

## **The complaint**

Mr and Mrs K complain that Royal & Sun Alliance Insurance Limited (“RSA”) rejected a claim on their legal expenses insurance policy.

Where I refer to RSA, this includes its agents and claims handlers acting on its behalf.

## **What happened**

Mr and Mrs K bought their house on 17 January 2022 and moved in on 24 January. It was a new build property.

They took out home insurance but were unable to start the policy immediately as the address had not yet been registered. The start date of the policy was 18 February 2022.

On moving in, Mr and Mrs K became aware of some snagging issues and contacted the builder who agreed to carry out some work to address the issues.

Over the following months, more problems became apparent and some of these were more serious. Mr and Mrs K raised these additional problems but the builder later refused to return and carry out any more work. So they wanted to take legal action against the builder.

Their home insurance policy included legal expenses cover so they made a claim on the policy to cover the cost of legal action against the builder.

RSA said there was no cover because the date of occurrence was before the policy started, and the policy excluded claims in these circumstances. Mr and Mrs K complained but RSA didn’t change its position. It said:

- it didn’t dispute that further incidents had occurred after the policy started but the policy terms say it needs to identify the first event that led to the claim being made
- if there is a unifying factor connecting the claim to a string of previous incidents, even if they did not lead to a claim at the time, the first one would be considered the ‘date of occurrence’
- in this case, that was when the snagging issues were identified on completion of their house purchase on 17 January 2022.

When Mr and Mrs K referred the complaint to this Service, our investigator said it was reasonable for RSA to decline the claim as the first event that led to the claim happened before the policy started.

Mr and Mrs K disagreed and requested an ombudsman’s decision.

I issued a provisional decision saying I was minded to uphold the complaint. I set out my reasons as follows:

*The relevant industry rules and guidance say insurers must deal with claims promptly and fairly and should not unreasonably reject a claim. They should also enable customers to pursue their financial objectives.*

*The policy provides cover for the type of claim Mr and Mrs K wish to make but, as with all insurance, there are conditions and exclusions that limit the cover available.*

*In this case, the relevant term says the legal action must “have a date of occurrence within the insurance period.”*

*Date of occurrence is defined as follows:*

*“For civil cases, this is the date of the event that leads to a claim. If more than one event arises at different times from the same cause, the date of occurrence is the date of the first event. This may be before the date you first became aware of it.”*

*Insurance is generally intended to cover future risk and it’s not unusual for insurers to say they won’t cover something that’s already happened before the policy starts. I don’t think that’s unfair. But the policy term RSA relies on is very wide and, if applied strictly, excludes cover even where the customer is not aware something has happened.*

*While the policy terms are the starting point for considering the claim, I make my decision based on what’s fair and reasonable, taking into account all the circumstances. So I’ve considered all the evidence, including what Mr and Mrs K knew when they took out the policy.*

*RSA says although more than one event led to the claim, and some only became apparent later on, they all originate from the same cause and that was before the policy started. So they are all connected and the claim is not covered.*

*Mr and Mrs K say:*

- *the word ‘event’ can’t be read on its own – one has to look at an event that leads to a claim*
- *it’s not uncommon for a new build property to have a snagging list and that doesn’t generally lead to a dispute*
- *the dispute only happened when the builder rejected the points raised by them, which was in 2023*
- *they provided a surveyor’s report detailing all the defects and they couldn’t have been aware of all of these until they obtained that report.*

*It’s not unusual with a new build property to have some snagging items. The snagging items listed when Mr and Mrs K moved in were quite extensive but they were more cosmetic issues and the builder offered some dates when these would be dealt with. So at that point, the issues were routine and there was no reason for Mr and Mrs K to think they might lead to a claim on their insurance.*

*Over the following year, more issues became apparent. The surveyor’s report Mr and Mrs K obtained in July 2023 listed many items that had not been in the original snagging list and these included more serious problems, including some structural issues. When they presented all of these to the builder it became clear they would not be dealt with.*

*I appreciate that all of the problems can be traced back to the construction of the building. To that extent they are connected. But as I’ve said, it’s common to have snagging issues. These*

*are usually dealt with by the builder and rarely lead to legal disputes. Looking at all the circumstances, I'm satisfied that at the point when they took out the policy Mr and Mrs K were not in dispute with the builder and had no reason to think they would need to make a claim. It only became apparent a long time later that there was a dispute and they would need to claim on their policy. It wouldn't be fair to apply the policy term so strictly as to exclude a claim in these circumstances.*

*For these reasons I'm minded to uphold the complaint. And I think this is further supported when considering the Consumer Duty, which requires firms to enable customers to pursue their financial objectives. I think it would be unfair to prevent Mr and Mrs K from using their legal expenses cover in these circumstances.*

*RSA rejected the claim in reliance on this particular policy term without going on to consider it further. I don't think that was fair but that doesn't necessarily mean the claim will be covered; there may be other terms that apply. So while it would not be fair to reject the claim in reliance on this particular term, RSA will need to consider it in line with the remaining terms and conditions.*

### **Replies to the provisional decision**

Mr and Mrs K have not provided any further comments in reply to the provisional decision.

RSA has provided the following comments:

- The policy wording is clear in that it will not cover a claim where the date of occurrence is before the policy started even if the insured was not aware of it.
- The provisional decision suggests that if there's no legal expenses insurance in place at the time of a breach of contract on a new build property, it should always provide cover where the extent of the defects only comes to light during the policy period. This seems unfair.
- The event that gave rise to the legal action occurred before the policy started. The policyholder was aware of it and had raised issues with the builder; they were just not aware of the extent of the defects.
- It seems unfair if an insurer has to cover issues a policyholder was already aware of when they bought the policy, and where it's not uncommon for new build property defects to be worse than first thought.

### **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 considered the further comments from RSA carefully, my view remains that it would not be fair to reject the claim on the basis the date of occurrence was before the policy started.

I appreciate the policy term refers to the date of the first event that leads to a claim and this "*may be before the date you first became aware of it.*" But I have to consider what's fair in the particular circumstances of this case.

I wouldn't say an insurer will always have to cover something has happened before a policyholder bought their policy; every case must be considered on its own facts and different factors may apply. I'm only considering the facts of this case.

The fact that someone is aware of an issue doesn't necessarily mean they have a dispute which is likely to lead to a claim on the policy. Even if Mr and Mrs K were aware of some minor snagging issues, they wouldn't have known there were structural issues, which the builder would not be prepared to remedy, and which would lead to them making a claim. In the particular circumstances of this case – and for the reasons set out in detail above – it wouldn't be fair to treat this as a pre-existing dispute and refuse cover on that basis.

### **My final decision**

My final decision is that I uphold the complaint and direct Royal & Sun Alliance Insurance Limited to reconsider the claim on the basis that the date of occurrence is within the insurance period and in line with the remaining policy terms.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs K and Mr K to accept or reject my decision before 17 July 2024.

Peter Whiteley  
**Ombudsman**