

The complaint

Mr R complains about the way Royal & Sun Alliance Insurance Limited (RSA) handled and settled a claim under a Properties insurance policy.

What happened

The details of this complaint are known to all parties, so I won't repeat them in detail here. Instead, I'll summarise my understanding and focus on giving the reasons for my decision.

Mr R evicted a tenant from his rental property in 2021 and found several areas of damage. This included, broadly, damage to doors, windows, carpets, bathroom fixtures, and water damage, amongst other things. He raised a claim to RSA and it caused delays, so he carried out repairs himself. This cost him roughly £47,000. This included repairs Mr R thought RSA should cover, and also non-insurance related repairs he isn't claiming for.

RSA concluded there were several causes of damage which couldn't be attributed to one claim incident. It offered to settle some damage under an escape of water, and theft, claims. It told Mr R it could consider other areas of damage, but new claims would need to be set up. It also said some damage was attributed to general property misuse and wear and tear. Mr R agreed for further claims to be set up, but things didn't really progress. As a result, Mr R complained.

RSA responded to it in November 2022. It said it was clear more than one incident occurred. It maintained it offered a fair settlement for the first two claims, asked Mr R to provide more information regarding loss of rent, and said it could consider other damage under a separate part of the policy. It did offer to waive excess payments (totalling £450) to recognise the level of service provided to Mr R up to that point. Mr R decided to approach our Service for an impartial review.

The Investigator reviewed the complaint and recommended it be upheld. Following the Investigator's view, however, RSA looked at other areas of damage to determine whether separate parts of the policy could cover it. It then provided Mr R with a new settlement offer it paid to him as an interim payment, which included recording two additional claims under malicious damage, and accidental damage. Mr R accepted further claims to be recorded, but had concerns over this latest settlement offer, as it still left him out of pocket.

I issued a provisional decision on 6 January 2024 which set out the following:

'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.

It's important I explain we're an informal dispute resolution service. It's not our role to handle or oversee claims. And our service can only consider matters a respondent business has had the opportunity to respond to in the first instance. I've set out what this means in this case. I've used sub-headings for ease of reading to set out my decision.

The claim

Before I do, it needs to be noted that this claim was complex in nature. It involved several causes of damage by a tenant that was evicted. There is also damage caused by the tenant misusing the property, and wear and tear. So, I think it was reasonable for RSA to conclude all damage couldn't be covered by a single claim.

It seems a loss adjuster was instructed only to look at damage related to an escape of water. A theft claim was also considered later. But all parties understood during the validation process that, to indemnify Mr R, several claims likely needed to be set up. And I think, had the loss adjuster been instructed to assess all damage alongside the policy coverage, things would have gone far smoother than they did for all parties.

It's my view the claim has run on as a result. So, I think RSA could have handled matter much better at times, and with a higher level of customer service.

Since the Investigator's view, RSA considered other areas of damage under separate parts of the policy. And it offered to increase the settlement over a total of four claims – escape of water, theft, malicious damage, and accidental damage. I think that was a reasonable approach. I say this because this should have happened at the outset. Mr R was willing for further claims to be assessed to recover as much of his outlay as possible.

Returning to my earlier point however, our Service can only consider matters a respondent business has had the opportunity to respond to. The revised settlement amount paid to Mr R as an interim payment was offered by RSA after its November 2022 final response letter. But I'm unable to consider RSA's handling of the claim after this date. So, if Mr R is unhappy with this new settlement amount, he will need to raise a new complaint with RSA for it to have the opportunity to respond to in the first instance.

Loss of rent

RSA requested more information from Mr R in November 2022 to consider a loss of rent claim. But I'm inclined to say it had enough information at this point to settle this aspect of the claim.

*For clarity, the policy defines this as: 'The actual amount of the reduction in the **Rent** received by **You** during the **Indemnity Period** solely as a result of **Damage to Buildings**.'*

The previous tenancy agreement ended due to an eviction order rather than as a result of damage to the buildings. After the tenant left, the property couldn't be rented out until claim-related (and non-claim related) repairs were completed. Mr R says the property was uninhabitable as it had no heating, and outstanding damage resulting from the claims, amongst other things. I think that's reasonable based on the photos I've seen.

So, Mr R suffered a loss of rent for a period of a few months while repairs took place as a result of damage to the buildings. Therefore, it follows, I think RSA should settle Mr R's loss of rent claim.

