

The complaint

D – a limited company – is complaining about the amount Covea Insurance plc paid to settle a claim it made on its commercial property insurance policy.

D has been represented throughout the claim by a loss assessor. But, for ease of reference, I shall refer to anything the loss assessor has said as being said by D. Further to this, any reference to Covea includes actions by any company who acted on Covea's behalf.

What happened

D owns a number of properties in a building that it rented out. In February 2022, the tenant living in one of the properties ('Flat 3') had a mental episode and caused significant damage to the property and he also damaged the communal area. He then broke into another one of D's properties ('Flat 4'). D then looked to claim on its insurance policy to claim for damage to both properties and lost rent.

Covea arranged for a video inspection of the property and also asked D to provide quotes for repairing the damage. D provided two quotes – the accepted contractor quoted £13,500. However, Covea didn't think the internal damage to Flat 4 was consistent with the damage to Flat 3 and didn't think it was deliberate damage. It thought it was a poor attempt at DIY and not covered. It also said that the policy didn't cover the damage D was claiming to the kitchen. So it offered to pay D £11,700 to settle the claim. D didn't agree and maintained it was entitled to £13,500.

D also submitted a claim for lost rent to both flats totalling around £24,000. Covea agreed to cover lost rent to Flat 3. But it said the only insured damage to Flat 4 was a broken lock and it said D could have easily replaced that. It also said D's estate agent had advised that D had intended to redecorate the flat before the tenant broke in. So it didn't think it was liable for any lost rent to that property.

Our investigator thought Covea's clarity of communication could have been better and quicker and he recommended that it pay D £100 for the inconvenience this caused. However he didn't think Covea was liable to pay anything else on the claim.

D disagreed with the investigator. It said that Covea had taken a long time to settle the claim and it said D couldn't do anything with the damage until this point. So it maintained Covea should cover its lost rent on Flat 4.

As D didn't agree with the investigator, the complaint's been passed to me to decide.

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've come to the same conclusion as the investigator and I'll now explain why.

There are two parts of the claim that are in dispute – the amount Covea has said it would

pay for the damage and the claim for lost rent. I shall deal with each point separately.

Damage claim

The issue for me to decide is whether all the damage D is claiming for was caused during the insured event – namely the tenant's actions arising from his mental episode. I don't think it was. In short, D has to show that the damage it's claiming for arose from an insured peril. In this case, it needs to show it was down to either malicious or accidental damage. I understand that the issues in question are damage to the kitchen in Flat 3 and poor paint issues in Flat 4.

The policy doesn't define what is meant by malicious or accidental damage. So I've thought what a reasonable interpretation of that would be. I think malicious damage covers a situation where an individual intentionally sets out to cause damage to the property. And I think accidental damage covers a situation where damage occurs due to a sudden and unexpected situation.

Firstly, I'm not persuaded that there's sufficient evidence to show that the tenant applied the paintwork in question. But, even if it was, it seems to be an attempt to carry out paint repairs. So, as I think there was a clear decision to put paint on the wall, I cannot say it was an unexpected event. It follows that I don't think I can reasonably say it would be considered accidental damage. Further to this, as I said, it seems to me that the paintwork was an attempt to carry out repairs. I haven't seen anything to support the painting was a deliberate attempt to cause damage – i.e. it wasn't malicious. It follows, therefore, that I don't think it was unreasonable for Covea to say it wasn't required to cover the paintwork damage. And I think it was fair for Covea to say the only insured damage to Flat 4 was the damage to the lock.

D also sets out that the tenant ripped off the kitchen cabinet doors. And it says it's unable to replace them, so it's unhappy Covea hasn't covered the loss. However, I'm not persuaded I've seen enough to show that the kitchen doors themselves were damaged and needed to be replaced or. I recognise the door didn't fit onto the cabinet, but I think that this could have been repaired. And I've ultimately not seen enough to show that D actually paid to replace them.

Loss of rent

The terms of the policy cover any loss or reduction rent that D suffers as a result of damage to the property arising from an insured event. Covea has covered the loss of rent to Flat 3, so I'm not going to comment any further on this. The issue for me to decide is whether I think it was fair for Covea to not cover lost rent on Flat 4. I think it was and I'll explain why.

As I set out above, I think the only damage caused by an insured peril was to the lock. D says that it wasn't able to rent out the property until this damage was resolved. But I think the primary reason why D couldn't rent out the property was the need to clean the property and the paintwork.

But, even if the damaged lock was material to the loss of rent, I'm conscious of the following condition precedent:

"1. Actions by You

It is a condition precedent to Our liability that You shall on the happening of any incident which could result in a claim under this policy:

f) *take all reasonable action to minimise or check any interruption or interference with the Business.*”

So, the terms of the policy required D to take reasonable steps to minimise any interruption. I can't reasonably say that it was fair for D to allow it to lose rent totalling around £13,000 if all it needed to do was to replace the lock at a minimal cost. So I have to say that D hasn't complied with condition precedent. And it follows that I think this is a further reason why Covea isn't liable to cover D's loss of rent under the terms of the insurance policy.

D has also set out that it thinks Covea took an unreasonable length of time to decide this claim. It's set out that the event took place in February 2022, but Covea didn't decline the claim for lost rent until October 2022. And it says this is the primary reason it's lost rent on Flat 4. I can understand this, but I also have to consider whether Covea has unreasonably delayed the handling of this claim. I think there were occasions when Covea could have been more pro-active. But I think it also had a number of issues it needed to consider. This was clearly an unusual set of circumstances and I can understand why it wanted to investigate the claim thoroughly. I'm conscious it wanted to gather the police report to understand from the police's perspective about what happened and I can see it had challenges obtaining this. Further to this I can also see it became aware D's director had previously had a county court judgement, so it wanted to validate the policy. This wasn't unreasonable. I can see that Covea ultimately confirmed it would settle the claim in August 2022.

However, crucially I've seen emails to D in April 2022 where Covea explained its concerns about whether the policy covered the damage to the property. When thinking about whether Covea is liable for any consequential losses as a result of anything Covea did wrong, I need to ask the following questions:

1. Is the loss a direct result of what went wrong;
2. Is the loss reasonably foreseeable; and
3. Did D take reasonable steps to mitigate its losses?

Ultimately, it's a fundamental principle of law that a claimant must take reasonable steps to mitigate its losses. As I set out above, D could and should have replaced the lock sooner and it's not reasonable for it to incur such a sizeable loss when it could have taken minimal steps to reduce this. And, as I said, it was aware from at least April 2022 that Covea was unlikely to cover the internal damage. So I think D could and should have taken steps to minimise its liability.

Ultimately, while I appreciate D's unhappiness with the length of time the claim has taken, I can't reasonably require Covea to cover any lost earnings it's incurred during that time. And I think the £100 in compensation the investigator recommended in compensation is fair compensation for the inconvenience this has caused D.

My final decision

For the reasons I've set out above I require Covea Insurance plc to pay D £100 in compensation. I make no further award.

Under the rules of the Financial Ombudsman Service, I'm required to ask D to accept or reject my decision before 24 April 2024.

Guy Mitchell
Ombudsman