

## **The complaint**

Miss O's complaint relates to a claim on her Royal & Sun Alliance Insurance Limited ('RSA') landlord legal expenses and rent guarantee insurance policy, which was declined by RSA.

Miss O feels that RSA have treated her unfairly.

In this decision all references to RSA include their claims handlers.

## **What happened**

Miss O took out a landlord legal expenses and rent guarantee insurance policy underwritten by RSA. The policy commenced on 11 April 2023.

In July 2023 Miss O submitted a claim under the policy. She said that she had not received the rent due to her, that this was due on 5 July 2023 from Universal Credit and that the tenant had also failed to pay a top up due to her.

Considerable correspondence ensued between RSA, Miss O and her agent about the interpretation of when the arrears commenced and whether the account had been brought into credit or at least back to zero by the tenant around the periods Miss O was claiming for. Various rent schedules were submitted by Miss O's agent and explanations were given around an amendment to the tenancy agreement in which Miss O said she was prepared to accept the payment of rent later than the dates set out in the original tenancy agreement.

The matter culminated in RSA taking the view that even if they accepted everything Miss O and her agent had said, Miss O's position was still that the rent payment due to her had not been received on 5 July 2023, which fell within the policy's 90 day waiting period. As such RSA said her claim was not covered.

Unhappy, Miss O referred her complaint to the Financial Ombudsman Service. Our investigator considered her claim and concluded that it should not be upheld. Miss O doesn't agree so the matter has been passed to me to determine.

## **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 don't uphold Miss O's complaint. I'll explain why.

The starting point is the policy terms. They exclude:

"18. An event which occurs within the first 90 days of the period of insurance."

*"Event" is defined as "The incident or the first of a series of incidents which may lead to a claim under this insurance. Only one insured incident shall be deemed to have arisen from all causes of action, incidents or events that are related by cause or time."*

Based on everything I've seen, I'm satisfied that the event which gave rise to the claim happened before the expiry of the 90 day period set out in the policy exclusions. Miss O's claim was made in July 2023 and in that claim, she said she had not received the rent due to her on 5 July 2023. That day falls within the 90-day exclusion period. As such it's not covered by the policy.

Miss O has said this is unfair. She's also asked whether the policy would afford her with cover for rent arrears going forward if she wrote off the sums owed to her up to the 90-day exclusion. Whilst RSA haven't addressed this issue, I don't think they would dispute the position that writing off sums would not negate when the initial event took place- namely that Miss O did not receive the rent she was expecting in July 2023- and that this happened before the expiry of the 90 day period. And given that event is described as "*the first in a series of incidents that may lead to a claim*" under the insurance, it makes no difference whether Miss O writes off the sums due to her or not because the key event is the default on the rent. That happened during the waiting period so any further defaults that follow, whether she writes off the sums due or not, would not be covered. I think the situation might have been different if the tenant had paid off the balance of the sums due promptly then defaulted again outside of the waiting period, but an insurer might take a different view given the risk of default is multiplied by an earlier default and that's what terms like the ones I've described are in place to prevent.

Miss O has said the policy term RSA have applied is unfair because it enforces a three-month waiting period on one year's worth of cover. I accept what she says about the extent of the cover versus the waiting period, but I don't think this means the length of the waiting period for this type of policy is unfair. This type of policy is intended to protect landlords who are engaged in commercial activity to the extent that they are renting out a property. The purpose of the cover is to reimburse the landlord for rent arrears and cover claims in certain circumstances against tenants. The policy has been priced to balance the risk to the insurer which will no doubt have taken into account the waiting period. If the waiting period were less, then I would expect the policy premiums to be significantly higher. The Financial Ombudsman Service cannot dictate what risks an insurer should take when setting its policy terms. We can only determine whether the application of those terms is fair. The commercial nature of the policy and the fact that the waiting period has been put into place to reduce the risk of early claims to the insurer doesn't to my mind mean the duration of it is unfair. And that kind of waiting period is quite common in policies of this nature. There may well be other policies on the market without this kind of waiting period, but that's a matter for Miss O to consider at renewal.

Finally, I note Miss O has made various submissions about this policy being missold to her. I can't consider these submissions as they are complaints against the seller of the policy. Miss O will need to direct her complaint to the seller if she wants to pursue this specific complaint.

**My final decision**

For the reasons set out above, I don't uphold Miss G's complaint against Royal & Sun Alliance Insurance Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss O to accept or reject my decision before 27 May 2024.

Lale Hussein-Venn  
**Ombudsman**