

The complaint

Mr W, a sole trader, has complained about the settlement received in relation to a business interruption claim under his insurance policy with Royal & Sun Alliance Insurance Limited (“RSA”).

RSA used agents to deal with the claim on its behalf. For ease, I will refer to RSA throughout this decision as the agents were acting on its behalf.

What happened

Mr W owned a complex of holiday let properties insured under his policy with RSA. He let to holidaymakers and students on a bed and breakfast basis who were attending a local facility. In early 2021, Mr W contacted RSA to make a claim for the losses he incurred as a result of the Government response to the Covid-19 pandemic.

RSA accepted that there was cover under Mr W’s policy for the period 23 March to early July 2020. RSA arranged for loss adjusters to deal with the claim on its behalf. RSA initially calculated that Mr W’s takings for the 12 months prior to the lockdown in March 2020 was £17,509; and the anticipated turnover for March to July 2020 was £3,445. After further consideration, RSA paid the amount for the cancelled bookings in this period, which was £6,203.80.

RSA paid the following:

Property 1: four nights from 6 June 2020 and seven nights from 4 July 2020, which was a total of £1,835.26.

(This property had been occupied by a long-term tenant from 2015 to 2019 and was newly let as a holiday let in 2020.)

Property 2: four nights from 10 April 2020; six nights from 17 May 2020; and seven nights from 23 May 2020, which was a total of £2,417.55.

RSA also paid for eight student cancellations for 23 March 2020 = £2,086.

As there were no other bookings at the time the restrictions were imposed, RSA did not make any payment in respect of the other two properties. RSA calculated the total loss of rent as being £6,430.80 and deducted £327 for savings Mr W made in the same period for electricity, so it paid Mr W a total of £6,103.80.

Mr W was very unhappy with the settlement made and said his losses were over £28,000, as he should also receive payment for bookings that were likely to have been made during the same period, as some people book on shorter notice. In addition, two of the properties had not been let to holidaymakers the previous year but were being offered for let in 2020, so his income would have been considerably higher than in previous years, if it had not been for the Government restrictions imposed in March 2020. Mr W said he did not normally open in March 2020, so he said he was claiming for the period from 23 May to July 2020, a period of 40 days which he said is when the holiday season would start. He said he would have

received £190, £140, £110 and £80 per night for the four properties respectively for that period.

RSA did not accept that Mr W had established the loss of rent he was claiming. RSA said there was no evidence any of the properties would have been fully booked for the entire period Mr W claims, given previous years' bookings. RSA said that only two properties were available to book prior to the restrictions coming into force in March 2020, so there is no evidence that Mr W had taken or expected to take any holiday bookings for the other two properties prior to or during the lockdown period. RSA said one of them was for sale and it appeared that Mr W had been winding down the letting business.

In addition, RSA said Mr W also lets to students at a reduced rate for bed and breakfast. While let to students, the properties could not be let to holiday makers at the higher rate. It calculated the lost bookings to students and, as a gesture of goodwill, had not deducted any savings in not providing them with breakfast and included this in the settlement. RSA did not agree to pay anything more.

Mr W brought his complaint to this service and made a number of submissions in support of his complaint. I have considered everything Mr W has said but have summarised his main points below:

- the whole complex has been available for sale since 2015 but he continued to operate as normal in terms of lettings, as there was no firm sale agreed.
- He started advertising the two new properties in January 2020.
- He had a pool heater installed in 2019, a solar cover from January 2020, and another in June 2020. Having a large, heated outdoor pool would have attracted extra bookings if he'd been allowed to let them out.
- He has continued to suffer effects from the pandemic after early July 2020, as there were lost bookings in the autumn and early 2021 and block bookings for students were cancelled for the whole of 2020 and 2021. These were cancelled within the period of indemnity, so should be covered.
- He also says that all four properties were fully booked from July 2020 when the first lockdown ended, so would likely have been fully booked in the period he was claiming for.
- RSA deducted electricity savings but the electricity costs in the summer are minimal.
- Income in 2020 for all four properties would have been higher than previously also because he had left his full-time job and had committed full-time to the letting business.
- He sold the properties in June 2021; the new owner lives in one property and lets the other three, which are almost fully booked for April, May and June 2022. This shows he would have had bookings in 2020 for these properties.

