

The complaint

Mrs M and Mrs W, trading as 'M', complain about the actions of Covea Insurance Plc when responding to their 'Property Investors Protection Plan' commercial insurance policy.

A large part of this complaint relates to the actions of agents who were acting on behalf of Covea. Where Covea have accepted responsibility for their agents' actions, any reference to Covea in my decision should also be interpreted as covering the actions of their agents.

What happened

The background to this complaint is well known to M and has previously been set out in great detail by our Investigator. Rather than repeat in detail what's already known to both parties - and generally not in dispute, in my decision I'll focus mainly on giving the reasons for reaching the outcome that I have.

M's commercial property suffered extensive damage because of a fire at a neighbouring property in April 2021. At the time of the fire, M had let the premises out to a business tenant on a long-term lease. Unhappy with the actions of Covea when responding to the claim and the claim settlement offered, M made a complaint. Covea partially upheld the complaint and recognised that there had been service failings. Covea made an increased cash settlement offer of £67,999 in May 2022. Remaining unhappy with the claim progression, M made another complaint to Covea in mid-2023. Again, that complaint was partially upheld and Covea offered £100 compensation.

M considered the dispute unresolved and referred the complaint to our Service for an independent review. Our Investigator considered the complaint and said we couldn't consider the earlier final response letter (dated January 2022) as it had been referred outside of the 6-month time limit that must apply for referrals to our Service. He recommended that the remainder of the complaint (that we could consider) be partially upheld. Covea accepted the recommendations and M objected. They felt that if Covea had responded better to the claim, then they wouldn't have lost their tenant who was on a long-term lease or incurred legal expenses as a result.

Our Investigator issued updated recommendations and as Covea haven't responded, the complaint was referred to me for a decision. Recently I sent both parties a copy of my jurisdiction decision explaining why we couldn't consider all of the complaint referred to our Service.

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 Service is an alternative, informal dispute resolution service. Although I may not address every point raised as part of this complaint - I have considered them. This isn't intended as a discourtesy to either party – it simply reflects the informal nature of our Service.

The scope of my decision

There were several parties involved in this claim and complaint. I'm only considering the actions of Covea and their appointed agents (loss adjusters, contractors, engineers etc). By appointed agents, I mean any party appointed by or working on behalf of Covea for whom Covea are ultimately responsible for their actions.

This means I won't be making any findings on the actions of any entity who *weren't* acting as agents of Covea. For example, the broker ('B1'). Whilst I've no doubt communicating with various parties may have caused inconvenience for M, it wouldn't be unusual in a more complex claim of this nature to have more than just an insurer to correspond with.

It's also important that both M and Covea understand when a complaint is referred for final decision, although an Ombudsman will consider it afresh, I only need to decide on matters that are still in dispute – if I'm satisfied that delivers an overall fair and reasonable outcome.

For this complaint, as Covea told us in an email dated 4 November 2024 they accepted our Investigator's recommendations. The only new finding that was added in the updated assessment was the inclusion of a recommendation for Covea to pay 50% of M's legal fees (plus interest) arising from their decision to vacate the property and exit the lease early. I note in M's responses they were unhappy with the recommended increase in compensation to £600. So I will concentrate my decision on these matters, but for completeness I will also include a direction on the earlier matters that Covea accepted.

My key findings - Did M suffer a consequential loss because of Covea's claim response?

I've carefully considered Covea's acceptance that there were claim delays when responding to this claim. They were willing to offer £100 in the final response letter I'm considering here in recognition of service failings and they also accepting of our Investigator's increased compensation recommendation of £600 for any avoidable distress and inconvenience caused.

Based on careful consideration of the arguments put forward by both parties, on balance, I'm satisfied M did. I'll explain why below.

M had a long-standing business tenant in situ at the premises. It stands to reason that if said tenant had been trading successfully at that location for several years (22) and had signed a long-term lease (10 years) around 12 months prior to the fire and the country was starting to turn a corner after the COVID-19 pandemic – they'd be reluctant to leave, unless forced by circumstances and uncertainty beyond their control. I quote the below relevant extracts from the related legal correspondence between M and their tenant:

“As at today's date [28 April 2022], being almost one year since the date of the fire (an Insured Risk) the Property is still not fit for occupation. No remedial works have been carried out to the Property to rebuild and reinstate it...”

Covea accepted that there had been delays before April 2022 when progressing the claim and reaching an acceptable settlement figure with M. I've kept in mind that even if claim settlement had been reached earlier and repair works commenced, given the extent of the repairs, there still would've been a period where the tenant would've been unable to use the premises. On balance, I find it more likely than not that the avoidable delays caused by Covea were likely a major contributory factor in the tenant exiting the agreement early. It follows that on balance, as a consequence, the subsequent legal fees M incurred trying to resolve the matter arose out of the claim delays.

I find that Covea need to make a 50% contribution towards M's legal expenses outlay (a total of £5,500) incurred as a result of their tenant exiting their lease agreement early. This is because of a consequential loss and not under the legal expenses section of cover. I note that Mrs M's broker already accepted making a 50% contribution.

M has argued that the £600 offered doesn't go far enough in recognising the impact of Covea's action on them when causing avoidable distress and inconvenience. I've considered this and also kept in mind the overall actions Covea have agreed to, alongside the general level of inconvenience that might be expected to arise, unfortunately following a claim of this nature on a commercial insurance policy. I find £600 to be fair, reasonable and appropriate. This is *in addition* to the offer of £100 in a final response letter dated July 2023.

Putting things right

Covea Insurance plc now need to:

- Pay 50% of the legal fees stemming from the tenant's decision to leave. 8% simple interest per annum is to be added to this figure, to be calculated from the date M made payment until the date Covea reimburses M's outlay.
- Rerate the policy at renewal in 2022 using a reserve claim value of £100,500. 8% simple interest per annum to be added to any refund figure, to be calculated from the date M paid for the policy until the date any refund is paid to M.
- Pay the earlier offer of £100 compensation made in a final response letter from July 2023. M says they've no record of having received this. If his payment has already been made, Covea need to provide M with reasonable evidence of having done so.
- Pay a further £600 for the avoidable distress and inconvenience caused. Including the earlier offer, this means a total of £700 compensation.

My final decision

My final decision is that I partially uphold this complaint. Subject to M accepting the decision before the deadline set below, I direct Covea Insurance plc to follow my direction as set out under the heading 'Putting things right'.

Under the rules of the Financial Ombudsman Service, I'm required to ask M to accept or reject my decision before 24 March 2025.

Daniel O'Shea
Ombudsman