had been caused by water leaking from the drain and accepted this was covered by the policy. But it said the tanking wasn't covered because it didn't think water would damage it. Ms S disagreed and said the tanking had also been damaged by the water from the leaking drain.
- To move things forward, Covea appointed a loss adjuster who agreed to appoint an independent surveyor to look into the tanking matter further. Ms S thought Covea should pay for an independent surveyor of her choosing but it didn't agree to do so. At this stage, the claim reached a standstill and neither the loss adjuster nor an independent surveyor inspected the damage. Ms S complained.
- Covea responded in February 2022. It said it had declined to deal with the tanking system because it wasn't performing properly. Covea said its purpose is to intercept and divert water away from the property, so it should have been able to deal with the leak from the drain. Covea said the tanking was faulty, likely installed incorrectly and hadn't been damaged by the water leak – so it wasn't covered by the policy.

- Ms S arranged for a surveyor, D, to look into the problem. D said a combination of the drainage defects and the failure of a neighbour's gutter meant that during high rainfall, the water table level would have risen above its normal level near the basement and exerted a substantial hydrostatic pressure on the tanking system, causing it to fail.
- Covea said the report didn't change its position. And it wouldn't pay for the report.
- Later in 2022, Ms S sold the property. She says she paid to have the basement stripped out and has provided an invoice for that work. I understand no other work was carried out to reinstate the basement or tanking. Ms S says she lost £30,000 on the sale because of the lack of reinstatement – and this figure was in line with quotes she'd received for reinstating the basement and the tanking.
- Ms referred her complaint to this Service. She made a number of points, so I'll summarise those I think are key:
  - There was torrential rain shortly before the claim was made and this impacted the property. So the claim should be considered as a storm or flood rather than an escape of water and accidental damage to a drain.
  - To support her view, she provided information from a weather expert, which she paid around £500 for. She asked to be reimbursed that cost.
  - It was unfair for Covea to insist on appointing its own independent surveyor, not agree to Ms S appointing D, and not to pay for D's report.
  - Although Covea had accepted the claim for the internal damage, it hadn't made an offer to carry out the work or to pay Ms S to have it done. It should reimburse her the cost of the strip out work she arranged and pay £30,000 for the reduction in the sale price for her property.
  - It was unfair for Covea to leave her with a shortfall on the drainage costs.
  - Covea caused delays, hasn't communicated effectively and hasn't provided all relevant information to Ms S.
  - Ms S incurred legal fees and Covea should reimburse them.
- Our investigator didn't think the complaint should be upheld. He wasn't satisfied the weather conditions at the relevant time amounted to a storm or a flood. So he said it was reasonable for Covea to consider the claim as accidental damage to a drain and the consequential escape of water. Our investigator didn't think it had been shown the escape of water had damaged the tanking system, so he said it was fair for Covea to decline to cover it. As the surveyor report provided by Ms S hadn't changed the outcome, our investigator didn't think Covea should pay for it.
- An agreement couldn't be reached, so the complaint has been referred to me.

### **My provisional decision**

I recently issued a provisional decision in which I said:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

- As our investigator has explained, this complaint will only consider the claim made under the buildings section of the policy. Ms S has made a related claim under the legal expenses section of the policy. That section is provided by a different insurer. So if Ms S would like to complain about it, she'll need to do so separately.

- This complaint covers a number of issues, so I'll consider each in turn.