Since bringing the complaint to us, Mr W increased the amount he wants to claim for. He said his losses were in fact almost £41,000, as he did not previously claim for Easter and had only really claimed for June 2020. Mr W also said he had lost a booking in September 2020.

One of our Investigators looked into the matter. She did not recommend the complaint be upheld, as she was satisfied RSA had made a fair settlement of the claim.

Mr W didn't accept the Investigator's assessment, so the matter was passed to me. I issued a provisional decision on this matter earlier in March 2021. I have copied part of that below:

“Policy cover

Mr W’s policy covers loss of gross revenue as a result of restrictions imposed arising from the occurrence of a notifiable disease within the vicinity of the premises:

“Loss as a result of

A) Closure or restrictions placed on the Premises as a result of a notifiable human disease manifesting itself at the Premises or within a radius of 25 miles of the Premises”.

The maximum period of indemnity for business interruption is 12 months.

RSA accepted that the Government restrictions imposed in March 2020 on people travelling was covered under this section of the policy.

In relation to how it would calculate the business interruption loss covered, the policy states:

“Gross revenue – how we settle claims

If damage or any event covered under this insurance occurs ... and causes interruption of or interference with Your Business at the premises

We will pay you the amount of loss resulting from the interruption or interference caused by the Damage in accordance with the following:

1. In respect of Gross Revenue

The amount by which the Gross Revenue received during the Indemnity Period falls short of the Standard Gross Revenue as a result of the Damage.”

Gross Revenue is defined in the policy as being *“the money paid or payable to the Policyholder for services rendered in the course of Business”.*

Indemnity period

Mr W initially said he was claiming for the period from 23 May to July 2020 and said he does not normally let any properties in March 2020, other than to students. He now wants to claim for this entire period, on the basis of an average anticipated income, which he puts at a total of £41,000.

Mr W also said he had cancellations after July 2020, which should be covered, as his policy covers up to a maximum of 12 months.

RSA says the indemnity period is 23 March to early July 2020, being the period of restrictions that meant holiday homes could not be let out; and has paid Mr W the amounts that he would have received for bookings that would have taken place during that period but which had to be cancelled. Mr W might not have received the payment for those bookings during that period but I think this is right. The policy doesn’t cover loss of market or restrictions on people but only restrictions placed on the premises; and as of early July 2020, Mr W was able to offer his premises for let.

There were some restrictions introduced after this that restricted people’s behaviour, including that people from more than two households could not stay together overnight.

However, I do not think these were restrictions placed on the premises, as required by the policy, but were restrictions placed on how people could use the premises. Mr W was able to offer the premises for let.

RSA has paid Mr W for bookings that had to be cancelled in the period 23 March to 7 July 2020, even though Mr W said he wasn't claiming for this whole period initially. There is no evidence of any pre-existing bookings during the period from March to July 2020 that have not been met.

Mr W has asked for payment in relation to three other cancelled bookings in September 2020, October 2020 and April 2021 but I agree these are not covered by this policy as part of this claim, as they fall outside the indemnity period and there is no persuasive evidence that these bookings were cancelled because of any closure or restrictions placed on the premises, even though they may have been cancelled during the indemnity period.

Mr W's policy ran from 15 August 2019 to 14 August 2020, so any later claims would be subject to the terms in place under the policy that started in August 2020. If Mr W wants any claim arising from the later lockdown periods considered, it would have to be looked at separately.

Assessment of loss

Mr W says the rent in 2020 would have been higher than any previous years for a number of reasons, in particular his full time focus on the lettings business, the additional of heaters for the swimming pool, and the two additional properties being available for let.

