

The complaint

Mrs B complains that Royal & Sun Alliance Insurance Limited (RSA) has unfairly declined her buildings insurance claim.

All references to RSA also include its agents.

What happened

The details of this complaint are well known to both parties, so I won't repeat them again here. Instead I'll focus on giving my reasons for my decision.

I issued a provisional decision on 11 February 2022. In my provisional findings, I said:

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

- *RSA have referenced a policy exclusion related to illegal activities. The exclusion sets out several requirements that need to be complied with by Mrs B.*
- *One of these requirements is that Mrs B, or someone acting on her behalf, complete internal and external inspections of the building at least every three months.*
- *RSA have applied this in declining Mrs B's claim as it said as internal inspections hadn't taken place.*
- *I understand COVID restrictions and concerns regarding risks to family members health would've made inspections difficult. But I do think Mrs B could have reasonably done more to mitigate her circumstances regarding internal inspections, such as contacting RSA to inform them she was unable to do so – or arranging video inspections. While it's likely the tenant wouldn't have complied, I can't see this option was explored.*
- *However, if Mrs B had completed internal inspections, it's likely it would only have identified the Cannabis Farm had been set up earlier. And I'm not persuaded it would have prevented it happening.*
- *From viewing correspondence between RSA and Mrs B's broker, I haven't seen any evidence to suggest the other terms hadn't been complied with.*
- *So while technically it is a breach in conditions, I think in the circumstances, it is fair and reasonable that RSA deal with the claim*

Putting things right

To put things right, I'm intending to direct RSA to deal with the claim under the remaining terms of the policy."

Responses to my provisional decision

RSA didn't agree with my provisional findings. It clarified the purpose of the clause and its relevance in law. It also pointed to other final decisions issued by our service that it feels involves similar facts.

Mrs B has added no further comments.

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 considered what RSA said, but it doesn't change my decision – or my reasoning.

RSA has pointed to previous decisions made by other ombudsmen in cases they feel involve similar facts. And has referenced the Insurance Act of 2015. But, as RSA will also be aware, we aren't bound by our previous decisions and we consider each case on its own individual facts, taking into account what we think is fair and reasonable in the circumstances.

I recognise the policy term strictly allows RSA to decline the claim. But I must also consider whether applying that term would produce a fair and reasonable outcome – and I've explained in my provisional decision why I don't think it treats Mrs B fairly and reasonably to rely on the clause in these circumstances.

As I've set out above if Mrs B had completed internal inspections, I think it's likely it would only have identified the Cannabis Farm had been set up earlier. And I'm not persuaded that it would have prevented it happening. Similarly bearing in mind the timescales involved, I'm satisfied that her not doing so didn't increase the risk of it happening, as I've mentioned above, I think it is more likely than not it would have already been in place at the time an inspection was due.

Putting things right

To put things right, I direct RSA to deal with the claim under the remaining terms of the policy.

My final decision

My final decision is that I uphold Mrs B's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 8 April 2022.

Michael Baronti
Ombudsman