*Should the tanking be covered?*

- This is the main point in dispute. In summary, Ms S argues that water caused damage to the tanking, so it should be covered. Covea doesn't agree, it says the tanking is faulty, was likely installed incorrectly, and isn't damaged.
- The policy covers damage caused by storm, flood, and escape of water from a drain. So if the tanking was damaged by any of these causes, it would be covered by the policy – subject to any relevant exclusions or other terms.
- I think the first step in this case is to establish whether the tanking is actually damaged, before considering what caused such damage. That's because Covea says the tanking isn't damaged at all.
- I've looked at B's report. It's not clear who wrote it or what relevant professional qualifications, if any, they hold. It's also not clear what the author's opinion about the tanking is. They indicate the tanking *may* have failed in one place, *may* have failed in another, but also suggest there *may* be other causes of water ingress which would mean the tanking didn't fail at all. Covea disregarded B's findings about the cause of the water damage, as they weren't consistent with other evidence gathered during the claim. And the position it reached in its complaint response wasn't based on B's findings, but its own view on the matter. Taking all of this into account, Covea seems to find B's report unpersuasive and unreliable. I take the same view.
- Covea said the tanking system hadn't been damaged by water because the purpose of the system is to intercept and divert water away from the property. As water had clearly breached the system, that meant it was faulty. Covea also referred to it as 'not performing properly'. It concluded this meant the system was likely installed incorrectly. This wasn't based on B's findings or any other expert report, but on a 'desktop review'.
- D is a chartered surveyor with significant experience, who inspected the problem. To an extent, D agreed with Covea. They said the tanking had failed because an unusually high volume of water had exerted significant pressure, leading to the water ingress. But they didn't say this was because of an installation problem.
- I understand Ms S had the tanking system installed around 18 years prior to the claim. She says there have been no previous problems with it. And D noted there were no signs of any longstanding issues. These points don't support Covea's position that the tanking was incorrectly installed. And Covea has presented no evidence of its own to support its position.
- Taking all of this into account, it seems to be agreed the system failed to perform its function of keeping water out. In my view, as it wasn't working properly, that means it was damaged. And there's no evidence to suggest this was the result of an installation problem. The evidence shows it was the result of water pressure following the drain leak. That means the tanking was damaged by an escape of water from a drain and is covered by the policy.
- To put things right, Covea should settle this aspect of the claim in line with the terms and conditions of the policy. It should bear in mind that as Ms S has sold the

property, a repair won't be possible. In these circumstances, the policy says Covea will pay the lower of the estimated cost of repair and the amount by which the property has reduced in value as a result of the damage. So Covea should consider these options when settling the claim. To do that, it will need to consider what work was reasonably necessary to ensure a lasting and effective repair of the tanking.

- The claim will be settled by cash payment, but it should have been settled long ago. As a result, I think Covea should add interest to the cash payment. Based on the claim timeline, I think the payment should have been made around 1 January 2022. So interest should be calculated from that date until the date of settlement.

*What part of the policy should the tanking be covered under?*

- Ms S has argued that the claim should be covered as storm of flood, rather than an escape of water. I understand the latter attracts a higher excess, so covering the claim under a different section would make a difference.
- For there to be storm damage, I would first expect to see evidence of storm conditions at the relevant time. Here, that means evidence of sufficient rainfall to be considered storm strength as there's no suggestion the damage could possibly have been caused by strong winds.
- Our investigator used two independent weather tools and looked at the rainfall recorded around the relevant time. A weather station two miles away from the property recorded a maximum of 2.6mm of rainfall per hour. One of the tools characterised the conditions as 'no significant rain' or 'moderate rain'. In my view, these records aren't consistent with storm strength rainfall.
- Ms S has provided information from a weather expert. It shows there was heavy rain in parts of the UK at the relevant time. And it highlights newspaper predictions of heavy rainfall closer to the area of the property. I'm not satisfied either of these things persuasively show what weather conditions were likely experienced at the property.
- The expert also notes thunderstorms can deliver severe weather at a very local level, perhaps within a mile. So it's possible there was such an event near Ms S' property that wasn't recorded two miles away at the weather station. I accept the weather data is imperfect as it can't tell us exactly what happened at Ms S' property. But I'm satisfied that evidence of the weather conditions two miles away is a strong indicator of the likely conditions at Ms S' property. And just because there *could* have been stronger rainfall at Ms S' property, it doesn't mean there *was*. The rainfall could equally have been less severe than recorded nearby.
- The information provided by the weather expert shows rainfall records from the local area – one from a nearby station and one eight miles away. They describe 'showery rain/heavy showers' and 'rain, some heavy'. The records from the station nearest to Ms S shows heavier rainfall than recorded above, but still not enough to be considered storm force in my view – up to 12mm over a period of around 20 hours. I'm not satisfied the rainfall from many miles further away is as relevant, particularly given what the expert has said about the variance of local conditions.
- The weather expert says the information our investigator used was 'too limited, not meteorologically sound and almost certainly underscores the actuality'. But it's not clear why they think that, so I see no reason to disregard the information. In any

case, even if I relied solely on the rainfall records the weather expert provided from the station nearest to where Ms S lived, I'm not satisfied that amounts to storm.

