

The complaint

Miss P is unhappy with what Royal & Sun Alliance Insurance Limited did after she made a claim on her landlord legal expenses and rent guarantee insurance policy.

What happened

In March 2022 Miss P contacted RSA as her tenants had told her they would moving out of her property around seven months prior to the end of the tenancy agreement. She wanted assistance in pursuing a breach of tenancy claim against them for costs, including unpaid rent for the remainder of the tenancy. RSA asked Miss P for some further information and then sent the claim to a panel solicitor (S) for it to assess whether it would have reasonable prospects of success (a requirement of the policy).

At the end of April S said it appeared the tenants would be leaving the country meaning they would be outside the jurisdiction of the UK courts and Miss P would have no way of pursuing them. So it didn't think her claim had reasonable prospects of success. It provided some suggestions as to action Miss P might take to protect her position and also queried what advice Miss P had provided to the tenants.

After receiving further information from Miss P, RSA reviewed matters in July as it now appeared one of the tenants was still in the UK. It said it would refer the matter back to S if Miss P was able to provide evidence of that which she did. S then said it didn't deal with debt recovery work. RSA referred the claim to a different panel firm (M). It advised that further information was required in order to consider matters which Miss P provided.

M subsequently advised the claim didn't have reasonable prospects of success. It said Miss P was under a duty to mitigate her losses by finding alternative tenants. So her claim would be limited to unpaid costs until the property was vacated which was a relatively small amount. And it questioned whether the defendant, who Miss P said owed multiple debts, was likely to have assets against which a claim could be made. It said the claim's prospects of success were below 50%.

Miss P said she had tried to relet her property and had evidence of that. And it was the tenants who left the country who had debts; the remaining tenant was still working. RSA passed those comments back to M for review. Following a number of chasers M said at the start of November Miss P's response hadn't changed its assessment of the claim.

Our investigator didn't think there had been unreasonable delay by RSA following Miss P's initial submission of her claim in March 2022. And RSA had apologised for not responding to an email Miss P sent at that time.

There had been delay in the further comments Miss P made about the second prospects assessment being considered but she thought the £100 RSA had already offered for this was reasonable. And she thought RSA was entitled to rely on the legal assessments from the panel firms when concluding the claim didn't have reasonable prospects of success and so wasn't one it should provide funding for.

Miss P didn't agree. In summary she said:

- Her claim had never been for eviction and was always for debt recovery. So she queried why it had been referred to S in the first place by RSA and said this had caused unnecessary delay.
- Her claim was for the remaining six months of the fixed term tenancy and this was not a negligible amount as M had suggested. And the damages she was claiming for only became apparent once the tenants had vacated the property. She queried whether RSA had provided correct information to M to enable it to assess the claim given its initial analysis said it was missing documents she'd provided.
- RSA hadn't responded to an email she sent in September setting out queries in relation to the assessment and had only chased up the panel firms for responses when she requested this. She thought quicker responses should have been provided.
- Since the prospects assessment from M she'd obtained further evidence (including a decision in her favour in relation to the tenant's deposit) which supported her view that they were in breach of the tenancy agreement.

I issued a provisional decision on the complaint last month. In summary I said:

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 Miss P's policy. This does cover "Costs to pursue the tenant if they have breached any of their obligations under the tenancy agreement". So the action Miss P wanted to bring is one her policy could cover. However, it only covers claims which have been assessed as having prospects of success. And the policy defines that as "at least a 51% chance of you achieving a favourable outcome."

As an insurer isn't a legal expert we think that should be assessed by a qualified lawyer with suitable experience. So I think it was right in principle RSA referred the matter to a panel firm for that assessment to be carried out. And while there was a slight delay in RSA initially reviewing the claim I don't think the time taken for this process overall was unreasonable. Having obtained advice from the panel firm RSA provided a claim outcome less than four weeks after this had been submitted.

But I appreciate that the claim was always for debt recovery; Miss P never suggested it was for eviction proceedings (which is what S appear to have experience of). So I'm not clear it was appropriate for the matter to have been referred to S in the first place. However, while Miss P suggests this delayed the progress of her claim I don't think that's right. S didn't, at that stage, raise any concerns about its ability to assess the claim and it went ahead to do so. Its conclusion was it wouldn't have reasonable prospects of success because, if the tenants returned to their home country, they would be outside of the jurisdiction of the UK courts. Its assessment appears to me to be properly written and reasoned and from someone qualified to provide it. I don't think there was any reason why RSA shouldn't have relied on it.

