

The complaint

Mr F has complained on behalf of S, a limited company, that Royal & Sun Alliance Insurance Plc (RSA) has unfairly declined a flood claim under a commercial property insurance policy.

What happened

Mr F made a claim to RSA in March 2019 after the basement in S's rental property was flooded following heavy rain in the previous week. He said the basement had only recently been tanked.

He sent RSA a quote to stop the basement from being flooded again. S's contractor said the basement was being refurbished and the works were required to "*control and manage rising groundwater in the basement.*"

RSA declined the claim. It said S wasn't covered for flooding caused by a change in the water table level.

Mr F brought S's complaint to this service. I issued a provisional decision explaining why I wasn't minded to uphold the complaint. An extract from my provisional findings is set out below:

"Having seen photos of water on the floor of S's basement, I can see it's not in dispute that the basement was flooded. RSA has to settle the claim for flood-related damage unless it can show that a policy exclusion applies. So the first question to consider is whether RSA acted reasonably in declining the claim by relying on the exclusion for loss or damage caused by rising water table levels.

The only professional evidence I've seen as to the cause of the flooding comes from S's contractor who said it was "associated with the amount of rainfall over recent months as well as changes in the water table."

Essentially he was talking about ground water flooding which is when the level of water within the rock or soil below the surface of the land (known as the water table) rises for some reason such as heavy rainfall. When the water table rises and reaches ground (or in this case, basement) level, water starts to come out on the surface.

Ground water flooding tends to occur after a long period of heavy rain. I've seen evidence that there was heavy rain in the local area in the week before the basement was flooded. S's contractor implied there'd been heavy rain in the preceding months. The fact that S's property doesn't appear to have been flooded previously suggests to me that the water level around and under S's property might have risen generally. I think that was probably why it couldn't cope with the heavy rainfall experienced prior to the basement flooding even though previously the same level of rainfall might not have been a problem.

I note the basement had already been tanked before the flood and the purpose of tanking is to stop water from getting into the basement. The description of the works provided by S's contractor supports the fact that the cause of the damage was a rise in the water table. The

works involved installing a “robust sump pump system with perforated sump liner to provide simplified route for water to flow to” and a “water discharge pipe from the sump pump to the existing drainage pipe”. A pump system is often considered the most effective way to keep ground water out of a property.

When an insurer wants to apply an exclusion and so decline a claim, the onus is on it to show, on the balance of probabilities, that the exclusion applies. In this case I think the information from S’s contractor is enough to show that the exclusion for a change in the water table level probably applies.

Buildings insurance policies come with many different types of cover, exclusions and conditions. I don’t think the exclusion for rising water table levels is unclear or, particularly for commercial property policies, unusual and it’s clearly set out in the policy documentation.

In conclusion I don’t think RSA treated S unfairly in applying this exclusion to defeat its claim.

Mr F has referred to guidance on our website about cases of water getting into properties due to a rise in the water table where the insurer has disputed that the damage has been caused by a flood. That’s not the case here. RSA didn’t dispute that there’d been a flood. However the policy wording excludes liability for flooding caused by a rise in the level of the water table.”

RSA accepted my provisional decision. Mr F said the exclusion shouldn’t apply as it was accepted that heavy rain had contributed to the damage.

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 accept that heavy rain did contribute to the flooding of S’s basement. The water table goes up and down depending on the season and the amount of rain or snow. There is a direct link. But this doesn’t change the fact that RSA didn’t offer S cover for this risk under the policy. So regardless of the causal link, unfortunately for S, it isn’t covered for this claim.

The response from Mr F doesn’t change my provisional findings and so they now form part of this final decision.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask S to accept or reject my decision before 29 March 2021.

Elizabeth Grant
Ombudsman