

The complaint

Ms P is unhappy Royal & Sun Alliance Insurance Limited turned down a claim she made on the rent protection section of her landlord's insurance policy.

What happened

In April 2022 Ms P added rent protection and legal expenses cover to her existing landlord's insurance policy. She contacted RSA to make a claim on the policy in October 2022 as her tenant hadn't paid the rent due in September. RSA referred the matter to panel solicitors who asked Ms P for further information including a deed of guarantee. At the end of October RSA said it would be making a payment of £1,500 under the rent guarantee policy.

However, at the start of November the panel solicitors said Ms P's tenancy agreement didn't contain any clauses which made the guarantor liable for unpaid rent. RSA said as a result it wouldn't be making payment as the policy terms hadn't been met. It said it wasn't able to stop the already agreed payment being sent but asked Ms P to reimburse that amount to it.

Our investigator agreed the policy terms hadn't been met in relation to the guarantor requirements. He thought it was fair of RSA to decline Ms P's claim on that basis. And although Ms P said the tenancy arrangements had been discussed with RSA prior to cover being put in place he hadn't found evidence of that. She had been in contact with the legal helpline provided by RSA but her first contact with it was in June 2022 which was after the tenancy had been taken out. He thought it was fair of RSA to seek reimbursement of the money it had paid Ms P.

Ms P didn't agree. She said she had multiple interactions with legal advisers from RSA and was assured the tenancy agreement (including the guarantor information) had been correctly drawn up. And although she cancelled an initial claim in June 2022 she provided documents at that time which were reviewed and confirmed as satisfactory. If she'd been given correct advice she'd have ensured proper documentation was in place.

She said after her claim was made there was delay by RSA in assessing it which caused further financial loss. She didn't think it was fair RSA was seeking to recover money paid out given it initially accepted her claim. And she said she was now at risk of losing her property because of difficulties in meeting mortgage payments.

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 Ms P's policy. This does offer rent protection which covers *"rent arrears due from the tenant under the tenancy agreement which you have notified to us during the period of insurance, and within 45 days, and where you are pursuing a claim under the tenant eviction section of this policy, up to the limit of indemnity"*.

However, there's a general exclusion applying to the legal expenses, tenancy eviction and rent protection sections of the policy which excludes cover for *"Any claim where you have not obtained a satisfactory tenant reference in respect of each tenant or guarantor"*.

The policy says a tenant reference must include *"a credit check obtained from a licensed credit referencing company showing no County Court Judgements in the immediate preceding three years, no outstanding County Court Judgements and no undischarged bankruptcies"*. And it says *"where the tenant has failed to meet the requirements of the credit check a guarantor must be sought who must meet the above requirements"*.

Guarantor is separately defined as *"the individual or organisation shown in the tenancy agreement that has received a satisfactory tenant's reference and has provided a financial guarantee of the tenant's performance of their obligations under the tenancy agreement"*.

In this case I can see Ms P's tenant failed the referencing check and so a guarantor was required. It appears that guarantor did pass the check but the issue is they didn't provide a *"financial guarantee"* of the tenant's performance of their obligations. While they signed the tenancy agreement that doesn't make any specific reference to them providing a guarantee of the rent and simply confirms they've read and understood the document. And it doesn't appear any separate guarantor document was signed.

So I think RSA were right to conclude a financial guarantee, as required by the policy, hadn't been given. I also think it was reasonable of RSA to say that increased the risk of loss because it made it more likely Ms P wouldn't receive rent that was due because the guarantor wasn't required to provide this if the tenant defaulted. As a result I don't think it acted unfairly in turning down Ms P's claim.

I appreciate Ms P says she discussed matters with RSA prior to entering into the tenancy agreement and acted on the advice it provided. But it doesn't appear there's other evidence to support that. Ms P did contact the legal advice line provided by her policy in June 2022 (and subsequently). And advice was provided about what notices she might be able to serve on her tenant following late payment of rent. But the notes I've seen don't suggest Ms P supplied documents relating to her tenancy during those calls or that any specific advice was given about that.

And in any case Ms P had already entered into the tenancy at that point. I've haven't seen evidence which shows she had any discussions with RSA prior to doing so. Our investigator asked her to provide any information she had about contact with RSA at that time but Ms P hasn't done so.

I appreciate she may have discussed the tenancy documentation with the seller of her policy but that's a different business to RSA. So any concerns she has about any advice it provided would need to be pursued against that business. It isn't something RSA is responsible for.

I've also considered whether it's fair of RSA to seek reimbursement of the rent guarantee payment it paid Ms P. I can understand why Ms P would have thought her claim had been

accepted given RSA said it would make payment, And if RSA had completed its checks on policy coverage earlier I think it's likely that payment wouldn't have been made.

But I can see RSA did advise Ms P prior to the payment being received it didn't think her claim was one that was covered by the policy. At that point it was too late to stop the payment taking place but Ms P would have known prior to the funds arriving this wasn't something RSA thought she was entitled to. Given that I don't think it was unreasonable of RSA to seek recovery of these funds from her.

I appreciate the financial difficulties Ms P is now in as a result of the failure of her tenant to pay her rent. I'm really sorry to hear of the problems that's caused and in particular the possible loss of her property if she can't meet mortgage payments. But the issue I'm considering is whether RSA has acted correctly and fairly in turning down the claim she made under the rent protection section of her policy. For the reasons I've set out I think it has. I'm sorry to bring Ms P what I do appreciate will be disappointing news.

My final decision

I've decided not to uphold this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Ms P to accept or reject my decision before 3 April 2024.

James Park
Ombudsman