The policy states that "*The Insurance Amount is the Gross Revenue that would have been earned in the twelve months immediately following the date of the Damage 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*". So, I think any circumstances that might have made a difference to the income during the indemnity period are relevant.

I note however that in an email to RSA dated 1 June 2021, Mr W says he retired from his full-time job in 2016. And his wife ran the lettings business with him. I am not convinced therefore that this is a reason why rent in 2020 would have been significantly more than any other year since his retirement.

With regard to the swimming pool, Mr W says he installed heaters prior to the 2020 letting season which would have increased bookings.

I've considered the evidence provided about this. The first invoice Mr W provided is dated October 2019 and says it was for refurbishment of the heating unit. So it would appear the pool previously had a heater but it needed refurbishing. In January 2020 a solar cover was provided and then in June/July 2020 an invoice for removal of old heating unit and delivery of a reconditioned unit. Mr W says the work in summer 2020 was to provide a back-up.

RSA says the installation in June 2020 would have been too late to have had a significant impact on bookings from March to early July 2020.

I think there is some doubt as to whether the pool was heated prior to June 2020, given the description of work carried out under the previous invoice. Overall, I do not

think there is enough evidence that this work would have made a significant difference in the bookings for any of the four properties in March to July 2020, compared to previous years.

With regard to the two additional properties, RSA disputed that one of them was ready for letting in March 2020, as Mr W had said it needed to be refurbished after a long-term tenant had left it in disrepair. However, the settlement RSA has already paid includes two cancelled bookings for this property. So I have no reason to doubt it was available for booking.

Another property was also not let out immediately prior to 2020. There is no evidence of any bookings, or booking enquiries, for this property.

I think it is likely that with two additional properties overall takings for March to July 2020 would have been more than in 2019. However, I do not accept that the takings were likely to be as much as Mr W has claimed.

There is evidence of five bookings for the two properties, as well as the student bookings prior to the lockdown period starting in March 2020.

Mr W has also provided evidence of three booking enquiries for one property (for 10-17 April, 23-30 May 2020 and 6-11 June 2020). However, I note the third enquiry referred to (for 6-11 June 2020) was a booking that was included in the settlement paid by RSA.

Mr W says he had to tell these people the property was not available due to Covid-19 restrictions on travel and therefore cancelled the bookings before they could pay for them. Mr W says he then blocked out all the dates to show the properties as unavailable during the effected period.

Mr W says this means it is impossible for him to provide evidence of additional bookings he missed out on because of the Government restrictions. However, Mr W says this shows there would have been many more bookings of this property were it not for Covid-19. And in 2015, it was booked out for April, May and June.

I can see Mr W's point that some bookings might have been made during the period of indemnity to be taken in that same period, as people do book holidays on shorter notice. However, I am not persuaded there is enough evidence that each of the four properties would have been fully booked for 40 days (or more as he has recently said), or that they would have been booked at the rate claimed for.

For the largest property, the average of the two cancelled bookings which RSA paid for (which included the Easter weekend and May Bank Holiday which would have been peak times) was £167 per night, whereas Mr W was claiming an average of £190 per night for the 40-day period.

For the other property that had three cancelled bookings, the average of those (which again covered Easter and May Bank Holiday) the average was just over £142 compared to £140 claimed.

The other two properties didn't have bookings, but Mr W has asked for £110 per night and £80 per night for these.

Mr W has also provided evidence of bookings taken by the new owner of all four properties which he says supports that he would have been almost fully booked for

the claim period in 2020, if it were not for the Covid-19 restrictions. I am not persuaded that the takings of the new owner establish that Mr W would have had similar bookings in 2020, given that different owners might market and present the properties differently.

Mr W also said he was fully booked from July 2020 onwards, which he also says proves he would have had a similar level of bookings in the indemnity period, if it had not been for the Covid-19 restrictions.

