DRN-4618655

The complaint

Mrs K, a sole trader, complains about the handling of her business interruption insurance claim, made as a result of the COVID-19 pandemic, by Royal & Sun Alliance Insurance Limited.

What happened

The following is intended only as a brief summary. Additionally, although a number of parties have been involved in the process, for the sake of simplicity, I'll just refer to Mrs K and Royal & Sun Alliance Insurance Limited (RSA).

Mrs K operated as café business and held a commercial insurance policy underwritten by RSA. In March 2020, Mrs K's business was interrupted by the government-imposed restrictions introduced as a result of the COVID-19 pandemic. Mrs K contacted RSA to claim for loss of gross profit. The claim was initially declined, and it was not until 2022 that RSA confirmed the claim was covered and a settlement was paid.

Mrs K has raised a previous complaint that related to this claim. Largely, this related to issues over the payment of Mrs K's accountant's fees and the delay in resolving the claim. Our Investigator looked at these issues, and said that the cost of the accountant's fees should be split between RSA and Mrs K. But that, as Mrs K had not demonstrated any losses that had been caused by the delays, RSA's payment of £100 was fair and reasonable to reflect this. The Investigator did say that if Mrs K could provide additional evidence of consequential loss, RSA should consider this further. The complaint was resolved on this basis.

Following a further exchange of correspondence between Mrs K and RSA, the insurer offered to pay an additional £975 in relation to the time taken to settle the claim. It calculated this sum as being interest on the settlement at a rate 2% higher than the base rate from 4 July 2020 to the date of settlement.

Mrs K was unhappy with this, and felt that the initial decline of her claim had led her to permanently close her business. So, she thought RSA should compensate her for this. RSA did not agree, saying it did not accept Mrs K's decision to close her business was purely due to the initial decline.

Mrs K brought her complaint about this to the Financial Ombudsman Service. Our Investigator thought RSA should calculate the compensation differently – with a higher level of interest and over a longer period, and pay a further sum of £250. But he did not agree that Mrs K had demonstrated that a different decision on her business would have been made had the claim been settled in 2020.

Mrs K remained unsatisfied and her complaint has been passed to me for a 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.

Having done so, I have reached the same outcome as our Investigator, largely for the same reasons.

Before setting out my reasoning in relation to the issue at the heart of this complaint, I will briefly touch upon a point relating to the issues dealt with in the previous complaint handled by the Ombudsman Service. No final determination was issued in respect of that complaint, and I consider I am able to make some points on these within this decision without prejudicing the parties' positions. These should be read as clarification, rather than findings.

Our Investigator's previous opinion was that, although Mrs K's policy sets out that the maximum settlement of the relevant claim would be £10,000 – and that this amount would include any accountant's fees – RSA had not been clear about this during the claims process. He did also note that Mrs K had not done all that she potentially could have to reduce these accounting costs though. So, he felt that the £600 cost of the accountant should be split between RSA and Mrs K. This would effectively raise the claim settlement to £10,300.

I appreciate that this leaves Mrs K having to pay £300 toward the accountant's fees, and this reduces the settlement. However, as the maximum settlement under the policy is £10,000, increasing this to £10,300 means that the payment of £300 by Mrs K effectively leaves her in a position that is in line with the policy.

In terms of the current complaint, Mrs K has said that the consequences of her claim not being met in 2020 were that she made the decision to permanently close her business. She said she had to continue to make rent payments whilst her business was closed, and that she was unwilling to take on any debt to service this.

I am sorry to hear that Mrs K's business did not continue. But the question I need to determine is whether the main reason for this this was RSA's initial decision to decline her claim, or whether other factors meant that this would have been the outcome regardless.

In doing so, I have taken into account the size of the claim and the maximum settlement available under the policy. The claim value was calculated by RSA as being around £15,000. So, any settlement would only have covered two-thirds of this and Mrs K would still have faced a significant deficit. If she was unwilling to take on any debts, it is unclear that she would have been able to service even this deficit. So, she still may have made the same decision.

It is possible that Mrs K had enough in reserve to meet this initial deficit. But I still need to take into account whether or not she did enough to mitigate any mistake by RSA. RSA has pointed to the availability of "bounce back loans" through the relevant government scheme. These were available with no repayments and at zero percent interest for a year, and many businesses took advantage of them to try and continue to operate in the face of the pandemic.

I do appreciate Mrs K's reluctance to take on debt, and have also taken into account that as a sole-trader she would have remained liable for this if her business then did have to close. But I need to balance this against whether it is reasonable to expect a person to try and mitigate their loss. And I think it is reasonable that someone do all they can to minimise potential consequential losses they face.

Mrs K has said that, at the time the decision was made, it was unclear what the ongoing impact of the pandemic would be on her business. But I think this would have been the case

regardless of whether RSA had met the claim in 2020. So, whilst I appreciate the financial pressures on her business would have been reduced, I still think she would have had to make the same decision at about the same point in time.

I appreciate that Mrs K may not agree with this. Ultimately, it is not possible for me to be sure what her decision would have been in different circumstances. But my role is to determine what I consider to be more likely than not. Given the financial pressures her business would have been under, even with RSA meeting the claim, along with the uncertainty over how the pandemic and associated restrictions would develop, and Mrs K's understandable unwillingness to take on debts in this scenario, I ultimately think it is more likely than not that she would have taken the same decision.

So, whilst I have a great deal of sympathy with Mrs K's position, I am unable to fairly and reasonably conclude that RSA should compensate her for the decision to terminate her business.

RSA did cause Mrs K avoidable distress and inconvenience though. Whilst this will only go a small way in terms of the overall distress caused by the circumstances overall, I think an award of £250 is appropriate compensation for that caused by RSA itself.

I also agree with our Investigator that RSA should recalculate the interest award it has paid to be in line with our usual approach. This reflects the fact Mrs K was without the settlement for a period of time. And neither party has provided any evidence why this should rate of interest be deviated from in the circumstances.

Putting things right

If it has not already done so, Royal & Sun Alliance Insurance Limited should put things right by paying Mrs K interest on the settlement of her claim. This should be calculated at a rate of 8% simple per annum, from 26 May 2020 to the date the claim settlement was paid.

Additionally, Royal & Sun Alliance Insurance Limited should pay Mrs K £250 compensation for the distress and inconvenience caused to her, if it has not already done so.

My final decision

My final decision is that I uphold this complaint in part. Royal & Sun Alliance Insurance Limited should put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs K to accept or reject my decision before 31 May 2024.

Sam Thomas
Ombudsman