

The complaint

H has complained about the delay by Royal & Sun Alliance Insurance Limited (RSA) in considering its claim under its commercial property insurance policy. It has also complained about RSA's subsequent decision to avoid the policy and refuse its claim because of this.

H is represented by Mr M.

What happened

H made a claim under its policy for impact damage to the insured property in July 2023. RSA investigated the claim. Mr M then complained that RSA's communication was poor and that it hadn't settled the claim. RSA issued a holding letter in November 2023 to Mr M giving him the right to refer H's complaint to us. Mr M referred the complaint to us. After this RSA issued its final response letter to Mr M. In this it explained the delay on the claim was due to the need to investigate it and it said it was satisfied Mr M was kept properly updated. It then explained that it had avoided H's policy on the basis it had not made a fair presentation of the risk when it wrongly said the insured property was occupied when the policy started in April 2023. And that it would not have offered the policy if it had known this was the case. It also said it had sent a letter communicating this to Mr M on 12 December 2023, although RSA has not provided a copy of this letter. RSA also said in its claim handling notes it had decided to retain the premium paid by H when it avoided the policy.

As Mr M had already asked us to consider H's complaint by the time RSA issued its final response, one of our investigators did this. He considered all the aspects covered in RSA's final response. He said that he didn't consider RSA had unnecessarily delayed the claim and that whilst it could have probably provided more updates to Mr M, he didn't consider this warranted compensation to H for inconvenience. He also said he was satisfied RSA's decision to avoid H's policy was reasonable.

Mr M didn't agree with the investigator's view and asked for a final 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've decided not to uphold it.

I've considered the way RSA handled H's claim and I'm satisfied it acted in accordance with its obligations to handle it promptly and fairly. I appreciate it took a long time to investigate it, but I'm satisfied its investigations were necessary and carried out in a reasonable time. This is because RSA had to make numerous enquiries about the occupancy of the insured property and these naturally took a fair amount of time. I'm also satisfied RSA also kept Mr M updated, albeit there wasn't much it could tell him other than its enquiries were ongoing.

Turning now to RSA's decision to avoid H's policy and decline its claim. The relevant

legislation is the Insurance Act 2015 (the Act). This required H to make a fair presentation of the risk it wanted RSA to insure when it took out the policy. If RSA could show H breached this duty it would also need to show it was what the Act described as a 'qualifying breach'. To do this it would need to show it wouldn't have offered the policy to H on the same terms or at all if H hadn't breached its duty to make a fair presentation. If it could do this and it could also show the qualifying breach was deliberate or reckless it would then be entitled to avoid H's policy (treat it as if it had never existed), refuse any claims under it and retain the premium paid by H.

In view of this, I have considered whether RSA has shown H failed to make a fair presentation of the risk when it took out the policy in April 2023. And I think it has. This is because the Statement of Fact provided to H when the policy started in April 2023, which confirmed the information H had provided, shows that H said the insured property was fully occupied at this time. And RSA has said H said it was '100% occupied as a bakery' when it asked it to insure the property, which I have no reason to doubt. And I'm satisfied that the evidence provided by RSA following extensive investigations shows the insured property was actually unoccupied in April 2023.

I've also seen the underwriting criteria RSA used at this time and this shows that RSA would not have offered the policy to H if it had known the property was unoccupied. This means I am also satisfied RSA has shown that H's breach of its obligation to make a fair presentation was a qualifying one. I'm also satisfied RSA has shown it was either deliberate or reckless. I say this because it is clear from the evidence provided that the property had not been occupied since H purchased it in April 2022 and I am satisfied H knew this or should have known this when it took out the policy. This means I'm satisfied RSA was entitled to retain the premium H had paid when it avoided the policy.

As I'm satisfied RSA was entitled to avoid the policy, I'm also satisfied it was entitled to turn down H's claim under it, as the avoidance means that – in effect – the policy never existed.

In summary, I'm satisfied that RSA's handling of H's claim up to the point it avoided its policy was reasonable. And I'm satisfied it was entitled to avoid H's policy for a deliberate or reckless qualifying breach under the Act and decline its claim. This means I do not consider H's complaint should be upheld.

My final decision

For the reasons set out above, I've decided not to uphold H's complaint about Royal & Sun Alliance Insurance Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask H to accept or reject my decision before 28 October 2024.

Robert Short
Ombudsman