

The complaint

Although the complaint is brought in the name of a business “P” I’ll be referring only to the parties directly involved - Mr S and Ms S.

Mr S and Ms S complained about Covea Insurance plc’s slow progression of a subsidence claim at their ground floor flat they usually let out to tenants. They are also unhappy about Covea’s decision to decline cover for the cost to put right their partially collapsed garden wall and loss of rent claim.

What happened

Mr S and Ms S notified Covea of a claim to their ground floor flat. After a period of investigation, the loss adjuster appointed by Covea accepted the claim having identified the cause of the damage as tree root induced subsidence. The most influential tree was situated in a neighbouring section of ground to the rear of the property. An arboricultural report recommended the tree should be completely removed to prevent further damage, and some other neighbouring trees and foliage, should be reduced.

Mr S and Ms S raised a number of complaint points. They said there was no progress on removing the tree or any other mitigation works. Mr and Ms S said Covea should pay for the collapsed wall. They submitted an independent expert report which suggested the proximity of the vegetation and defective drain meant it was more likely that the wall damage was linked to the same subsidence damage that had affected the house. Mr and Ms S wanted Covea to cover the loss of rent which they say is due to a loss of attraction caused by the collapse of the wall. Their basis for the claim was that they rent out their ground floor flat as a garden flat. Therefore, access to the garden was an obvious requirement of any prospective tenant. But they felt this was not going to be possible while a section of the garden wall was lying in the garden and part of the wall seemed only to be still standing due to another tree. They said the wall’s unstable state meant access to the garden was a safety issue.

Covea accepted it wasn’t able to progress the claim as quickly as it would have liked. But it said the delays were because the tree belonged to a neighbour and was in a conservation area. The neighbour required permission from the local authority before being able to take action. Covea was satisfied its loss adjuster sufficiently pursued the vegetation works in order for the claim to progress. But matters were further delayed outside of Covea’s control because the neighbour initially only applied to prune the tree despite being provided with evidence showing it had to be removed.

Covea said the wall collapsed possibly due to ground movement, mortar degradation or inadequate construction. It said it wasn’t due to the same subsidence event identified as being the cause of the damage to the house. And it refused the loss of rent claim as it didn’t feel the property was uninhabitable due to the claim.

Our investigator upheld the complaint. He accepted the lack of progress was outside of Covea’s control. And he said the property wasn’t made uninhabitable because of the damage to the garden wall. On those points he felt Covea had acted reasonably. But he did

accept based on Mr S and Ms S's independent expert report that Covea had acted unreasonably when it declined to pay for the damage to the garden wall. He said Covea should cover the cost of putting right the garden wall.

In my recent provisional decision, I said:

"Slow progress of the claim

There's no doubt the claim didn't progress as quickly as the parties would have liked. However, I am not persuaded that the delays are down to Covea. Subsidence cases are very time consuming, especially when vegetation belonging to another party has to be removed or reduced. But it's even more complex and time consuming where the vegetation is protected and requires local authority approval. So, I don't think there's any evidence Covea acted unreasonably here.

Garden wall

I have considered the points made by Covea's agents as well as the independent expert instructed by Mr S and Ms S on the cause of the damage to the wall. Covea and its loss adjuster decided the outcome of the wall claim based on pictures as opposed to carrying out site investigations. Neither party has undertaken any specific sub-ground site investigations to confirm the cause of damage to the garden wall.

Covea said long term deterioration was present with vegetation growing in the mortar. Whereas Mr S and Ms S's expert pointed out there were leaking drains and roots found near the collapsed section of the wall, these according to their expert must have "contributed to the collapse of the wall".

I don't think either side has enough evidence to allow me to uphold their position in full. So, to decide this case and enable the matter to be brought to a fair and reasonable conclusion I think an independent third-party expert is required.

Covea should provide details to Mr S and Ms S of three independent subsidence experts who are chartered engineers. Mr S and Ms S can then look at their details and select one. Once they have confirmed to Covea which one they'd like to be the independent expert Covea should pay that experts costs and arrangements should be made between the parties for this new expert to inspect Mr S and Ms S's claim damage regarding the collapse of the wall. As both sides will have some involvement in the selection of the expert, the expert will be considered to have been jointly appointed by Covea and Mr S and Ms S.

Once appointed the expert should be provided with all the evidence already produced in the claim by both sides so they can review it before inspecting the wall. Mr S and Ms S should arrange a convenient date to allow the inspection to take place and they will be able to explain their position about the wall to the independent expert in person. The expert should then provide a report with findings on the cause of the damage to the wall to both parties for their comments, along with how this can be remedied, and what Covea should be repairing, or paying for under this policy.

The parties will be bound by the findings of the independent expert.

Loss of rent due to loss of attraction after the collapse of the garden wall

Covea said it wouldn't pay for any loss of rent suffered by Mr S and Ms S stating that terms of their policy only cover loss of rent when the property is uninhabitable as a result of the same claim.

