

## **The complaint**

Mr P complains that Royal & Sun Alliance Insurance Limited (RSA) has unfairly declined his claim for rent protection.

Any reference to RSA includes the actions of its agents.

## **What happened**

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

- Mr P has a Landlord rent protection policy. It's underwritten by RSA.
- The policy started on 9 June 2020. In September 2020, Mr P made a claim on his policy as the current tenant had been in arrears since August 2020.
- RSA said it wasn't going to cover the claim because the arrears occurred in the first 90 days of cover starting. It said it would reconsider the claim if Mr P could show equivalent cover was in place immediately before the policy started.
- Mr P provided RSA with details for his previous insurers. Company A underwrote the rent protection guarantee which ran until July 2020.
- RSA considered it but said whilst there was continuous cover, it wasn't comparable. It said the previous rent protection guarantee policy was specifically for a previous tenant who had been named in it. It said Mr P, therefore, wouldn't have been able to make a claim for the tenant who was in arrears under the Company A's policy.
- Unhappy with RSA's response, Mr P brought a complaint to this Service.
- An Investigator looked at it. He said RSA's policy provided cover for the tenant specified on the tenancy agreement, whereas the previous policy covered the tenant named on the policy schedule. Because of this difference, the Investigator thought the policies weren't comparable and that RSA had fairly declined the claim.
- Mr P remained unhappy and so the complaint has been passed to me for a final decision.

I issued a provisional decision which said:

## ***What I've provisionally 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 minded to reach a different outcome to that of the Investigator and I'll explain why.*

- *The key issue in this complaint is whether it's fair for RSA to rely on an exclusion in respect of rent protection to decline Mr P's claim. The exclusion says:*

*"The insurer will not pay claims arising out of or in connection with any dispute arising*

- a) during the first 90 days of the first period of insurance, if the tenancy agreement commenced before the inception date of this policy; or*
- b) arising during the first 90 days of the first period of insurance, unless it can be evidenced that you previously held comparable legal expenses cover with another insurer immediately prior to inception of this policy."*

- *It's not in dispute that Mr P held LEI with another provider immediately before the inception of his policy with RSA. But RSA argue it's not comparable and so the exclusion applies.*
- *I've looked at the policies. Having done so, I'm not persuaded by RSA's argument. Ultimately, both policies provide LEI cover which includes rent protection. So, I'm satisfied both policies were designed to work in the same way.*
- *What's pertinent here is that the exclusion doesn't require the policies to be the same – rather that they are comparable. So, although RSA has in correspondence focussed on the previous policy not being equivalent to the current one, that's not what the exclusion requires it to be.*
- *I don't consider the nuance of Mr P's previous insurer only providing cover if the tenant was named on the policy schedule as a significant enough difference to RSA's policy to lead me to say the policies aren't comparable. Particularly as the chances of having two LEI policies which deal with rent protection in the same way is slim.*
- *Ultimately, it's enough for the policies to be comparable and from what I've seen I'm satisfied they are. So, I don't think RSA has applied the exclusion fairly and it should reconsider the claim (subject to the remaining terms and conditions) without reference to this.*

### ***My provisional decision***

*My provisional decision is that I intend to uphold this complaint and will direct Royal & Sun Alliance Insurance Limited to reconsider the claim without reference to the exclusion which is the subject matter of this complaint.*

Both parties replied to my provisional decision. RSA said it remained of the opinion that the two policies weren't comparable. It added the change in tenant happened during the height of the pandemic and therefore, there would have had to have been a period between the previous tenant vacating the property and the new tenant occupying it which would have meant a break in the policy.

In his response, Mr P explained the impact the situation had on his family both personally and financially. He said the rental income from the property in question had been used to financially support his parents in their retirement. And so, RSA's unwillingness to settle the claim put additional pressure on his family at what became a very difficult time due to the unexpected passing of his father.

Having considered the responses, I explained that I wouldn't direct RSA to pay compensation for inconvenience and distress experienced by third parties – namely, Mr P's mother - or that which is reasonably to be expected when dealing with a claim such as this. However, I recognised that this claim has continued for a period of approximately two years and has been a source of ongoing stress for Mr P. Because of that, I said £500 compensation would fairly reflect the difficulties Mr P has experienced. RSA didn't specifically comment on the matter of compensation, other than to say its opinion remained the same that they'd declined the claim fairly.

### **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 not going to depart from my previous findings, but I'll add some further clarity as to why I've reached the decision I have.

I accept that in its strict interpretation Mr P may have found it difficult to claim under Company A's policy for rent arrears if a condition was that the tenant had to be named on the policy. But applying it in this way would lead to an unfair result whereby Mr P would find himself without cover from either Company A or RSA – even though he ultimately, had the kind of cover he needed in place; the previous policy provided cover for rent arrears due from the tenant, and RSA's policy provides the same kind of cover.

In my provisional decision, I highlighted the exclusion RSA is seeking to rely on requires the cover to be *comparable*, not the same. And that I didn't consider Company A's requirement that the tenant be named on the rent guarantee to be so significant it could be deemed incomparable to RSA's policy. What's key is that ultimately, both policies provided rent protection in the event a tenant went into arrears.

I'm not persuaded by RSA's argument that restrictions imposed by Covid – namely, that there had to be a longer period between tenants vacating and new tenants moving in - meant there was a break in cover. What's key here is whether the policies continuously covered the period in question – which they do.

In the absence of evidence to the contrary, I'm satisfied, for the reasons previously explained, that £500 compensation is reasonable in the circumstances.

My decision remains that RSA should reconsider the claim without reference to the exclusion that it's seeking to rely on.

### **My final decision**

My final decision is that I uphold this complaint and direct Royal & Sun Alliance Insurance Limited to reconsider the claim without reference to the exclusion which is the subject matter of this complaint.

It must also pay Mr P £500 compensation. Royal & Sun Alliance Insurance Limited must pay the compensation within 28 days of the date on which we tell Mr P accepts my final decision. If it pays later than this it must also pay interest on the compensation from the date of my final decision to the date of payment at 8% a year simple.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 8 November 2022.

Nicola Beakhust  
**Ombudsman**