

## **The complaint**

T complains about the settlement by Covea Insurance plc of a loss of rent claim it made on a Property Owners insurance policy following a flood at its premises in June 2019.

## **What happened**

T is the owner of premises that were let to tenants and which were affected by flooding in June 2019. T made a claim on its policy and Covea appointed a loss adjuster to manage the claim.

The loss adjuster inspected the site and issued a preliminary report on 29 July 2019. T appointed contractors to carry out the repairs and a surveyor to manage the work, which was completed in October 2021.

In addition to the repairs, T claimed for loss of rental income while the work was being done. The loss adjuster made an offer to pay nine months' rent. T didn't accept this and said:

- the offer didn't cover the full loss of rent it had suffered;
- it had done everything it could to progress the project as quickly as possible and had used the contractor which the loss adjuster suggested;
- its surveyor provided a schedule of works which was essentially cut in half by the loss adjuster and this caused delays as the insurer had to return to the original proposed schedule of works;
- a compromise was reached about the start of the project, but the future works were never discussed and there was no time limit for them to be carried out.

The loss adjuster made an offer to pay fifteen months' rent to try to resolve the claim. T did not accept the offer and claimed the full loss of rent for the period the works were going on.

When T referred the complaint to this service our investigator thought it should be upheld. She said:

- T could claim for loss of rent for the period set out in the policy, which was 36 months;
- considering the timeline of events and the comments from T's surveyor, it wasn't unreasonable that the repairs took a lot longer than originally anticipated;
- it was for Covea to show the work hadn't been done in a reasonable time and it hadn't done so.

The investigator recommended a further payment for loss of rent for the period up until the works were completed in October 2021.

Covea didn't agree and has requested an ombudsman's decision. It says:

- It doesn't believe T has acted reasonably or attempted to mitigate its loss.
- It had other work done, which wasn't part of the insurance, and this was a deliberate attempt to make the loss of rent period longer to increase the amount of the claim – in effect using the policy as a substitute for rent it would have lost by having work done.
- The offer of 15 months' rent is generous and was initially accepted by T.

T's broker, who has assisted it in relation to the claim, says it's not true T accepted the offer of 15 months' rent; this was accepted as an interim payment and when the works overran, the additional period should also have been covered.

As no agreement has been reached I need to make a 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.

The relevant industry rules and guidance say insurers must deal with claims promptly and fairly; provide reasonable guidance to help a policyholder make a claim and appropriate information on its progress; and not unreasonably reject a claim. They should settle claims promptly once settlement terms are agreed.

The cover in the policy for 'Rent Receivable' was for: *"loss of rent receivable arising from damage to any property owned by you, occurring during the indemnity period following an incident during the period of insurance caused by a specified peril insured under the buildings section."*

The indemnity period was 36 months. So the starting point is that T had cover for 36 months' rent.

T had a duty to mitigate its loss – so if it was responsible for avoidable delays, it would be reasonable to take that into account. But if Covea wishes to reduce the amount paid and claim that T is not entitled to cover for the full period allowed in the policy, then the onus is on Covea to prove T was responsible for the delays and I don't think it has done that.

There were some initial delays in getting tenders and agreeing the specifications for the work but a compromise was reached in relation to that period. This was included in the payment of 15 months' rent. So I don't need to make a finding on that. The issue for me to decide is whether Covea should also cover the rent for the later period, after delays occurred in carrying out the repairs.

There is a difference of opinion as to the reasons for the delays. So I've considered the evidence from both sides about what happened.

When the claim was made there was a meeting on site to review and agree the scope of repair. A full survey was undertaken by specialists which indicated that large areas needed to be stripped out due to contamination or concealed dampness. The Schedule of Works was issued to contractors for pricing. The lowest of the pricing returns was £117,000.

The loss adjuster said it then transpired that the contamination/dampness wasn't a concern and strip out works were not required. The surveyor provided a reduced scope of £66,537.

Both the surveyor and the broker say delays were caused by the fact items which the loss adjuster removed from the specification had to be reintroduced as the work went on, and the main contractor had to allocate labour to other projects while it waited for the loss adjuster to approve the changes.

The loss adjuster says it was reasonable to have removed those items and then consider each of them as they arose. Even if that's the case, the contractor gave examples of delays on the project. He said there was out of sequence working, as several of the additional elements were discovered as the reinstatement works progressed. To maintain continuity on

site, they had to alter their programme. And he says they had to leave site on several occasions while they awaited the lengthy process of assessing the requirements, producing the costs and receiving authorisation.

It's clear there are differences of view between the various parties involved. But on balance I find the combination of comments from the broker, surveyor and contractor more persuasive. I appreciate Covea says they are not independent but neither is the loss adjuster, and their comments are consistent.

There were also outside factors including the impact of the covid-19 pandemic and the fact the flooding in June 2019 had affected lots of premises in the area; there would have been many insurance claims and a high demand for contractors and labour. So when the project was paused awaiting authorisation of the higher costs, the labour was diverted elsewhere and had to be brought back to resume the work.

T wasn't responsible for any of this – it didn't decide what should be included in the specifications, what the process should be for reconsidering items or agreeing whether they should be done. And it had no control over how long it took to get each item authorised. So it would not be fair to penalise T for this.

More recently Covea and the loss adjuster have said T deliberately carried out other work, not related to insurance claim, to prolong things and allow it to claim more for loss of rent. But it didn't raise this at the time or put it to T, to give it a chance to comment. And this allegation is strongly denied.

Weighing up all the evidence, I'm not persuaded that T caused unnecessary delays. Taking all of the above into account I don't think it would be fair to make further deductions from the rent claim.

The additional rent the investigator recommended was from end of the period that the payment of fifteen months loss of rent applied to, until the completion of the works in October 2021. I agree that would be fair and so Covea should pay for that period. Before making my decision I asked the parties to clarify the period covered by 15 months the payment, to be clear about what period remained from then until October 2021.

Covea still maintains that the work could have been completed earlier and does not think any further payment should be made.

T says:

- there was a total of 25 months' loss of rent;
- 15 months has been paid, and the initial seven months period was half paid – to be fair to Covea, that could be said to be four months;
- the final date was September 2021;
- this leaves the period from April to September which is six months.

As I've said, I agree with the investigator's view that there should be a further payment to cover the period from the end of the 15 months already paid up to the end date. For the avoidance of doubt (and based on the comments received) I think that period is another six months.

### **My final decision**

I uphold the complaint and direct Covea Insurance plc to pay the loss of rent for the additional period of six months.

Under the rules of the Financial Ombudsman Service, I'm required to ask T to accept or reject my decision before 2 October 2023.

Peter Whiteley  
**Ombudsman**