I don't think there is any suggestion from Mr S and Ms S that their property was rendered uninhabitable by the damage to the wall. The point Mr S and Ms S are making is that the loss of rent section provides cover in much wider circumstances.

Mr S and Ms S have pointed to their policy document, page 30, Loss of Rent Section, subsection 10.

"10. Loss of attraction

Interruption of or interference with the business in consequence of damage to property in the vicinity of the premises which shall deter potential tenants or lessees whether the premises is subject to damage or not. Our liability will not exceed £50,000 any one occurrence and £250,000 in any one period of insurance."

Mr S and Ms S are claiming for loss of rent due to a loss of attraction as covered under subsection 10 of the Loss of Rent section of their policy. This is on the basis that they rent out their ground floor flat as a garden flat. Therefore, access to the garden was an obvious requirement of any prospective tenant. They have sought the advice of a local estate agent and concluded it's not possible to rent out the property while a section of the garden wall was lying in pieces in the garden. The estate agent effectively told Mr S and Ms S this. Also, the remaining wall is in an unstable and precarious state. There's a suggestion more of the wall would topple over but for a small tree holding it in place. So, any access for a tenant to the garden would be a huge safety issue. As a result, Mr S and Ms S felt they had no option but to withdraw the property from the market.

I haven't seen Covea make any specific comments about this point. Having carefully examined the policy documents, I am satisfied with the principle that loss of rent due to loss of attraction is covered under the policy.

However, I think the loss of rent claim hinges on the outcome of the claim for the wall.

If the independent expert recommends Covea should cover the claim for the garden wall, then it will follow that the rent claim is covered too. Mr S and Ms S should present the available evidence to demonstrate what loss of rent they reasonably and unavoidably suffered as a result of the loss of attraction caused by the damage to the wall. Covea should then cover this loss of rent claim together with interest at 8% simple per annum (less tax if appropriate) from the date of loss until the date of settlement.

If the independent expert concludes that the wall was damaged due to an uninsured cause – I think then the loss or rent claim due to loss of attraction fails. In such a situation, the responsibility to put right the wall would be down to Mr S and Ms S."

Responses to my provisional decision

I've read all the further points made but I'll only mention the points central to this decision.

Mr S and Ms S said tree removal had taken place and monitoring carried out. This allowed the main building repairs to go ahead. But the work hasn't begun despite a schedule of works being drawn up. The loss adjuster didn't accept the works and said repairs now were different to the original works when the claim first arose in 2019.

Mr S and Ms S think further damage and changes occurring over the course of the past couple of years seems perfectly normal. A further site meeting took place between the contractor and the loss adjuster but there's been no sign of a further schedule.

Mr S and Ms S feel the further recent delays are down to Covea's loss adjuster and would like this service to consider this.

Mr S and Ms S have confirmed Covea provided details of surveyors and one has now been picked and so hopefully their appointment is imminent.

Covea didn't respond to the 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.

Our investigator responded to Mr S and Ms S to confirm that the later delays aren't something I can consider as part of this complaint. But if Mr S and Ms S wish to they can ask Covea to review these delays as part of a new complaint.

I'm pleased to see a surveyor has been picked and I hope Covea can arrange for the inspection and report to take place as soon as possible.

There's no detail in the responses to my provisional decision that make me think I need to change anything so my provisional decision will now become my final decision.

Putting things right

- pay for and jointly appoint with Mr S and Ms S an independent expert engineer to inspect and report on damaged wall claim.
- both parties will be bound by the expert report findings and solutions put forward to resolve the claim.
- If the independent expert recommends Covea should cover the claim for the garden wall then Mr S and Ms S should present the available evidence to demonstrate what loss of rent they reasonably and unavoidably suffered as a result of the loss of attraction caused by the damage to the garden wall.
- Covea should then cover the reasonable loss of rent claim together with interest at 8%* simple per annum (less tax if appropriate) from the date of loss until the date of settlement.
- if the independent expert concludes that the garden wall was damaged due to an uninsured cause – then a loss of rent claim due to loss of attraction should not succeed. And I won't require Covea to take any further action over this matter.

My final decision

I uphold this complaint.

I require Covea Insurance plc to:

- pay for and jointly appoint with Mr S and Ms S an independent expert engineer to inspect and report on damaged wall claim.
- both parties will be bound by the expert report findings and solutions put forward to resolve the claim.
- If the independent expert recommends Covea should cover the claim for the garden wall then Mr S and Ms S should present the available evidence to demonstrate what loss of rent they reasonably and unavoidably suffered as a result of the loss of attraction caused

by the damage to the garden wall.

- Covea should then cover the reasonable loss of rent claim together with interest at 8%* simple per annum (less tax if appropriate) from the date of loss until the date of settlement.
- if the independent expert concludes that the garden wall was damaged due to an uninsured cause – then a loss of rent claim due to loss of attraction should not succeed. And I won't require Covea to take any further action over this matter.

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

Under the rules of the Financial Ombudsman Service, I'm required to ask P and P to accept or reject my decision before 29 November 2022.

John Quinlan
Ombudsman