

The complaint

W, a company, complains that Royal & Sun Alliance Insurance Limited (RSA) declined a claim it made under its professional indemnity insurance policy.

The complaint is brought by Mr P, a Director of W, on W's behalf.

What happened

W had the benefit of a professional indemnity insurance policy with RSA which ran from May 2021 until April 2022.

W entered into a contract with a customer to provide surveying services. The survey was conducted in January 2021 with a report being issued around two months later.

In April 2021 the customer complained about the work conducted by W. W responded a couple of weeks later apologising that the service the customer received had not been as expected. W agreed to waive its fee with a view to seeing an end to the matter. Three weeks later the customer asked for its complaint to be dealt with under W's complaints handling procedure. W responded to this, but the customer said they weren't prepared to accept W's position.

In June 2022 W received a formal letter of claim from Solicitors instructed by its customer. It notified RSA of this the following day. RSA declined the claim on the basis that the claim itself had not been made during the period of cover.

Our investigator considered W's complaint and concluded it should be upheld. She said that although W had failed to notify the claim during the period of insurance in accordance with the policy terms, it wouldn't be fair for RSA to decline the claim as they hadn't been prejudiced by being notified after the policy ended. RSA don't agree so the matter has been passed to me to determine.

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 starting point is the policy terms. They say:

“THIS POLICY COVERS CLAIMS FIRST MADE AGAINST THE INSURED (AND, IN RELATION TO INSURANCE CLAUSE 3, LOSSES FIRST DISCOVERED AND INSURANCE CLAUSE 4, LOSS OR DAMAGE OCCURRING) AND NOTIFIED TO

THE INSURER DURING THE PERIOD OF INSURANCE. PLEASE READ THE POLICY WORDING CAREFULLY.”

It's not in dispute that the claim W was making was in relation to losses first discovered during the period of insurance nor that the claim itself was notified around two months after the policy ended. What is in dispute is whether it was fair for RSA to rely on their policy

terms in declining W's claim on reliance of them.

RSA say that if they provided W with cover, they would have been in breach of their policy terms and this wouldn't be in line with treating customers fairly. They also say they've complied with the guidance issued by the Association of British Insurers in their handling of this claim. W on the other hand says that the position RSA have adopted is not fair or reasonable as there was no prejudice to it in considering the claim after it was notified two months too late.

I've thought about what both parties have said in this case and the circumstances surrounding the claim itself. I think the fair thing in this particular complaint is for RSA to consider W's claim as if it had been notified during the period of insurance. These are my reasons:

- Had W done as required and notified the claim during the policy period, it's likely RSA would have simply opened a file on the matter and kept a watching brief. That's because W's customer didn't seek to pursue anything beyond setting out that they didn't agree with W's position in June 2021. It wasn't until a year later that W received a letter of claim. So, if RSA had opened file, I think it would have been reasonable for them to think the claim might well have gone away by the time cover ended. Because of this I don't think RSA would suffer any prejudice by accepting the claim when it was notified to them, even though this was two months after cover ending.
- There's nothing else in this case that suggests RSA may be adversely affected by considering the claim as if it had been made during the period of cover. W hasn't incurred any legal fees of its own, there's no suggestion that the evidence in the case might be compromised had the claim been notified sooner and there don't appear to be any other difficulties that might prejudice RSA in looking at things now.
- W notified the claim to RSA the day after it received a letter from its customer's Solicitors. So, although it was notified two months after cover ended, there was no delay in notification once a letter of claim had been received.
- W is a business in its infancy. And although it's a commercial entity, it is effectively operated by Mr P. Mr P says that this was the first time he'd received a complaint from a customer and that he was naïve to the fact that he needed to report this to RSA. Whilst I don't think this is a reason in itself to uphold W's complaint, I do feel that the size and relative inexperience of W is something RSA should've taken into account when considering whether to have adopted a fair and reasonable approach in this particular case.
- I appreciate RSA is concerned with the wider impact of accepting a claim outside its policy terms, but each case turns on its own facts and in this particular case, I'm persuaded that RSA should have adopted a fair and reasonable approach and agreed to consider the claim as if it had been made during the period of cover.

As the investigator explained, I can't award anything for the distress RSA's handling of W's claim might have caused to Mr P (particularly due to the circumstances he's described- which I'm sorry to hear about) because this is W's complaint and W is not a natural person. As such it isn't capable of suffering distress, so I won't be making any awards of compensation in this regard.

Putting things right

To put things right RSA should reconsider W's claim under the remaining policy terms as if it

had been made during the period of insurance being in place.

My final decision

I uphold W's complaint against Royal & Sun Alliance Insurance Limited and direct it put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask W to accept or reject my decision before 1 September 2023.

Lale Hussein-Venn
Ombudsman