

The complaint

Miss P has complained about Covea Insurance plc's (Covea's) decision to decline a claim she made for damage caused to, and items stolen from, her commercial property.

Mr J is named in this decision as he is also named as a policyholder on the schedule of insurance. However, Miss P is the owner of the property and therefore holds the relevant insurable interest in relation to this complaint and is the party to whom the redress is payable. I've therefore only referred to Miss P throughout the remainder of this decision.

What happened

On 19 December 2023, I issued my provisional decision explaining why I was intending to uphold the complaint. This is what I said in my provisional decision:

What happened

Miss P let her commercial property to a tenant who accrued substantial rent arrears over a five-year period. Miss P issued forfeiture proceedings to evict the tenant and take possession of the property, in June 2022. The tenant attended the property within ten days from the date of eviction to remove his belongings, in accordance with the terms of the lease.

A short while later, Miss P's managing agent attended the property and found that there had been a forced entry from the rear of the property. He also found that the commercial kitchen had been removed and the ventilation, fridges and toilets had been vandalised. Miss P submitted a claim to Covea for approximately £20,000 of loss and damage, in July 2022. In October 2022, Covea confirmed its decision to decline the claim on the basis that the stolen items belonged to the tenant.

Unhappy with its decision to decline the claim, Miss P complained to Covea who issued its final response not upholding the complaint, in December 2022. In brief, Covea said the claim had been declined as the items stolen had been installed by the tenant so weren't covered by the policy. Covea didn't agree with Miss P's submission that anything that hadn't been taken by the tenant, ten days after the tenancy had ended would become the property of the landlord. Rather, Covea considered Miss P, as landlord, was acting as the tenant's agent in relation to the items, to store or dispose of them. As the lease didn't oblige the landlord to insure property installed by the tenant, Covea maintained its position that the items removed from the property during the burglary weren't covered by the policy.

Miss P brought her complaint to this service. Our investigator looked into what had happened and issued a view upholding the complaint. She clarified that the main issue in dispute was whether the items that were stolen from the property belonged to the landlord. Our investigator agreed with Miss P's view that the ownership of the tenant's fixtures and fittings had transferred to her. She concluded that Covea needed to reconsider the claim on the basis that the stolen items were included in the property owned by the landlord and were therefore covered by the policy.

Covea didn't agree with our investigator's view. It remained of the view that clause 29 of the lease meant the tenant retained ownership of the fixtures and fittings after the lease had been forfeited. Covea also said they hadn't seen a copy of Miss P's legal advice that our investigator appeared to be basing the view on. Further Covea said that wasn't fair as all parties should base their decision on the same information.

What I've provisionally 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'd first like to address Covea's response to our investigator's view. As Covea will be aware, the rules under which the Financial Ombudsman Service operates can be found in the Dispute Resolution section of the Financial Conduct Authority's handbook of rules and guidance (available online); commonly known as DISP.

DISP 3.6.1R says: 'The Ombudsman will determine a complaint by reference to what is, in his opinion, fair and reasonable in all the circumstances of the case.'

DISP 3.6.4R goes on to say that in considering what is fair and reasonable in all the circumstances of the case, the Ombudsman will take into account relevant law and regulations.

The key issue in this complaint centres on who owns the tenant's fixtures and fittings that were left behind in the property following forfeiture of the lease. This is a legal issue that our investigator considered and that I have also considered in this decision, as we are required to do by the DISP rules referred to above.

So, while Covea's response to the investigator's view indicated it considered it hadn't been provided with information this service had access to (that is, Miss P's legally privileged advice from her solicitors) that in fact wasn't the case. The case file Covea provided to this service, shows that these arguments were made by Miss P and her broker to Covea, from when the claim was first made in July 2022. Also, our investigator's view was not based on any advice that hadn't been shared with Covea, rather, it was based on a consideration of legal principles which were also available for Covea to consider, should it have wished to do so. I note that Covea has now had an additional five months to consider this issue.

Having considered afresh all of the available evidence and arguments, and the relevant law applicable to this complaint, I'm currently of the view that the items that were stolen or damaged during the burglary were tenant's fixtures which fall to be the landlord's property after forfeiture of the lease and therefore should be part of Miss P's insured property. I will explain why.

Miss P's property was a commercial property which had fixtures including air conditioning units, a commercial kitchen, fridges and toilets. The air conditioning unit and the commercial kitchen were stolen in that they appear to have been physically disconnected and taken away. And I understand the fridges and toilets were vandalised. In addition, some damage was caused to the entry point, where the thieves accessed the property.

The large items such as air conditioning units were clearly fixtures in that they were items that had become part of the land itself but could be removed without losing their usefulness and without causing significant harm to the land. Indeed, that appears to be what was done – wires were cut and the air conditioning units and

commercial kitchen were physically removed.

