DRN-3812238

The complaint

Mr G and Mr S are unhappy a claim made under their home insurance has been declined by Royal & Sun Alliance Insurance Limited (RSA).

What happened

In July 2022 Mr G and Mr S were moving a bird feeder which had a spiked base in their garden, and unknown to them, they accidentally pierced their oil heating fuel transfer line. Mr G and Mr S discovered this a few days later when there were signs of oil presence in their garden, which led them to inspect their oil tank, which had around 750 litres less oil than they expected.

Mr G and Mr S reported this to RSA, their home insurance provider. RSA appointed experts to investigate, and they declined the claim on behalf of RSA. When Mr G and Mr S contacted RSA to dispute this, they were told the transfer line wouldn't be covered as they didn't have accidental damage cover, but the clean-up from the oil leak would be covered under their policy.

However, RSA subsequently declined the claim. They said there was no damage to the buildings and that's what the policy covers, so they said Mr G and Mr S didn't have a valid claim. But RSA recognised Mr G and Mr S had been given incorrect information that the claim would be covered and offered £100 compensation for this.

Mr G and Mr S were unhappy with RSA's decision and approached this service.

Our investigator looked into matters, but she didn't uphold the complaint. She said Mr G and Mr S didn't have accidental damage cover, so the pipes wouldn't be covered. She also said she didn't think the pipes would form part of the heating system, which is what was covered under the policy.

The investigator said Mr G and Mr S were provided with documents when taking out and renewing their policy, and as it was sold and renewed on a non-advised basis, it was for Mr G and Mr S to ensure the policy was suitable for their needs. She recognised RSA had given incorrect information about the claim being covered, but she thought the £100 compensation they had already offered for this was reasonable.

Mr G and Mr S disagreed, they argued that the fuel transfer line was part of the heating system so they said their claim should be covered.

RSA also responded to our investigator to say they did actually accept the fuel transfer line was part of the heating system, but there hadn't been any damage to Mr G and Mr S' buildings (as defined in the policy terms), so there was no cover, and this is why they had declined the claim.

Our investigator revisited things. She said RSA hadn't acted unfairly by declining the claim as there was no damage to the buildings as defined, and Mr G and Mr S didn't have accidental damage or garden cover. Therefore, she said there was no insured event, so the

pollution and contamination as a result of the oil leak wouldn't be covered either. She recognised Mr G and Mr S said they thought there may be damage to a fence as a result of the leak, but the expert reports provided didn't demonstrate that.

Mr G and Mr S didn't agree and asked for a final decision from an ombudsman.

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 recognise the very difficult position the accidental loss of oil puts Mr G and Mr S in, and I sympathise with their situation. However, whilst I appreciate it will come as a disappointment to Mr G and Mr S, having taken everything into account, I don't think RSA has acted unreasonably by declining the claim. I'll explain why.

Mr G and Mr S were moving a spiked bird feeder when they accidentally punctured the heating oil fuel transfer line to their home, resulting in a significant escape of oil into their garden.

Mr G and Mr S don't have accidental damage cover on their policy, and they accept the repair/replacement of the damaged fuel line itself isn't covered under their policy terms as a result. But Mr G and Mr S believe that RSA should pay, under their insurance policy, for the clean-up of the oil, which will be at a significant cost.

Mr G and Mr S' policy provides cover for:

> *"5. Oil escaping from a fixed heating system."*

And it's this section which Mr G and Mr S believe should pay for the clean-up.

Our investigator initially said she didn't think the fuel transfer line would be part of the fixed heating system. However, RSA clarified that in fact it does consider the transfer line as part of it. Therefore, this isn't in dispute. In any event, I agree with RSA here that it would form part of the heating system.

So, in principle, the policy does provide cover for oil escaping from a fixed heating system. However, looking at the full policy terms, which the escape of oil cover is in, these explain:

> *"What we cover*
> *Damage to **your buildings** caused by the following:"*

Therefore, this says damage caused to *buildings* as a result of a number of listed insured events is covered. It then goes on to outline those specific events, such as storm, flood, and in this case, escape of oil from a fixed heating system. However, what is important here is that the policy covers *damage to buildings* by these insured events.

The policy terms define *buildings* as:

> *"**Buildings***
> ***Your home**, drives, walls, patios, paved terraces, footpaths, tennis courts, fixtures and fittings (examples below), fixed solar panels, permanently fixed alarm systems, drains, pipes, cables, underground tanks, fences, hedges that form part of the boundary of **your home**, gates, swimming pools and any items permanently fixed*

into the ground such as hot tubs, statues, garden ponds, fountains, pergolas and gazebos.
Buildings *Cover doesn't include aerials or satellite receiving equipment."*

And *home* is defined as:

> *"**Home***
> *The house, bungalow or flat at the address shown on **your** Policy Schedule, its outbuildings, including attached and detached garages, annexes, conservatories, sheds and greenhouses."*

So, for the escape of oil from a fixed heating system section to provide cover, there would need to be damage to the *buildings* (as defined). However, that isn't what has happened here. Instead, it's the soil in the garden that has been contaminated. But the garden and soil doesn't form part of the *buildings* as defined. So, on this basis, an insured event under the escape of oil from a fixed heating system section of cover hasn't occurred in line with the policy terms.

