

The complaint

Mr D and Mr D complain Royal & Sun Alliance Insurance Limited (RSA) have unfairly declined their buildings insurance claim.

All references to RSA also include its appointed agents.

What happened

The details of this complaint are well known to both parties, so I won't repeat them again here. Instead, I'll focus on giving my reasons for my decision.

My provisional decision

I issued a provisional decision on 29 February 2024. In my provisional findings, I said:

"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 am intending to uphold the complaint for these reasons:

- In its final response letter RSA have referenced an exclusion in the policy which it has applied to decline Mr D and Mr D's claim. The exclusion says damage from an escape of water isn't covered while the home is unoccupied.*
- The policy defines unoccupancy as when the home is not lived in for more 60 days in a row. It defines lived in as including activities such as eating, sleeping, and bathing.*
- Mr D and Mr D said the property is a second home - which they visit around twice a month. They've provided electricity and gas bills which show some usage at the property around the time of the claim. However, RSA have said this usage isn't indicative of the property being occupied.*
- Mr D and Mr D also provided bank statements showing purchases in the property's local area within a 60-day period of the incident being reported to RSA.*
- I've reviewed the statements, and they do show purchases in the local area of the insured property, in places such as local supermarkets. Mr D and Mr D would need travel a considerable distance from their home address to the property. So I think it's more likely than not Mr D and Mr D have been attending the property when these purchases were made – and therefore the property hasn't been unoccupied for more 60 days in a row.*
- RSA has commented the gas and electricity usage at the property is low. But given the nature of how Mr D and Mr D said the property is used, I wouldn't expect it to be high. And I'm not persuaded that this alone would mean the property has been unoccupied for more than 60 days. Photos provided of the property by RSA also show there were beds in the property and means in which to bathe and prepare meals.*
- I also note in the investigation notes provided that Mr D and Mr D's estate agent confirmed it had been at the property around two weeks before the damage was discovered and subsequently reported to RSA.*
- The damage in question was caused by two pipes in the loft bursting. And I also*

consider here I've not seen anything to persuade me that in the event Mr D and Mr D weren't occupying the property, as RSA suggest, it would have made a difference to the outcome of the escape of water.

- So, considering the available information, I don't think RSA acted fairly in applying the exclusion and should now proceed to settle the claim.
I recognise Mr D and Mr D said they have already had some work done at the property to rectify matters where possible. RSA should meet the costs for any works already carried out which were covered under the terms of the policy.*
- A scope of work was created by RSA when it attended the property, if any work is remaining from this, RSA will need to discuss and agree with Mr D and Mr D whether they wish to use RSA's appointed contractors to complete this. Alternatively, if a cash settlement is preferred by Mr D and Mr D given the way in which the claim has been handled so far, RSA should settle at the commercial rate to Mr D and Mr D and not its own agreed costs for the remaining work to be completed.*
- RSA accept it caused avoidable delays in its handling of the claim such as when arranging for its adjusters to visit the property and due to missed appointments. RSA offered Mr D and Mr D £275 compensation for the inconvenience its actions have caused. From reviewing the information available to me I think this amount is fair in recognising the impact of its actions.*

Putting things right

To put things right, I intend to direct RSA to:

- Settle any damage already repaired which is coverable under the claim at the cost to Mr D and Mr D on production of sufficient evidence such as invoices.*
- Pay 8% simple interest on this amount from the date the amounts were paid to the day it makes payment to Mr D and Mr D.*
- If required RSA should carry out any remaining work covered under the policy or provide a cash settlement to Mr D and Mr D at commercial rates to enable them to get the work done.*
- Should any exist, amend, and remove any adverse data from relevant databases relating to the claim being declined."*

Responses to my provisional decision

RSA didn't respond to my provisional decision.

In response to my provisional decision, Mr D and Mr D have provided further invoices. They said they have incurred further costs in drying the property before they were able to arrange for repairs to be done. They said RSA had originally agreed to cover these costs when it was considering the claim.

Mr D and Mr D also said it would be their preference to obtain a cash settlement from RSA rather than it carry out the remaining works.

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.

I've reconsidered all the available information along with Mr D and Mr D's additional comments, but it doesn't change my decision – or my reasoning.

I can see in its initial report RSA said the property was being dried by heating and venting. So as part of proceeding to settle the claim, I would expect RSA to consider any reasonable and associated costs – including the cost incurred by Mr D and Mr D in drying the property.

As I set out in my provisional decision, if a cash settlement is preferred by Mr D and Mr D, given the way in which the claim has been handled so far, RSA should settle at the commercial rate to Mr D and Mr D and not its own agreed costs for the remaining work to be completed.

If for any reason, Mr D and Mr D are dissatisfied with a settlement offer made by RSA, they may wish to consider raising a further complaint and may bring that complaint to our service if dissatisfied with RSA's response.

Putting things right

To put things right, I direct RSA to:

- Settle any damage already repaired which is coverable under the claim at the cost to Mr D and Mr D on production of sufficient evidence such as invoices.
- Pay 8% simple interest on this amount from the date the amounts were paid to the day it makes payment to Mr D and Mr D.
- If required RSA should carry out any remaining work covered under the policy or provide a cash settlement to Mr D and Mr D at commercial rates to enable them to get the work done.
- Should any exist, amend, and remove any adverse data from relevant databases relating to the claim being declined.

My final decision

My final decision is that I uphold Mr D and Mr D's complaint.

To put things right I direct Royal & Sun Alliance Insurance Limited (RSA) to do as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D and Mr D to accept or reject my decision before 12 April 2024.

Michael Baronti
Ombudsman