And in any case the policy doesn't cover "Legal action outside the territorial limits". It defines territorial limits as The United Kingdom (meaning England, Scotland, Northern Ireland and Wales), Channel Islands and Isle of Man". So if, as appeared to be the case, Miss P's tenants had left the UK (or would shortly be doing so) the policy wouldn't have provided cover for action to be taken against them in their home country.

That means it was only when Miss P was able to provide further information (including a tracing report) to show one of the tenants remained in the UK the policy could have provided funding for any legal action. And RSA then agreed to refer matters back to S for review. It was at that point it said it wasn't able to deal with the claim. I appreciate that does appear to have caused some delay; the matter was referred back to S at the start of August and it only advised two weeks later it didn't deal with this sort of claim. But as it had given no prior indication of that (and indeed had previously provided an opinion on prospects) I don't think it was unreasonable of RSA to have thought it would be able to do so again.

Where I do have a concern is in relation to RSA's reliance on the prospects assessment M subsequently produced. The assessment appears to have relied on an alleged failure by Miss P to mitigate her losses. But neither RSA or the panel firm appear to have sought any information from her about this. And once the assessment had been produced Miss P made clear she could provide evidence of her attempts to relet the property.

The assessment also said that the likelihood of the defendant having assets to claim against "seems slim". However, that conclusion doesn't appear to be supported by any clear evidence. And while the assessment suggests the claim might involve "throwing good money after bad" (suggesting M didn't think it would be proportionate to pursue) it provides no figures for either the cost of the claim or the amount in dispute. Miss P suggests the reason the prospects assessment was lacking was because RSA didn't provide M with all of the relevant information about her claim. I don't need to determine that because, whatever the reasons are, I don't think the assessment is properly written and reasoned and so isn't one RSA should have relied on.

And while RSA did rightly refer the further comments Miss P made back to M for it to review it didn't respond for two months and at which point it simply said "Unfortunately, we do not believe this case has prospects of success and maintain that view despite client's response to our initial risk assessment."

I appreciate RSA did chase for a response (and I don't think that was solely when Miss P got in touch with it). But I think RSA should have done more to ensure a quicker response was provided, for example escalating the matter to senior management at the panel firm. And given there's no reasoning or explanation in what M did then say I don't think RSA were entitled to rely on that assessment to decline funding for Miss P's claim. I think Miss P is right to feel she's never received a proper response to the information she provided in her email at the start of September 2022.

Putting things right

I understand Miss P hasn't pursued her underlying legal claim since her legal expenses claim was declined by RSA (though has recovered the deposit paid by the tenants). She says that leaves an amount outstanding of around £5,289. And she believes the tenant is still in the UK where he has indefinite leave to remain.

Given the failing by RSA in relying on an inadequate prospects assessment in November 2022 it will now need to arrange for all the information available in relation to Miss P's claim in November 2022 to be assessed by a different panel firm to see if it has reasonable prospects of success and is proportionate to pursue. If the panel firm's opinion on that is positive RSA will need to provide funding for Miss P's claim in line with the remaining terms and conditions of her policy.

I also think Miss P will have been caused additional distress and inconvenience as a result of her claim being turned down on the basis of an inadequate assessment. And I think it will also have been frustrating for her that RSA didn't ensure she received an answer to the information she provided in her email at the start of September 2022. I appreciate RSA has already offered to pay £100 for the delay in progressing the claim but, in order to recognise the additional distress Miss P was caused, I think it should pay her a further £200 (so £300 in total).

Responses to my provisional decision

Neither Miss P or RSA responded to my provisional 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.

As neither side has responded to my provisional decision, I don't have any reason to change the conclusions I set out in it.

Putting things right

RSA will need to arrange for all of the information available in relation to Miss P's claim in November 2022 to be assessed by a different panel firm to see if it has reasonable prospects of success and is proportionate to pursue. If the panel firm's opinion on that is positive RSA will need to provide funding for Miss P's claim in line with the remaining terms and conditions of her policy. And it will need to pay a total of £300 in recognition of the distress and inconvenience it caused her.

My final decision

I've decided to uphold this complaint. Royal & Sun Alliance Insurance Limited will need to put things right by doing what I've said in this decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss P to accept or reject my decision before 23 May 2024

James Park
Ombudsman