

The complaint

Mr E complains that Covea Insurance plc (“Covea”) has treated him unfairly in relation to a subsidence claim made on his landlord insurance policy.

What happened

The background of this complaint is well known to all parties. So, I’ve summarised events.

- Mr E made a claim for subsidence under his Covea policy. While works were undergoing, Mr E had struggled to keep tenants in the property due to the cracking and ongoing works.
- Mr E says he and Covea discussed matters and reached an agreement to provide reduced rent to a new tenant following some temporary repairs. So, he arranged a new tenancy with reduced rent (£1,300) until January 2022. He said this was £200 below the previous monthly rent of £1,500 he’d had in place. He shared the tenancy agreement with Covea, and it then declined to cover any reduction. This tenant moved out around December 2021.
- Following Mr E’s complaints, Covea has issued two final responses (FRL1 and FRL2) concerning this claim and associated rental income.
- FRL1 was issued in December 2020 and concerned the rental income and delays.
- FRL2 was issued in May 2021. It said the claim for loss of rent until the subsidence claim is concluded was rejected on the basis the visible cracking was not a justifiable reason to leave it empty. However it agreed the cracking and ongoing repairs may put off potential tenants and said it would agree to carry out temporary cosmetic repairs, and agreed in principle to a £200 reduction in rent being recoverable if this enabled Mr E to mitigate his losses and secure a new tenant.
- Covea went on to say the tenancy he’d written did mention the subsidence but did not specifically mention the rent reduction being as a result of the claim. It said Mr E had told it this was discussed verbally only. But Covea said the lack of text or email evidence supporting this led it to conclude there was no evidence to support the loss of rent was agreed solely as a result of claim damage. It also said it would’ve been unable to provide advice on how to set up any such tenancy agreement.
- Our Investigator looked into the complaint. he explained the matters concerning FRL1 were brought out of time, but he could consider FRL2. He said Covea had acknowledged subsidence was mentioned in the tenancy agreement, and it was unfair in the circumstances to expect Mr E to have known what to specifically include without any guidance from Covea. He also said Covea had alluded to the reduced rent being accepted due to market forces but there was no evidence to support this.
- So, the Investigator concluded Covea should pay the £200 reduction in rent for the period the tenants were in the property – plus 8% simple interest to account for the period he was without these funds.
- Covea disagreed saying Mr E’s tenant had complained in May 2021 that the crack damage had made the room cold and was trying to move out as a result. It said this

commentary did not support that Mr E's tenant was benefitting from a rent reduction. It also said writing the tenancy agreement was not complicated and sensible for him to avoid future complaints. And it said the reduction would have only been in place until August 2021 when it completed temporary repairs.

- The Investigator looked again and didn't change his mind. He said its FRL2 agreed to both repairs *and* a rent reduction so he said he still felt rent should be covered for the period the tenants were in place. He also said Covea had seen the tenancy shortly before it became live but didn't advise Mr E of its concerns until several months after which prevented him for rewording the contract.
- Mr E has accepted the Investigator's view including the FRL1 matter concerning jurisdiction, so I won't address this further within this decision. Covea didn't, so the complaint has been passed to me for an Ombudsman's 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.

Having done so, I'm upholding this complaint. I'll explain why.

- Covea has said Mr E's property was habitable and therefore it would not cover a claim for loss of rent under the policy. But it did say cracking to the property and disruption from repairs may put off prospective tenants, seemingly taking into account the history of tenants.
- It also agreed in principle to cover a reduction in rent of £200. Seemingly Mr E followed this advice as its not disputed that he lowered the rent by this sum.
- Covea says Mr E's contract was simply not clear enough that the rent was lowered due to the ongoing works. And while it acknowledges the ongoing subsidence is mentioned, it says this isn't specific enough.
- Covea has said it could not advise Mr E on drafting his tenancy agreement, but this would've been straightforward. While I of course wouldn't expect Covea to draft the contract for Mr E, it seems to me that it should've made clear any stipulations it expected to him. Or perhaps offered to review the tenancy before it went live, or simply read it and responded more quickly than it did, potentially giving Mr E the opportunity to amend the tenancy agreement before it began or shortly after as our Investigator has suggested.
- And based on what I've seen, I'm not persuaded Covea has shown it did make this requirement clear to Mr E. Or at the very least, I'm not satisfied it has been able to demonstrate it made this clear to this Service.
- Covea has also said Mr E's statement that he'd verbally agreed with the tenant that the reduced rent was related to the subsidence works wasn't sufficient. And Covea has suggested the agreed lower rent sum could be related to wider market conditions. But it's not been able to point to anything within the tenancy that persuades me this was the case. So, while I accept this is a possibility, it seems most likely to me that Mr E had discussed this with the tenant – particularly given the reference to subsidence within the agreement.
- Covea has also said Mr E had made reference to the tenant complaining about the cracking in May 2021. I take on board these comments, but I'm not persuaded that it's fair to say the contract being more specific about the reason for the reduced rent would've necessarily prevented a tenant complaining in the circumstances.
- Covea also pointed to a new tenant in place from January 2021 onwards at a lower

rent with the same description used for the tenant in question. I take these comments on board, but this doesn't outweigh the reasoning I've given above and hasn't changed my mind.

- Covea has said if it is directed to cover the reduced rent, it should only cover up until August 2021 as it completed temporary repairs around this time. However, again I'm not persuaded this stipulation is explained in the documentation it sent to us, and this is not reflected within its FRL2. So again, it's possible this agreement was made with Mr E, but I'm not satisfied it has demonstrated this to our Service.

My final decision

For the above reasons, I uphold this complaint. Covea Insurance plc must pay Mr E:

- £200 for each month his previous tenant was in place and paying rent in line with the tenancy agreement in place from January 2021 onwards until it ended.
- 8% simple interest* on each of these payments from the date specified in the tenancy agreement until the date of settlement.

* If Covea considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr E how much it's taken off. It should also give Mr E a certificate showing this if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 8 June 2022.

Jack Baldry
Ombudsman