DRN-3632184

The complaint

A limited company, which I'll refer to as J, complains Royal & Sun Alliance Insurance Limited has turned down a claim it made under its Business Interruption insurance policy.

What happened

Below is intended to be a summary of the key events that led to this complaint. It does not therefore list everything that happened or include all of the detail.

J made a claim to RSA for business interruption. There had been an ongoing issue with the building it operated from and J believes its turnover was negatively impacted as a result.

RSA considered the claim but declined it. It said the policy had an indemnity limit of 24 months and therefore this ran from 2016 to 2018. It said that J hadn't shown its turnover had reduced during that time so didn't think there had been any loss to be covered by the policy. It also said that it didn't think J had acted promptly to rectify the issue with the building nor did it keep it updated on the progress made.

J disagreed with RSA and brought its complaint to this service. Our investigator looked at the complaint but explained to J he didn't think RSA had acted incorrectly.

J asked for the complaint to be reviewed by an ombudsman.

My provisional decision

I issued a provision decision on 1 August 2022. In it I said I intended to uphold the complaint for the following reasons:

"What date should the claim run from?

The relevant policy term for indemnity period says "the period beginning when the Damage not exceeding the Maximum Indemnity Period (as shown in the Schedule)"

The schedule confirms the indemnity period is 24 months.

I've considered the timeline of events and the policy terms. Taking a strict interpretation of the term, the timeframe would run from 2016 and therefore I can see why RSA used that date. However, I don't think that produces an outcome that is fair and reasonable in all of the circumstances of this case.

The building had only just been renovated and J referred back to the builders in relation to the issues at the entrance the property – described as being "small patchy vinyl flooring softness". Remedial works were undertaken at the time and J says it was led to believe that the matter could be due to poor flooring in that area. I have seen no reason to doubt that wasn't the case at the time.

A few months later J reports that following further follow up visits the builder noticed moisture and small collection of water in the sub-floor cavity of the entrance area – which was then removed. Tests were performed and pipes were tested for leaks, but none were found. According to J other relevant agencies were also contacted at that time to see if this was related to a wider issue in the area but this was not deemed to be the case.

There was a gap of a year before any further damage was reported, and this occurred in a different area to that of the above. In my mind this is relevant as J had no reason to believe that the issues weren't resolved following the remedial works above. At this point J notified RSA as the damage was in the front room of the property and was starting to impact the operation of the business.

It is worth pointing out here that RSA also provides the insurance covering the property itself and therefore J was in contact with it, via its broker, to make a claim on that section of cover.

Having considered the timeline, I think on a fair and reasonable basis the relevant date for the start of the indemnity period should be January 2018.

Did J act reasonably in notifying RSA and mitigating any loss

RSA has suggested that J didn't notify it as soon as possible of the damage occurring and it doesn't believe it acted promptly to find the cause of the damage that was occurring. On that basis it has cited the Claims Conditions section of the policy and said that J has acted contrary to those conditions.

As explained above, I think J did act promptly to notify RSA of damage to the property which may affect the business. While I understand different departments within RSA may deal with the different aspects of the claim, I need to consider, as a whole, the actions J took.

In 2018 J notified RSA of a potential issue with the building with mind to making a claim for repairs. This also put RSA on notice of a potential business interruption claim.

J has been able to show the builder conducted many investigations to establish the cause of the damage that was occurring. External agencies were again consulted, and further specialist investigations instructed – which were inconclusive. A period of monitoring took place and any water discovered in the sub floor cavity within this time is reported to have been pumped out and ongoing rectification work undertaken to damage as it occurred.

In March 2020 the flooring at the rear of the property was removed, to gain access to the cavity below and further investigations were undertaken. The source of the water was eventually found to be a blocked internal gully in the party wall. The buildings insurance claim at this point was accepted and I am led to believe that the costs of all rectification work previously undertaken were accepted under cover. I take this to mean they were considered reasonable works.

I do accept that during this time there was a lack of updates to RSA, however for the most part there was little that could be said which would impact this particular claim. Investigations were continuing into the cause of the damage.

While it is always arguable that investigations can be undertaken quicker, given we would usually say an insurer is entitled to rely on the opinion of experts, I extend that same consideration to J here. The matter was with the builder, who in turn had instructed other specialists and agencies. There was also a period of monitoring, which added to the time that past, which I don't consider to be unreasonable.

From looking at the evidence available to me, it appears all avenues were exhausted before the decision was taken to cause significant disruption to the operation of the business in allowing the rear floor to be uplifted. There is evidence that repairs were undertaken as matters progressed in order to reduce impact to the business and therefore keep it as operational as possible. In light of the above, I don't agree with RSA's assessment that J did not act to mitigate its loss.

RSA's interpretation of reduction in standard turnover

RSA has suggested that as the accounts show that J's revenues increased over the years, there is no loss to be covered by the policy – as there was no reduction in standard turnover.

The relevant policy terms here are:

"Item on Gross Revenue

Subject to the provisions below the Company will pay as indemnity –

A) in respect of Loss of Gross Revenue
The amount by which the Gross Revenue during the Indemnity Period shall in consequence of the Damage fall short of the Standard Gross Revenue"…

The policy gives the following definitions:

*"**Gross Revenue** the money paid or payable to the Policyholder for works done and for services rendered in course of the Business at the Premises"*

*"**Standard Gross Revenue** the Gross Revenue which would have been obtained during the indemnity period.*

Had the Damage not occurred after account has been taken of the trends of the Business and the variations in or other circumstances affecting the Business either before or after the Damage or which would have affected the Business had the Damage not Occurred"…

Having considered the above, simply because J has been able to increase its revenue over the years doesn't mean there is no loss. The definition of Standard Gross Revenue says that the trends of the business need to be taken into account. In this case the trend for J was upwards.

J has argued that due to the damage it had to take several rooms of the building out of action and therefore this impacted the amount of trade it could do as those room(s) could not be used. Therefore, the revenue it expected to achieve without these issues having occurred was more than it actually did.

While I accept given the nature of its business the loss to J may not be easy to work out, this isn't a reason in itself to decline the claim.

Conclusion

Having considered all of the evidence available to me, I don't think RSA has acted fairly or reasonably when it turned down J's claim.

I'm therefore intending to uphold J's complaint and direct RSA to consider the business interruption claim from January 2018 and consider the losses caused to J from that date onwards to the limit of the indemnity period."

Responses to my provisional decision.

J responded saying it accepted the decision.

RSA responded indicating it accepted the decision by saying the claim file was being reopened and it would be looking to agree a settlement on the claim with J.

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 both parties have accepted my provisional decision and no further comments have been put forward for consideration, I see no reason to depart from it.

So, for the same reasons as set out in my provisional decision, I uphold J's complaint. I direct RSA to consider the business interruption claim from January 2018 and consider the losses caused to J from that date onwards up to the limit of the indemnity period.

My final decision

My final decision is that I uphold J's complaint against Royal & Sun Alliance Insurance Limited. I direct it to put matters right as I have set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask J to accept or reject my decision before 1 September 2022.

Alison Gore
Ombudsman