UK holidays were much more popular in July, August, September 2020 as there were still restrictions on foreign travel and so I do not think Mr W's bookings post lockdown are necessarily proof of likely bookings in March to July 2020, if it had not been for the lockdown. The lockdown was announced in late March 2020 but no bookings were taken for two of the properties for between March and July 2020 by the time it was announced and five bookings across the other two properties.

In my view, Mr W's previous years' bookings are more persuasive evidence of the bookings he would have realised in March to July 2020 if it had not been for Covid-19 restrictions.

I have seen Mr W's tax documentation for April 2019 to April 2020, which confirms he received £17,715.42 in rent for this period. This is in line with RSA's calculation for March 2019 to March 2020. Although I think it is reasonable to assume that bookings would have been seasonal and not evenly spread across the whole year, so a high proportion of this income would likely have been taken in the months April to September inclusive.

Having considered bookings for the previous year, even with the addition of two properties, I do not think the evidence supports that the takings would have been as Mr W has claimed. And there is little evidence to support what he would usually expect by way of late bookings. It is impossible to work out precisely what the position would have been had Covid-19 not occurred and Mr W could have let all four properties. I have to therefore consider the most reasonable outcome, which reflects the fact that it is likely he would have had some additional late bookings.

Mr W has provided evidence of two booking enquiries which it seems to me would likely have gone ahead if he had been allowed to. It is of course possible they were only made due to restrictions on travel elsewhere. As stated, it is impossible to be certain but I think overall it would be reasonable for RSA to also pay Mr W the value of the two booking enquiries he had to cancel before they'd been paid for. These were in the value of £1,079.68 and £1,153.91. Interest should be added at 8% simple per annum from the date he provided evidence of these bookings to RSA to the date of reimbursement.

Deduction of electricity

Mr W has also objected to the deduction of electricity costs which he saved, as the properties were not let. The policy states:

“Savings

If any of the charges or expenses of the Business payable out of Gross Revenue cease or reduce directly as a result of the Damage the amount of such savings during the indemnity period shall be deducted from the amount payable”.

RSA is therefore permitted to deduct costs savings.

Mr W says electricity in the summer would have been minimal but I have not seen any convincing evidence that the amount deducted was not a reasonable reflection of the savings Mr W made for the relevant claim periods. I do not therefore intend to ask RSA to make any change to this amount.”

Responses to my provisional decision

I invited both parties to respond to my provisional decision with any further evidence or arguments they want considered.

RSA said it had based the settlement on a list of cancellations previously received from Mr W but confirmed it had also been provided with the evidence of the bookings I provisionally decided it should pay. It said it had not been satisfied these were for the indemnity period but is prepared to accept the provisional decision and pay the amounts I proposed. It has not added anything further.

Mr W has also responded to my provisional decision. He has said:

- He evidenced that the new and first pool heater was fitted in winter 2019. There was just a delay in the written invoices being sent.
- The pool was not heated prior to 2019. He brought a refurbished unit, as it was cheaper than a new one.
- He has provided evidence of previous marketing of the property showing mention of the pool but not that it was heated and a April 2020 brochure stating there was now a heated pool. His viewings for the property increased threefold after this. He brought a second heater to make sure there was a contingency in case the first one didn't work.
- The presence of a large heated pool meant more bookings and higher rent, so the addition of the heaters would have made a significant difference to the income he could have achieved if it had not been for the lockdown restrictions.
- This is further evidenced by the fact the new owners were nearly fully booked for the same period in 2022.
- He had numerous awards as a host and significant repeat business, which the new owner wouldn't have had, so it is disingenuous to presume the new owner would have marketed the properties in a way that was so different as to have more bookings than he could have achieved.
- He was not winding the business down, as RSA presumed. To the contrary, he needed to “wind it up” to make it more marketable.
- On the balance of probabilities, he would have received more bookings.
- I disregarded the fact he had full bookings from the day lockdown ended in July 2020. How is he meant to evidence the lost bookings for the new properties?
- He received nothing from RSA for two properties for three months. It is impossible that he would not have had any bookings for those properties, or more bookings for the other three properties.
- Most bookings are made at the last minute, often on the same day.
- He is claiming for 91 days per property (March to July 2020) and he has only been awarded 50 nights, which is unfair.