Mr G and Mr S also don't have optional garden, or garden accidental damage, cover. This covers loss or damage to contents in the open, along with plants, hedges and lawns, amongst other things. And escape of oil is an insured event under this section of the policy. But as I say, Mr G and Mr S don't have this optional cover.

Therefore, as no insured event has occurred in line with the policy terms of the cover which Mr G and Mr S have, I don't think RSA has acted unfairly by declining their claim on this basis.

Mr G and Mr S have said they think there could be damage to their fence as a result of the oil leak. However, I agree with our investigator that the expert reports don't support that. If Mr G and Mr S are able to evidence this, they should approach RSA in the first instance. But based on what I've seen so far, I don't think this has been shown.

Mr G and Mr S have also pointed to another part of their policy, which they say should provide cover. This says:

> *"Pollution or contamination*
> *Any claim or expense of any kind directly or indirectly caused by pollution or contamination, or arising from it. That's unless it was caused by a sudden unexpected incident or oil or water escaping from a fixed oil or water installation, which occurred during any insurance period and wasn't the result of an intentional act.*
> *We class all pollution or contamination which arises from one incident as having occurred at the same time as that incident took place."*

However, this wording is actually an exclusion applicable to all parts of the policy, rather than in the insured events section of Mr G and Mr S' policy.

This says that pollution or contamination is excluded from all parts of the policy cover, unless it's the result of specific circumstances outlined. The exception it makes in the wording is in relation to if there is an insured event i.e. if there is a covered escape of oil under the policy, then it covers the connected expense of pollution or contamination which would otherwise be excluded.

But, as I explained above, there isn't actually an insured event here as the escape of oil hasn't damaged the *buildings* (as defined) which is what the policy covers, therefore the exception to the exclusion (which would mean there is cover) doesn't apply.

Mr G and Mr S argue that by the wording of the exclusion, this implies pollution or contamination is separately covered. However, I don't agree. I'll explain why.

Some insurance policies cover 'all-risks'. This means the policy covers anything that might happen at a property, unless its otherwise specifically excluded. However, Mr G and Mr S' policy covers a number of listed, specific, insured events - known as insured perils. So, it is only these specific events or perils that are covered, and within those specific events, there are also exclusions.

Therefore, the starting point in Mr G and Mr S' policy and claim is that there needs to be an insured event or peril as specifically listed. If there is, then the insurer needs to deal with it, unless there is an exclusion which then means that insured event then isn't covered.

Here the claim doesn't get beyond the 'is there an insured event' for the reasons explained (because there isn't damage to the *buildings* as defined), so an exclusion doesn't need to be considered or applied – and consequently the exception to it doesn't either. The wording here Mr G and Mr S refer to is in relation to an exclusion in the policy, and that only needs to be considered if there is an insured event under the policy in the first place – which isn't the case here.

Mr G and Mr S have also mentioned their policy wording for subsidence mentions the land on which the building stands. However, the subsidence cover again covers damage to the *buildings*, caused by subsidence of the land rather than the land itself in isolation. In any event, this is specific to the subsidence section of cover, so isn't relevant for the escape of oil claim. And I don't agree with Mr G and Mr S when they say because it is mentioned in the subsidence cover, it shows the policy intention is to cover the land for all the other perils (including escape of oil) too.

Mr G and Mr S have also highlighted they were told they had cover for the clean-up, and later were told they didn't.

I've listened to the call recordings provided and I agree that Mr G and Mr S were told the wrong information. RSA accepts this, and this is why they offered £100 compensation. And having taken everything into account, I think the £100 compensation is fair and reasonable for that incorrect advice from RSA, so I'm not going to direct them to increase the amount.

In RSA's final response, they also outlined that there may be a case for a claim for legal liability, but there is also a term which requires a policyholder to take all reasonable steps to prevent loss. They've more generally said that if this term is breached then they wouldn't pay claims. But I can't see that Mr G and Mr S have formally attempted to make a legal liability claim, or that RSA has formally considered one either. So, I won't be deciding that here in this complaint. If this is something which Mr G and Mr S wish to explore, they'd need to contact RSA directly in the first instance.

Mr G and Mr S have also said the policy was mis-sold, on the basis they believed from their policy documents that they had cover for escape of oil from a fixed heating system. However, as I've explained, in principle this is covered - if there is damage to the *buildings*. So, I don't agree the policy was mis-sold on this basis. The policy was also sold (and renewed) on a non-advised basis, and Mr G and Mr S were provided with policy documents at the point of sale and renewal, and these outlined the policy terms and cover. It was for Mr G and Mr S to consider if the policy they'd purchased was suitable for their needs.

My final decision

Royal & Sun Alliance Insurance Limited has already made an offer to pay £100 compensation to settle the complaint and I think this offer is fair in all the circumstances.

So, my decision is that Royal & Sun Alliance Insurance Limited should pay the £100 compensation offered (if they haven't already done so).

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G and Mr S to accept or reject my decision before 15 December 2022.

Callum Milne
Ombudsman