DRN-5627409

The complaint

Mr M, representing company J, has complained about J's motor trade insurer, Covea Insurance plc. Mr M feels Covea has unfairly declined J's claim for equipment which was damaged beyond repair.

A loss assessor has been assisting J/Mr M. For ease of reading though, in the body of my decision, I'll likely not refer separately to the loss assessor.

What happened

In February 2023 a piece of J's equipment was damaged whilst in use. J looked at repairing the equipment and contacted the manufacturer. In November 2023, following ordering of parts and further assessment by the manufacturer, it was decided the equipment was beyond repair. At that time J realised the loss might be covered by its policy with Covea and made a claim.

The equipment in question here is used by placing an item within it. On this occasion, in February 2023, that item had come loose and the equipment had been damaged. Covea asked J what might have caused that to happen. J put forward three possibilities. Covea said they all sounded like operator error, or that the equipment had suffered wear and tear. It noted those causes were excluded under the accidental damage cover. So Covea declined the claim.

J responded challenging Covea. In a final response letter, it maintained its position.

When J complained to the Financial Ombudsman Service, Covea said its ability to properly investigate the claim had been prejudiced by J's late notification. It conceded that one of the three possible causes put forward by J might not be excluded but maintained the other two likely were. So, Covea said, that meant there was a 66% likelihood that what had happened was excluded. As such, Covea felt its decline had been reasonable.

Our Investigator did not uphold the complaint. She felt that, in the circumstances, Covea had acted fairly and reasonably.

J said it was disappointed at the outcome. It said it was a basic premise of insurance that if an insurer wanted to rely on an exclusion to defeat a claim, it was up to the insurer to show the exclusion most likely applied. J said it had not been shown that what had happened was an operator error – Covea had not even spoken to the employee who was operating the equipment. J also noted Covea had not inspected the equipment – so any reference by it to wear and tear was no more than an assumption.

The complaint was referred to me for an Ombudsman's decision. Having reviewed it, I found I was minded to uphold it. I found I had some sympathy with Covea's position – but I wasn't persuaded it had done enough to show a relevant exclusion likely applied to remove its liability for the loss. So I issued a provisional decision to share my views with both parties. My provisional findings were:

"J is correct – as Covea is looking to rely on exclusions to defeat the claim, it is up to Covea to show that such reasonably apply. Covea acknowledged this claim under the accidental damage section of cover. But said that it was likely either operator error or wear and tear which allowed or caused the item within the equipment to become loose and cause damage – both being causes excluded under the accidental damage cover. So the issue becomes whether Covea has shown its reliance on these exclusions is reasonable.

Covea's come to its conclusion, on cause, based on two possibilities put forward by J (three were initially identified, but as noted above, Covea later revoked its argument regarding one of the possibilities). When asked by Covea what might have caused the item to become lose, J said:

- *The item had not been sufficiently tightened on to the equipment and had worked loose during operation.*

- *The item was fitted with weights, with the weights being clamped to the equipment rather than the item, allowing the item to become loose.*

I can understand as a starting point, an insurer asking a policyholder for their view on likely causes of damage. I can see that Covea might have felt on the back foot, so to speak, because of the timing of the loss and the later claim. I can even understand Covea's premise that if two out of three possible causes were excluded that might lead one to concluding its most likely an excluded cause was at play. After all, many of my decisions are based on the premise of 'what is most likely to have happened'.

However, the hypotheses as to cause did not come from an expert, such as an engineer and Covea does not seem to have made any enquiries even to establish some basic things such as the proper operating procedure for the equipment, or likely faults or age related issues with the same. Given the exclusions Covea is looking to rely on – operator error and/or wear and tear, that doesn't seem very fair to me.

Here Covea seems to have just assumed that the hypotheses put forward equate to things excluded by the cover. I think though that before it can reasonably argue that 'two out of three' causes are operational error/wear and tear – meaning that is most likely what caused the damage and is excluded – it first has to show that those two are reasonably likely to be operator error and/or wear and tear.

For example, an item not being "sufficiently" tightened might be operator error. But it could also be that the operator did everything they were meant to in line with proper operating procedures for the equipment. If so, it's difficult to view anything that went wrong as being down to their 'error'. In respect of wear and tear, Covea hasn't suggested how either of the two above possible causes might relate to wear and tear – but any reliance on such an exclusion would usually involve an insurer assessing things like the age of the equipment and its expected lifespan.

I'm not persuaded that, in the situation here, Covea has shown it's most likely that these two hypotheses show that either an operator error or wear and tear occurred such as to cause the damage.