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 considered everything again, including Mr W's response to my provisional decision, I am not persuaded to change my provisional findings.

Mr W provided an email from his contractor dated October 2019 to support that the heater was installed in winter 2019. I note this says he stripped down *"your ...swimming pool heater and attached a quotation for a compete refurbishment... the heat exchanger requires a rebuild as it could leak once this unit is reused..."*

Another email dated 17 December 2019 confirms payment had been received and says *"I look forward to commissioning your refurbished unit soon"*.

There was then the invoice dated July 2020, which was for removal of old heating unit and installation and commissioning of refurbished unit. While Mr W says this was just a back-up second heater, this is not very persuasive given the other evidence.

Mr W has also said there would have been no point in him putting a solar cover on the pool if it were not heated but I don't agree the fact he paid for a solar cover in January 2020 establishes that the pool was being heated from then.

I have also considered the sale particulars for the property provided by Mr W, which he says were from 2019. I note this refers to the pool and doesn't specifically state it is heated. But it does say: *"The 40' swimming pool has its own pump house to the side and the whole of this area extends to about a quarter of an acre with a pool heater already in situ"*. So again it is not entirely clear. The heater may not have been working (which is why it needed to be refurbished). However, Mr W has said he acquired a refurbished unit in October 2019, implying there was no heater at all beforehand.

I also note the graph provided regarding online viewings regarding the sale of the property, which peaked in mid-April 2020, which is when Mr W says the marketing material was changed to state the pool was heated. I accept that average viewings were increasing compared to February and March 2020 and peaked in April 2020. The graph only shows figures for these months. It is possible this is due to new information about there being a heated pool but Mr W has not explained why those details would only have been changed in April 2020, if the heater had been installed in October 2019.

Given all of this, the doubts about exactly when the pool was first heated remain. Overall, I still do not think there is enough evidence that this work would made a significant difference in the bookings for any of the four properties in March to July 2020, compared to previous years.

Mr W also says again that the fact he was fully booked from July 2020 when UK holiday homes could reopen and that the new owner has been almost fully booked for the same months, demonstrates that he would have had considerably more bookings during the indemnity period if it had not been for the lockdown. For the same reasons given in my provisional decision, I do not think this is proof of what Mr W would have received in bookings in March to July 2020. I remain of the opinion that previous years' performance are more indicative of likely bookings in March to July 2020.

Mr W has also said bookings would be made late but there is no evidence of what late bookings he would have expected, perhaps by reference to previous years.

As stated in my provisional decision it is impossible to work out precisely what the position would have been if Covid-19 not occurred and Mr W could have let all four properties between March and July 2020.

I have to therefore consider the most reasonable outcome. I provisionally decided that the value of the two booking enquiries made, but which were cancelled before they were paid for, should be paid by RSA. The value of these together with the previous payments, means a total payment of approximately £8,664 for just over three months. Mr W's rental income for the year April 2019 to April 2020 was £17,715.42 (so a monthly average of £4,28.75 if spread evenly across the year). This would have presumably for two properties only and I also acknowledged that this might not have been equally spread across the year but having considered this, the payment I've proposed does not seem out of line with what could have been expected.

As stated, it is impossible to be certain but I think overall it would be reasonable for RSA to also pay Mr W the value of the two booking enquiries he had to cancel before they'd been paid for. These were in the value of £1,079.68 and £1,153.91. I am not persuaded that Mr W has established any further loss of rent.

My final decision

I uphold this complaint in part and require Royal & Sun Alliance Insurance Limited to pay Mr W the additional sum of £2,233.59 for the two booking enquiries referred to above, together with interest at 8% simple per annum from the date he provided evidence to RSA of those attempted bookings, to the date of reimbursement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 28 April 2023.

Harriet McCarthy
Ombudsman