- As I've not been persuaded there were storm conditions, it follows that the damage can't have been caused by a storm.
- I would usually consider a flood to be a build-up of a body of water. But I'm not satisfied that's what's happened here. The evidence suggests a drain leaked underground and the water overwhelmed the tanking system before leaking into the basement. I haven't seen anything to suggest a body of water built up during this process. So I don't think the damage was caused by a flood.
- Overall, I'm satisfied it would be fair for Covea to cover the tanking under the 'escape of water' part of the policy.

*What is Covea's position with the internal damage?*

- Covea hasn't been clear about this, so I can understand why Ms S is unhappy about it. Covea has accepted the internal water damage, aside from the tanking, is covered. It seems to be satisfied the water leaked from the drain, through the tanking, and into the basement where it caused damage. That means this damage has also been caused by the escape of water and is covered by the policy.
- However, I can't see any evidence that Covea has taken any steps to settle this aspect of the claim with Ms S. It said it had paid Ms S, but that's not the case – the only payment it's made is for the drainage work.
- To put things right, Covea should settle this aspect of the claim in line with the terms and conditions of the policy. As with the tanking, it should bear in mind that as Ms S has sold the property, a repair won't be possible. So Covea should consider the options set out in the policy when settling the claim. It should also consider the invoice Ms S has provided for the strip out work she arranged.
- For the same reasons as the tanking, I think Covea should add interest to the cash payment, calculated from 1 January 2022 until the date of settlement.

*Should Covea pay for D's report?*

- The policy says Covea will pay for surveyor's fees in certain circumstances. In a case like this, where there is a problem with tanking and damp, I think an inspection and report by a suitably qualified surveyor is an appropriate step to take.
- Covea appointed B to inspect the damage. The person who carried out the inspection has been labelled as a 'surveyor' but it's unclear whether they hold any relevant surveying qualifications. And even if they do, Covea noted their findings about the cause of the water ingress were inconsistent with other information and disregarded much of what they said. So I'm not satisfied appointing B amounted to paying for a report by a suitably qualified surveyor.
- Covea was later prepared to pay for an independent surveyor to consider the damage, including the tanking. It offered to do this, but Ms S didn't agree to it. Had she done so, Covea would have paid for surveyor's fees in line with the policy terms.

- In the end, Ms S paid D to inspect and report on the damage. D is an experienced and suitably qualified surveyor who provided a thorough report. This is what I would have expected Covea to arrange as part of its claim investigation. And given how unreliable and unpersuasive B's report was, D's report is the only expert opinion available and has contributed to the claim outcome. Taking all of this into account, I'm satisfied it would be reasonable for Covea to pay for D's report. In response to this provisional decision, Ms S should provide a copy of the invoice.

*Did Covea pay a reasonable amount for the drainage work?*

- Covea has accepted a claim for the drainage investigation and repair carried out by T under the 'accidental damage to underground services' part of the policy. It's paid around £1,400, after deducting the £100 excess. That leaves Ms S with a shortfall of around £300.
- There's no dispute about the work involved – the difference is simply the result of Covea paying what it would have cost its own contractor do the work, which is cheaper than the cost of T doing the work.
- The policy says a policyholder should report the damage as soon as possible and shouldn't pay or agree to pay anything without Covea's permission. When Ms S got in touch with Covea, T had already carried out a survey and was due to investigate further the next day. Covea's call notes say they told Ms S the costs may not be covered and it would best not to take further steps until it had reviewed the survey.
- Taking into account the policy terms and what happened, I think it was reasonable for Covea to pay its own costs, rather than T's. Had it been given the chance to carry out the investigation and the repair itself, it could have done so at a lesser cost. In these circumstances, I'm not satisfied it would be fair to require Covea to pay more.

