

## **The complaint**

Mr S complains that Hubener Versicherungs AG has unfairly declined to cover a claim for damage following water ingress.

## **What happened**

Mr S is a commercial customer who, via his broker, took out a policy with Hubener to insure his commercial property on 26 June 2022. The property consists of a business premises on the ground floor and a flat on the first floor.

A claim was made in May 2023 after Mr S's tenant in the downstairs of the property noticed water entering. A loss assessor attended and the cause of damage was noted as the result of water ingress from an area where lead flashing had been stolen outside of the property.

The loss assessor noted in its report that the property was in a poor condition with areas of internal damage to the upstairs flat. Hubener reviewed the claim and information provided by the loss assessor and in June 2024, it issued a repudiation letter.

Hubener said it didn't think Mr S made a fair presentation of the risk when the policy was taken out. When the policy was applied for, Mr S was asked whether the premises is in a good state of repair, Mr S answered "yes" to this question.

Hubener didn't think, based on the condition of the property noted by the loss assessor during their visit, that the property was in a good state of repair and Mr S had made a misrepresentation at inception. It said had a fair presentation of the risk been made, the policy would have been offered but on different terms. The cover would have been limited to Fire, Lightning, Explosions and Aircraft Impact only, known as (FLEA cover). This meant cover for water damage from the ingress was not provided and the claim was declined.

Mr S complained about the claim decision and the complaint was brought to this Service. Our investigator looked at the complaint and initially had concerns over whether Hubener could demonstrate it would have acted differently had the question about the condition of the property been answered with a no. Hubener demonstrated this would have affected its risk decision but our investigator didn't think it could be shown the property was in a poor condition when the questions were asked and the policy was taken out.

Mr S said he'd been unable to inspect the property ahead of the policy inception but didn't think this meant he's mis-represented its condition. Evidence was provided by Mr S to show a tenant of the flat, who didn't move in until February 2023 had admitted to causing significant damage to the property. This was after the policy was incepted and the cover offered, based on the answers given. It followed that with it not being shown the property was in a poor condition at inception, the investigator didn't think it was fair for Hubener to apply the Insurance Act 2015 and the remedy it had sought to reduce the cover based on a misrepresentation being made. This is because they didn't think it could be shown this had happened and so the remedy couldn't be relied on.

They asked that Hubener reconsider the claim for water damage and the theft of the lead

roofing. If the claim is subsequently accepted, any cash settlement paid should include 8% interest from the date of the repudiation letter until the date payment is made. Hubener should also consider any other financial loss Mr S says he has incurred as a result of the delays, to be demonstrated by Mr S with any supporting evidence.

Hubener did not accept the recommended outcome and said it still believed it had fairly applied the Insurance Act 2015 and remedies available when a fair presentation of risk had not been made. Our investigators opinion was maintained and the complaint referred for decision at the request of Hubener.

### **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 have decided to uphold this complaint, for much the same reasons as our investigator. I appreciate Hubener will be disappointed by this as it feels it fairly applied the Insurance Act 2015 and remedies available within this. But I'll explain why I don't think this can be applied and it is right the claim is reconsidered against the policy terms in place when the policy was incepted.

As Hubener and our investigator have highlighted, the relevant law to this complaint is the Insurance Act 2015. This is because Mr S's property is a commercial one and the insurance in place, a commercial policy.

When considering if Hubener has applied the Insurance Act 2015 fairly, the first question that needs to be confirmed is whether there was a misrepresentation. Only if there is a misrepresentation would I need to consider if it would be a qualifying one, which would be the case if Hubener can demonstrate it would have acted differently had a fair presentation of risk been made.

The Insurance Act 2015 places a duty on Mr S, as a commercial customer, to make a fair presentation of the risk. This means he needed to disclose everything he knows or ought to know, that would influence the insurers judgement about the risk. Or enough information to put the insurer on notice that it needs to make further enquiries about potentially material circumstances.

Here, Mr S originally said he had not been able to access his property prior to taking the policy out. Hubener felt this meant as a commercial customer, Mr S has not acted reasonably and he ought to be aware of the condition of the property – both inside and out. And while Mr S says the roof was repaired in 2007 and was a relatively new roof, this is not enough to substantiate the condition of the property.

The damage highlighted by the loss assessor in its inspection and visit was holes to the wall, missing balustrade and spindles. Mr S has provided evidence to show his tenant which moved into the property in February 2023 has received cautions from the police for using the balustrade as an offensive weapon. There is also restraining orders keeping the tenant away from the downstairs business of the property and a written acknowledgement by the tenant that the damage noted to the inside of the property was caused by them.

I understand why, when Mr S said he hadn't been able to inspect the property prior to taking the insurance out with Hubener, that it has concerns about whether he was aware of everything he ought to be aware of. And it feels when answering the question about the property's condition and whether this is in a good state of repair, it could be a misrepresentation.

While I accept the concerns here, I don't think this can be shown to demonstrate the answer to the question was incorrect. I say this as the damage reported by the loss assessor correlates as damage caused by the tenant who was in situ in the property from February 2023. This was after the policy was incepted and when Mr S answered the question to say the property was in a good state of repair, it hasn't been shown it wasn't.

In the absence of anything else, I am persuaded this shows the damage to the flat was caused after the tenant moved in and the policy was in place. The business unit was trading underneath and I've not seen any significant concerns about the condition of this unit and so it follows, when Mr S said the property was in a good state of repair, that he was making a fair presentation of the risk. And whether he had visited the property prior to its inception or not, there is no evidence to show damage was existing in June 2022 when the policy was taken out.

With it not being shown there has been a misrepresentation, I don't think Hubener has acted fairly when applying the Insurance Act 2015 and declining the claim – following it reducing the cover in place to FLEA only. I think it is fair this is now reconsidered in line with the policy terms and cover in place when the policy was incepted.

Mr S, is a commercial customer and has set out at different points in his communication to Hubener, concerns about rents not being paid because of the damage. But I haven't seen anything beyond this, so as well as considering the claim for the damage to the property. If accepted by Hubener, I think it is fair Hubener also consider any costs presented by Mr S which have been incurred because of the delay in this claim being considered and Mr S will need to evidence these.

### **Putting things right**

To put things right now, Hubener will need to do the following:

- Reconsider the claim for water damage and the theft of the lead roofing.
- If the claim is subsequently accepted, any cash settlement paid should include 8% interest from the date of the repudiation letter until the date payment is made.
- If accepted, Hubener should also consider any other financial loss Mr S says he has incurred as a result of the delays, to be demonstrated by Mr S with any supporting evidence.

### **My final decision**

For the reasons I've explained above, I uphold Mr S's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 6 February 2026.

Thomas Brissenden  
**Ombudsman**