

The complaint

Mr V complains that Royal & Sun Alliance Insurance Limited ('RSA') refused to cover his claim for loss of rent under a property insurance policy.

What happened

Mr V is a leaseholder of a flat that he rented out. The flat is covered by a block insurance policy, underwritten by RSA.

An escape of water caused damage to a number of flats, including Mr V's. The claim for damage to Mr V's flat was accepted by RSA. However, RSA said there wasn't cover for loss of rent. Though it paid Mr V £200 compensation for the time taken to make a decision about this. Unhappy with this, Mr V brought a complaint to the Financial Ombudsman Service.

Our investigator recommended the complaint be upheld. She said the policy didn't exclude loss of rent for leaseholders, and so recommended RSA consider Mr V's claim for loss of rent.

I issued a provisional decision 12 February 2024. Here's what I said:

'There is a lease between two parties dated 1978. The freeholder at the time of the loss (that I'll call 'G') then granted an underlease to another company in 2012, who later sold the lease to Mr V.

The policy says:

'If the Property or any Flat is made uninhabitable by Damage not excluded under the Property Section the Company will pay the rent (including ground rent and service charges) the Insured would have received but has lost during the Indemnity period necessary to restore the Property or any Flat to a habitable condition'

The policy defines 'Insured' as:

'All [G] Parties in whom a freehold or leasehold interest is vested

The Direct Tenant of any such [G] Party (but only if and for so long as the [G] Party is under an obligation to the Direct Tenant to insure in joint names or as co-insured)

Any other freeholder or leaseholder notified to the Insurer under this policy as an Insured

Note: the interests of other tenants of each Property and the mortgagees of any of them are deemed to be noted on the Policy'

The policy defines 'Direct Tenant' as:

'The immediate tenant of any [G] Party but not any remoter under or sub tenants'

The policy also defines G Party which includes various subsidiaries of G.

Under the policy, RSA is required to pay rent that the insured would have received, if not for the damage. The crux of the matter is therefore whether Mr V would be considered an insured party, under the terms of the policy.

Mr V is not a G Party, and he has not been notified to RSA as an insured. Whilst his interest has been noted on the policy, that does not mean he is an insured party. It therefore seems to me that the only way Mr V could potentially be considered as an insured would be if he met the definition of Direct Tenant of any G Party.

RSA says that Mr V doesn't meet the definition of a Direct Tenant of any G Party, and has provided some legal arguments to support its reasoning. However, I don't think I need to make a finding on this. I say that because a Direct Tenant would only be considered an insured if the G Party was under an obligation to the Direct Tenant to insure the property in joint names or as a co-insured. I've read the lease and there's nothing to suggest that G Party was under such an obligation. Therefore, even if Mr V were to meet the definition of a Direct Tenant, he still wouldn't be considered an insured.

I'm therefore satisfied it was reasonable for RSA to say the policy doesn't cover Mr V for loss of rent.

RSA paid Mr V £200 compensation because of the time it had taken to make its decision about the matter. I see it became aware in early February 2023 that Mr V wouldn't be considered an insured, but didn't confirm this to Mr V for around two months. I think the compensation paid by RSA was reasonable here.

Mr V has also raised concerns with the Financial Ombudsman Service about the settlement paid by RSA for the repairs. I understand he thinks a higher payment should be made towards the cleaning of the property, and the repolishing work in the bathroom. However, Mr V would need to raise this as a formal complaint with RSA in the first instance. If he remains unhappy with RSA's response, he can ask us to consider the matter.'

I asked both parties for any further comments they wished to make before I made a final decision.

RSA responded to say it agreed with my findings.

Mr V responded to acknowledge my provisional decision, but didn't have any further comments to make.

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.

As neither party has provided any further comments, I see no reason to depart from the findings I made in my provisional decision. So I've reached the same conclusions, and for the same reasons.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr V to accept or reject my decision before 25 March 2024.

Chantelle Hurn-Ryan
Ombudsman