*Did Covea handle the claim fairly?*

- I won't go through each and every aspect of the claim handling, I'll focus on a few key points.
- Although Ms S initially said water was entering the basement, Covea didn't recognise the need to investigate the internal damage and focused on the drainage. This caused a delay. When it did take the next steps, it appointed B, and I've explained above why that didn't add meaningfully to the claim. This caused a further delay. I think it also led to Ms S' reluctance to agree to Covea's own choice of independent surveyor being appointed and that contributed to the stalemate.
- I don't think Covea proactively progressed the claim. It seemed to think it had settled the internal damage aspect when it hadn't and that remains outstanding today. And it often only took the next steps when it was prompted by Ms S.
- Covea itself has accepted that it didn't always reply promptly and/or thoroughly to enquiries from Ms S. Nor did it provide relevant reports as they became available. Usually, Ms S had to chase for them.
- Overall, I'm not satisfied Covea handled this claim fairly. As a result, Ms S was caused avoidable distress and inconvenience. To put that right, I think it should pay compensation. I consider £250 is reasonable in the circumstances.

### *Other points*

- Ms S has asked to be reimbursed for the cost of the weather expert information she provided. As it's had no impact on the claim and Covea isn't relying on it at all, I don't see any reason for Covea to pay for it.
- Ms S has also asked for her legal fees to be reimbursed. It's unclear to me what these are for, but I don't think Covea should pay for them. If they're related to the legal expenses claim, Ms S can direct this point to the other insurer. If they're for any representation she's had during this claim, I don't think it was necessary to incur legal fees to present her claim and complaint to Covea.

### **Responses to my provisional decision**

Ms S responded to say she largely accepted my provisional decision. However, she asked me to consider a couple of points further.

She said she'd felt it necessary to incur legal costs for specialist representation as a result of the way Covea had handled the claim. It hadn't agreed with D's report, the claim had become complex, and she'd lost confidence in Covea's ability to act fairly.

Ms S provided D's invoice and asked what the next steps would be for the claim settlement.

Covea didn't respond to my provisional 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.

As Ms S has agreed with most points in my provisional decision and Covea hasn't challenged any of them, I think most points have been resolved and don't require further discussion or comment. I'll focus on the points that remain in dispute – the legal fees, the next steps with the claim, and D's invoice.

### *Legal fees*

I can understand why Ms S became concerned about Covea's ability to handle the claim fairly – it's clear things didn't go as they ought to. And for the reasons I gave above, I don't think Covea treated Ms S fairly – in the claim outcome or the way it was handled.

However, the issues involved didn't require specialist legal input. And if Ms S was unhappy with the way Covea was handling the claim, she was entitled to follow the complaint process, including referral to this Service – all of which comes at no financial cost.

Ms S was entitled to pay for legal representation if she wished, but I don't think it was necessary for her to. As a result, I'm not satisfied it would be fair for me to require Covea to reimburse those legal fees.

### *Next steps with the claim*

I know Ms S is concerned that the award I set out will mean having to deal with Covea further. But that's unavoidable.

I set out the policy cover above – broadly that the cash settlements will be based on the lower of two estimated values. At the moment, neither value has been properly estimated and there may be a number of steps involved in carrying out the estimates, so I can't award a specific claim value as part of this decision.

However, I remind Covea that it's required to handle claims promptly and fairly. It must keep that in mind when settling this claim, particularly given the way the claim has been handled so far. And the cash settlement is subject to interest, so the longer it takes Covea, the more it will have to pay. So it's in both parties' interest to settle the claim as soon as possible.

#### *D's invoice*

Ms S has shown she paid £1,200, including VAT, for D's services. So I'll amend my award to reflect the specific amount paid.

Other than that, I remain satisfied the award I set out in my provisional decision is fair and reasonable for the reasons given.

#### **My final decision**

I uphold this complaint. I require Covea Insurance plc to:

- Settle the internal damage and tanking aspects of the claim by cash payment.
- Pay interest on the cash payment at 8% simple per year, from 1 January 2022 to the date of settlement\*
- Pay £1,200 for D's report\*\*
- Pay £250 compensation\*\*

\*If Covea considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr M and Ms S how much it's taken off. It should also give Mr M and Ms S a tax deduction certificate if they ask for one, so they can reclaim the tax from HM Revenue & Customs if appropriate.

\*\*Covea must pay the award within 28 days of the date on which we tell it Mr M and Ms S accept my final decision. If it pays later than this, it must also pay interest on the award from the deadline date for settlement to the date of payment at 8% a year simple.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M and Ms S to accept or reject my decision before 9 October 2023.

James Neville  
**Ombudsman**