

The complaint

Mr A is unhappy with what Royal & Sun Alliance Insurance Limited did after he made a claim on his landlord legal expenses and rent guarantee policy.

What happened

In February 2022 Mr A made a claim on his policy for damage caused to a property by his tenant and unpaid rent. RSA turned down the claim. It said as there was no current address for the former tenant recovery proceedings couldn't be pursued against them. So there were no reasonable prospects of recovery. And it was Mr A's responsibility to provide information to show his claim was covered.

Our investigator didn't think RSA had acted fairly. She thought it should have obtained and relied on a legal opinion from a suitably qualified legal professional prior to turning the claim down. It should now obtain such an opinion.

Mr A agreed though queried whether he should receive compensation for the handling of his claim. RSA didn't agree. It said it might not be cost effective to locate a tenant and appointing a tracing agent prior to legal proceedings commencing wasn't covered by Mr A's policy. It didn't think this was something for which a legal opinion was required and said a claim handler was able to advise on this. So I need to reach 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.

The relevant rules and industry guidelines say RSA has a responsibility to handle claims promptly and fairly. It shouldn't reject a claim unreasonably.

I've looked first at the terms and conditions of Mr A's policy. I can see that this provides cover for "*costs to pursue the tenant if they have breached any of their obligations under the tenancy agreement*". And "*costs to pursue rent arrears which began during the period of insurance*". That's what Mr A's claim relates to and RSA hasn't disputed an insured event under the policy has taken place.

However, it's a condition of cover that a claim has prospects of success. That's defined in the policy as "*at least a 51% chance of you achieving a favourable outcome*". The policy also says "*We may also limit the costs that we pay under the policy for your claim in the following circumstances... there are insufficient prospects of obtaining recovery of any sums claimed*". The policy also says "*It's important to co-operate with us at all times. You must give us and the authorised professional all the information and help required*".

However, it's our long standing approach that the prospects of success of a claim should be assessed by a suitably qualified legal professional. And prospects of success include whether there's a good chance of recovering the amount outstanding from the other side. I don't think this is something it's appropriate for a claims handlers to assess. I think RSA

should have asked for a legal opinion and relied on that if it wanted to turn down the claim on this basis of this policy term.

To put things right it will therefore need to obtain such an opinion as our investigator recommended. I also note the term RSA referenced when turning down the claim says if there are insufficient prospects of recovery it may limit the costs paid under the policy. It doesn't say it won't fund any costs at all.

In this case I think Mr A has shown he has a valid claim. Assessing whether there are prospects of recovery is part of the evidence gathering process that panel firms are instructed to prepare when a policyholder has demonstrated they have a claim. So I'd also expect that, as part of their consideration, solicitors should carry out (and RSA should fund) reasonable inquiries to establish whether the former tenant can easily be traced. That's likely to include the relatively modest cost of the tracing report that Mr A has referenced. If a properly evidenced legal opinion then shows it's unlikely to be cost effective to pursue the claim RSA would likely be able to rely on that. However, I don't think it acted fairly in turning down the claim based on the information currently available to it.

RSA referred to a condition about conduct of the claim and providing information in its final response. But I don't think that's a reasonable ground for turning down this claim. I can't see it ever asked Mr A for further information about his former tenant. In any case I've already explained this is an issue RSA should have sought a legal opinion on.

Finally, I've considered whether any compensation should be paid to Mr A for the handling of his claim. I don't think there was any significant delay in this being progressed and RSA provided him with an outcome within a reasonable period. It also responded to his complaint within the eight weeks allowed for doing so. And while I appreciate it will have caused Mr A inconvenience to have had his claim incorrectly turned down, on balance, I think the remedy I've already recommended does enough to put things right here.

My final decision

I've decided to uphold this complaint. Royal & Sun Alliance Insurance Limited will need to obtain a properly written and reasoned legal assessment on the prospects of success (including prospects of recovery) of Mr A's claim and act in line with that assessment.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 23 March 2023.

James Park
Ombudsman