I appreciate that this claim was made late, compared to when the damage occurred. I also appreciate that some repairs and investigation of the equipment had been completed (not by Covea). But I don't think any of that precluded Covea from completing reasonable investigations such as perhaps; interviewing the employee, asking J for sight of its relevant records such as training and operating logs, inspecting the equipment and speaking to the manufacturer, potentially even the manufacturer's repairer who had assessed the equipment. If, having made reasonable enquiries like that, Covea's view was that the time

and/or repairs had prejudiced its position – perhaps logs had been disposed of in in line with normal operating procedures, for example – I might have been compelled to agree its position had been prejudiced. But Covea has not even attempted to undertake any enquiries. In the circumstances I find Covea's decline on the basis of the hypotheses put forward by a non-expert, without any investigation, was unfair and unreasonable."

And I set out what I felt Covea needed to do to put things right:

"Covea has had the chance to assess the claim and hasn't convinced me it can fairly decline it. So it must now reasonably accept the claim and move to settle it. What that will mean for J is unclear at this stage – J says the equipment is beyond repair. But, as I understand it, it is still in J's possession. The policy allows Covea the choice in repair or replacement, so it will be up to Covea how it progresses with the claim.

J says it has been inconvenienced by Covea's decline and has suffered financial loss as a result. J has explained that this piece of equipment allowed it to carry out this certain area of work – and, without it, it's been unable to do that work.

I accept that J has had to challenge Covea's decline. But I also note it employed a loss assessor to handle that for it. So J's roll in challenging Covea has been somewhat limited, mitigating the inconvenience caused. But I accept there would still likely have been update meetings and similar which would have taken time away from the business. I'm minded to award £250 compensation for inconvenience.

To be clear – this is an award for J's inconvenience. I cannot award compensation for distress in this instance, nor take into account any upset caused to any individuals involved.

I'm not persuaded, in this instance, that it would be fair to make Covea pay anything regarding reported lost income. The equipment was damaged in February 2023 and J managed without it whilst it tried to repair it. If that meant that J lost business as a result that was not Covea's fault. And, with that gap in trade for so long, it's difficult to reasonably establish what would most likely have happened in 2024 with that part of J's business had the claim been accepted and settled in a timely manner by Covea. Trade might have resumed to levels it had been in 2022 – but it's also fair to think that custom may simply not have recovered. I'm simply not satisfied, in the circumstances, that Covea's unfair decline caused J a loss of business and, therefore, income in 2024. So I don't intend to make any award in this respect."

Covea said it accepted my provisional decision. J said it was pleased I had found in its favour. J asked though that I consider requiring that any claim settlement Covea makes takes into account the reasonable charges of its loss assessor. J said the loss assessor's "involvement….arose and was necessitated purely with a view to reviewing and contesting the original decision on policy liability and also to review the handling of the claim by Covea". J said given I'd found Covea's decision was unfair, it followed that Covea should cover those costs which had resulted.

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 note both parties have accepted my findings. So, with no objections to what I said, I've no need to revisit my findings here.

I also note J's request for my decision to direct Covea to include, within any claim settlement, the cost of its loss assessor's charges. However, that isn't something I can reasonably require Covea to do.

Covea did make what I have found to be, an unfair claims decision. That decision was communicated to J in January 2024. But J had already appointed the loss assessor prior to that, to assist it with making the claim. So I don't accept that the loss assessor was only involved because of Covea's unfair claim decline. In any event, once J had Covea's claim decision, it was then up to J how it dealt with that – it was open to J to make a complaint to Covea, wait for its formal final response and then complain to this Service, free of charge, if it remained unhappy. Instead J chose to utilise the loss assessor's services, knowing they came at a cost, to challenge that decline and, ultimately, complain to this Service. I can't reasonably place the costs flowing from that decision at Covea's door.

I remain of the view that my suggested award, set out in my provisional decision, is a fair and reasonable remedy for the failures which have occurred here, and I've not had cause to change my provisional findings. As such, my provisional findings, along with my comments here, are now the findings of this my final decision.

Putting things right

I require Covea to:

- Accept and settle the claim in line with the remaining policy terms and conditions.
- Pay J £250 compensation for inconvenience.

My final decision

I uphold this complaint. I require Covea Insurance plc to provide the redress set out above at "Putting things right".

Under the rules of the Financial Ombudsman Service, I'm required to ask to accept or reject my decision before 14 July 2025.

Fiona Robinson
Ombudsman