DRN-3517371

The complaint

Mr and Mrs J complain that Royal & Sun Alliance Insurance Limited (RSA) unfairly declined their legal expenses insurance claim.

What happened

The circumstances of this case are well known to both parties, so I've summarised what's happened below.

- Mr and Mrs J have a legal expenses insurance policy. From 2013, RSA has underwritten the policy.
- Mr and Mrs J sought to make a claim on their policy in 2020 to pursue a legal claim against a neighboring golf club as stray golf balls and overgrown trees were affecting the enjoyment of their property. They said the club's removal of protective netting in 2018 had led to increased golf balls reaching their property.
- RSA initially declined the claim. It said the events had begun before the policy started and pre-existing issues aren't covered.
- Mr J brought a complaint to this service. And following our investigator's involvement, RSA agreed to pass the claim for the overgrown trees to its panel of solicitors.
- Our investigator went on to consider the issue of the stray golf balls. She was persuaded the removal of the protective netting was the initial insured event which gave rise to the legal claim – because it was following this that Mr and Mrs J experienced a higher frequency of stray golf balls entering their garden.
- She said RSA needed to consider the claim under the remaining terms and conditions without reference to the exclusion it had sought to rely on.
- RSA disagreed. It said information provided by Mr and Mrs J suggests the issues with stray golf balls existed much sooner than 2018.
- So, the complaint has been passed to me for a final decision.

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.

Having done so, I'm upholding this complaint and I'll explain why.

The starting point is the policy document. Under the legal expenses – "what is covered" section it says:

> *"We will provide the following cover for legal expenses up to £100,000 for any one claim […]. You must have told us about the claim within 6 months of the cause of action arising […]. The cause of action must happen within the territorial limits and during the insurance period."*

It's the last sentence of this section upon which this complaint hinges. RSA has sought to rely on the following policy exclusion as it considers the subject matter of the legal claim to have pre-existed the policy start date:

> *"Any event, dispute or cause of action that first happened or started before you took out this insurance."*

RSA contends there was an issue with stray golf balls entering Mr and Mrs J's property from the time they moved into it in approximately 2010 – which was before the policy started. It's referenced an email from Mr J to support this, in which he says:

> *"My wife and I have lived in this property for 10 years, over this period we have experienced on average 1-3 errant gold balls per year smashing into our garden."*

RSA has also referred to an incident in 2013 where Mr and Mrs J's neighbour's property was damaged because of a stray golf ball. It says this shows errant golf balls were an issue for Mr and Mrs J much sooner than 2018.

Mr and Mrs J don't dispute that golf balls have entered their garden from before the policy began, but have said it's the increased frequency of this from 2018 which caused them concern for their personal safety and the need to ultimately pursue legal action.

On its face, I can understand that this matter concerns stray golf balls entering Mr and Mrs J's property across a number of years. But here, I think there is a distinct change in circumstances that means it would be fair and reasonable for RSA to consider this claim. I don't think it's reasonable to say the damage to Mr and Mrs J's neighbour's property constitutes the initial insured event for this claim concerning the removing of the netting. While it's clear that golf balls from the course may cause damage to nearby properties, I think it would be unfair to consider this potential damage to Mr and Mrs J's property from infrequent golf balls as the cause of action arising.

Instead, I've seen that following the removal of the safety nets, the number of errant golf balls entering their property has increased by at best, 4 times, and at worst 10 times over the year. Either way, I'm satisfied this increase in frequency shows a change in circumstances, and importantly, that this change coincides with a new event, namely the removal of the safety nets. So, I think it's fair and reasonable to consider this as the insured event in this instance.

For completeness, RSA has agreed to pass Mr and Mrs J's claim about the overgrown trees to its panel firm of solicitors and so I'm not considering this element of the claim further.

Overall, I don't think RSA has acted fairly in declining Mr and Mrs J's claim in respect of the alleged nuisance caused by the errant golf balls, and so it should reconsider the claim, subject to the remaining terms and conditions.

My final decision

My final decision is that I uphold this complaint. Royal & Sun Alliance Insurance Limited must reconsider the claim subject to the remaining terms and conditions, but without relying on the exclusion it's sought to apply.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs J and Mr J to accept or reject my decision before 20 July 2022.

Nicola Beakhust
Ombudsman