I've thought about the period in which I think would be fair and reasonable for RSA to cover loss of rent. As explained, the tenancy agreement ended due to an eviction order. So, I think there was likely always going to be a period of unoccupancy as even if the property hadn't been damaged, it could have taken some time – say a month, in the absence of any compelling evidence to the contrary – while it was cleaned up, maintained, and advertised.

I acknowledge Mr R says new private tenants were eager to move in but couldn't until

repairs were completed. And that could suggest there wouldn't have been a month of unoccupancy. But I need to look at things objectively here. I also note he said due to his experience with the previous tenant, he would only look to rent the property privately. That might not have been the case had the issues with the previous tenant not happened.

So, I'm inclined to say I think it would be fair and reasonable for RSA to cover Mr R's loss of rent between the period from one month from the eviction to April 2022 when repairs were completed.

I also think RSA should include interest on this payment because I think it ought reasonably to have been aware Mr R had a successful loss of rent claim over this period, in November 2022, due to the damage to the buildings. Interest should therefore be calculated from the date of its November 2022 final response letter to the date of settlement.

Summary

Taking everything into consideration, on the very specific circumstances of this complaint, I'm inclined to say that I think RSA should reconsider the remaining areas of damage in line with the policy terms.

I understand RSA has done that since its November 2022 final response. But should Mr R remain unhappy with the revised settlement amount, he will need to raise a new complaint with RSA in the first instance. This isn't intended as a discourtesy to either party – rather, our Service can only consider matters a respondent business has had the opportunity to respond to in the first instance.

For the reasons I've set out above, I'm inclined to say it's fair and reasonable for RSA to cover Mr R's loss of rent between the period from one month from the eviction to the date repairs were completed, in April 2022. It should also include 8% simple interest from the date of its final response to the date of settlement.

I think RSA ought to have handled matters better at times, and with a higher level of customer service. Therefore, all things considered – I find £750 compensation in total to be fair, reasonable, and proportionate here. I say this because while I accept things could have gone much smoother for Mr R, I've kept in mind the complex nature of this complaint and the several causes of damage that required consideration over multiple claims.

Therefore, I think RSA should also pay Mr R a further £300 compensation if it hasn't already done so. And if Mr R would prefer for the two further excess payments to be waived, he should let RSA know.

My provisional decision

For the reasons I've set out above, my provisional decision is I uphold the complaint. I intend to require Royal & Sun Alliance Insurance Limited to settle Mr R's complaint in line with my instructions above.'

Responses to my provisional decision

Mr R responded to say he was broadly in agreement with my provisional decision regarding the loss of rent claim and compensation. He asked for clarity around why I couldn't go on to consider matters that occurred after RSA's November 2022 final response letter. So, I've responded to this point, below.

RSA also said it agreed with my decision. It said the compensation would be paid to Mr R as

opposed to further excess payments being waived. And that's because settlement has already been offered on these other claims. I think that's reasonable. It also said it would consider a new complaint regarding matters that occurred after November 2022.

I'd like to thank both parties for their responses. I'll now go on to set out my final decision on the matter, and how RSA should put things right.

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.

To be clear, I'm not saying here I can't consider RSA's revised settlement offer following its November 2022 final response letter because Mr R accepted an interim payment. Rather, I'm unable to consider it because the offer was made to Mr R after RSA's November 2022 final response letter. And I'm only able to consider a complaint a respondent business has had the opportunity to respond to in the first instance.

I acknowledge why Mr R would feel this aspect of my decision is unhelpful. And I'm sorry to disappoint him. But I must explain that it isn't our role to handle or oversee claims. Rather, it's to consider matters being complained about that a respondent business has had the opportunity to respond to in the first instance. Therefore, Mr R will need to raise a new complaint to RSA regarding matters he's unhappy about following the November 2022 final response letter.

Both parties agreed with the way in which I thought the loss of rent and compensation aspects should be settled, so I've no further comments to make in this respect. Therefore, I'll now go on to set out how RSA should settle this complaint.

Putting things right

Mr R will need to raise a new complaint with RSA regarding matters that occurred after November 2022.

RSA should cover Mr R's loss of rent between the period from one month from the eviction to the date repairs were completed, in April 2022. It should also include 8% simple interest* from the date of its final response to the date of settlement.

RSA should pay Mr R a further £300 compensation for the distress and inconvenience caused.

My final decision

For the reasons I've set out above, my final decision is I uphold the complaint. I require Royal & Sun Alliance Insurance Limited to settle Mr R's complaint in line with my instructions above.

*If Royal & Sun Alliance Insurance Limited consider that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr R how much it's taken off. It should also give Mr R a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 19 February 2024.

Liam Hickey
Ombudsman