Where fixtures are removable by a tenant, the general rule is that he must exercise that right of removal during the term. Clause 29.3 of the lease reflects this position, although it refers to chattels only. Where the lease is forfeited, and the term of the lease brought to an end, as it was in this case, the tenant is entitled to a reasonable time in which to remove the fixtures. However, in this case there is nothing to suggest the tenant made any attempts to do so. The general principle at law which applies in these circumstances is that if the tenant does not remove the fixtures during the term (or any extended period – such as the ten days identified in the lease) they become the absolute property of the landlord, in this case, Miss P.

Clause 29.4 of the lease, which Covea has relied on, suggests at first glance, that the landlord remains an agent of the tenant in respect of storing or disposing of such property.

I've set out clause 29.4 below for ease of reference:

'29.4 The Tenant irrevocably appoints the Landlord to be the Tenant's agent to store or dispose of any chattels or items it has fixed to the Property and which have been left by the Tenant on the Property for more than ten working days after the end of the term. The Landlord shall not be liable to the Tenant by reason of that storage or disposal. The Tenant shall indemnify the Landlord in respect of any claim made by a third party in relation to that storage or disposal.'

I don't think this term is as clear cut as Covea suggests, nor do I think that Covea's reliance on it, to determine the legal ownership of the stolen and damaged items, is reasonable. While fixtures usually belong to the landlord at the end of any lease, a tenant has the right to remove certain fixtures – tenant's fixtures – but if he does not exercise his right to do so, the law says these will become the landlord's property.

Clause 29.4 of the lease suggests that ownership might pass at some point because in order to have the right to dispose of something there arguably must be some right of ownership there.

Covea's interpretation of clause 29.4 of the lease would mean that if a tenant refused to remove his chattels or fixtures, that the landlord would remain an agent for him forever more. However, I think that this period would have to come to an end after a reasonable period of time. And in this case, I think, on balance, that a reasonable time had passed for the tenant to collect his belongings before the theft occurred.

Also, the policy terms and conditions define 'Buildings' as: 'property comprising fixtures and fittings formerly the property of tenants which has been relinquished to You'. So, the policy terms provide for this situation, whereby the property has been relinquished by the tenant and has passed in ownership to the landlord. DISP 3.6.1R says I will determine a complaint by reference to what is, in my opinion, fair and reasonable in the circumstances of the case. Despite clause 29.4 suggesting the landlord remains an agent of the tenant, I'm of the view that that cannot fairly be considered to mean for an indefinite period. I'm therefore minded to conclude, for the reasons given in the paragraphs above, that the items that were stolen and damaged during the burglary at that time belonged to Miss P and were included in her insurable property.

Given the period of time that has passed since the claim was first made, I'm intending to uphold this complaint and require Covea to do more than was suggested

by our investigator.

It's apparent from Covea's final response letter and other information provided to this service, that it accepts an insured event has occurred, that is, the burglary and theft and damage to the building and items claimed for. Rather, its reason for declining the claim was simply that it didn't consider Miss P owned the items that were stolen.

I've explained in detail, why I do not share that view. Therefore, I am intending to require Covea to accept and settle the claim in full and pay 8% interest on the settlement monies from the date on which Covea re-confirmed its decision to decline the claim, on 20 October 2022, to the date the awards detailed in the final decision, that will follow this provisional decision, are paid.

I'm also intending to require Covea to pay compensation to Miss P for the stress, worry, upset and inconvenience it's caused her by the way it has handled the claim and the unfair decision it made to decline the claim. Miss P has told us that the whole situation has caused her a huge amount of worry and stress, at a time when she was undergoing medical treatment for a significant health condition. Covea's insistence that she was only acting as an agent of her evicted tenant, with regard to the items that had remained in the property at the end of the term, exacerbated what was already a stressful and frustrating experience for Miss P. She has also explained that the way Covea has dealt with the claim has caused her delays in being able to re-let the premises and has caused her increased anxiety and worry. Taking everything into account, I'm intending to require Covea to pay Miss P £750 compensation for that distress and inconvenience.

I concluded by saying I was intending to uphold the complaint and require Covea to accept and settle Miss P's claim in accordance with the remaining terms and conditions of the policy, pay Miss P 8% interest on the settlement sum in addition to the £750 compensation for distress and inconvenience.

I asked the parties to let me have any final new arguments or evidence by 16 January 2024, after which time I would issue my final decision on the complaint.

Neither party provided any further arguments or evidence for me to consider.

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.

As neither Covea nor Miss P have provided any new information or arguments for me to consider, I see no reason to depart from the conclusions detailed in the provisional decision.

I therefore uphold this complaint and require Covea Insurance plc to pay the awards detailed below.

Putting things right

For the reasons given in this decision (incorporating the provisional decision), I uphold this complaint and require Covea Insurance plc to:

- Accept and settle Miss P's claim in accordance with the remaining terms and conditions of the policy;
- Pay 8% * simple interest on the claim settlement sum from 20 October 2022 to the date the awards detailed in this final decision are paid; and
- Pay Miss P £750 compensation for the distress and inconvenience she's been caused by the way Covea has handled this claim.

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

My final decision

My final decision is that I uphold this complaint and require Covea Insurance plc to pay the awards detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss P to accept or reject my decision before 8 March 2024.

Carolyn Harwood
Ombudsman