DRN-5139503

The complaint

Mr P complains that Royal & Sun Alliance Insurance Limited (RSA) didn't make a recovery from a third-party for damages after he made a claim on his contents insurance policy.

What happened

Mr P held contents insurance underwritten by RSA. In 2020 Mr P made a claim under the policy following damage caused by a leak in his home. RSA accepted the claim and covered the cost of the repairs, subject to Mr P paying the policy excess of £350.

Following the settlement of the claim, RSA looked to recover its costs from a third-party it said was responsible for the damage caused to Mr P's home. And it included the excess Mr P paid as part of the claim when it looked to recover its costs.

RSA appointed its recovery agent, a solicitor's firm who I'll refer to as D, to act on its behalf in recovery of its claim costs as well as Mr P's excess. But it said it was unable to identify the third-party it said was responsible for the damage, so it abandoned recovery. Mr P was unhappy with the service he received from D and its decision to abandon recovery. So, he raised a complaint to RSA.

RSA accepted it failed to send Mr P some of the documentation he'd requested and arranged this to be sent to him. And D paid Mr P £250 in compensation for the trouble and upset it had caused. But RSA maintained its decision to abandon recovery. Mr P remained unhappy so referred a complaint to this Service.

Our Investigator didn't uphold the complaint. He said RSA had acted fairly and reasonably in the circumstances of things. Mr P disagreed so he asked for an Ombudsman to consider the complaint.

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 want to start by explaining I won't be repeating the entirety of the complaint history here or commenting on every point raised, as the same is already well known to both sides. Instead, I've focussed on what I consider to be the key points I need to think about in order to reach a fair and reasonable conclusion.

I don't mean any discourtesy by this; it simply reflects the informal nature of this Service and our key function – which is to resolve disputes quickly, and with minimum formality, on the basis of what I believe is fair and reasonable in the overall circumstances of the complaint. However, I assure both parties I've read and considered everything provided as part of this complaint.

I also want to explain this Service can only consider a complaint up to and including the date the business issued its final response on the matter. So, my decision has only focused on

the issues Mr P encountered up to 25 March 2024. Any concerns Mr P has with RSA after this date would be subject to a new complaint.

And as part of this decision, I can't consider the legal advice D provided to RSA. I can only consider how it acted insofar as a representative of RSA's in the handling of the insurance claim.

RSA's decision to abandon the recovery of its claims costs

An excess is the first part of any claim and is sometimes referred to as an uninsured loss. Mr P's policy booklet says an excess is the amount Mr P must pay in the event of a claim. The amount is set out in the policy schedule. Mr P's claim was the result of an escape of water, which meant the excess was £350.

Mr P's policy booklet also says RSA *"may also start legal action in the name of the **insured** (but at **our** expense and for **our** own benefit) to recover from others, compensation in respect of anything covered by this policy."* This is what's known as a subrogation clause, the purpose of which is primarily to give RSA the right to recover its claims outlay from the party it considers responsible for causing the damage. This right is standard across the insurance industry. And RSA doesn't need Mr P to agree to this. It usually means RSA can manage the recovery as it sees fit – as long as it treats Mr P fairly.

RSA made the decision to attempt to recover its claims costs as per the terms of the policy. And in doing so it appointed D to act on its behalf. Mr P says he should have been entitled to appoint his own solicitors or have some say on the representatives involved. But it's important to note, the pursuit of recovery was made under Mr P's contents policy – not any legal cover Mr P may have, in which there's sometimes the option for an insured to choose their own solicitors. Although D was seeking to recover the excess Mr P paid, D was acting solely in the interests of RSA. And I wouldn't expect RSA to allow Mr P to have any involvement in its decision making.

I've also considered Mr P's comments as to why he feels the policy wording is unclear in respect of RSA's recovery process. Whilst I appreciate his point of view on the matter, I wouldn't expect the policy to detail exactly what RSA will do in its decision to seek the recovery of any claims costs. So, I don't agree the policy wording was unclear or misleading.

I wouldn't expect the subrogation clause or recovery process to be highlighted during the sale or renewal of the policy. It's not an unusual, significant or onerous clause and is very common amongst insurers, so Mr P would likely encounter a very similar clause and process with any insurer. And, for the reasons above, I'm satisfied it treated Mr P fairly and reasonably.

RSA's decision to include Mr P's excess as part of its recovery wasn't unreasonable. That's because it gave Mr P an opportunity to recoup the excess amount he was always liable to pay, irrespective of how the damage occurred, and without him having to pay for any legal advice to do so. D continued to pursue RSA's recovery for some time but as it was unable to identify the third-party it believed was responsible and felt the prospects in bringing a successful claim were low, it decided to abandon its recovery. As a solicitor, I consider D a suitably qualified representative of RSA's who can provide legal advice to RSA. And I don't think it was unreasonable for RSA to rely on the professional opinion of D to decide to stop its recovery.

I understand why Mr P is frustrated- he had to pay an excess for something that wasn't his fault. But unfortunately, this can happen with insurance claims. Having considered all the

evidence, I think RSA's decision to abandon recovery was reasonable. So, I'm not asking it to take further action.

Customer service

Mr P is unhappy with the service he received from D during its consideration of recovery. He's particularly unhappy about their failure to provide adequate updates on the claim, their refusal to provide documentation and the way in which his complaint was handled. I haven't detailed everything here – but I've considered everything Mr P has said about the impact on him.

D is an appointed representative of RSA, who were instructed to seek recovery of any claims costs, including that of Mr P's excess. As D was instructed as part of the subrogation process by RSA, I'm satisfied its actions are the responsibility of RSA's, which means I hold RSA responsible for any actions of D's in relation to the service it provided and the impact this had on Mr P.

D acknowledges the service Mr P received fell short of the standard it expects to provide. And it agrees it didn't always provide him with updates on the status of the claim. RSA also accepts it didn't provide some of the information Mr P requested as quickly as it should have done, which it acknowledges caused undue trouble and upset to Mr P.

I can see Mr P has raised issues about RSA's complaints handling. Complaints handling isn't a regulated or other covered activity. So as a general rule, if a complaint is solely about complaint handling, we wouldn't be able to look into things. But where complaint handling forms part of a regulated activity, such as claim handling, we can take it into account when looking at the overall customer experience. In this case I think the issues which Mr P has raised about the complaints handling are an extension of the issues which relate to regulated activities, so I'm satisfied this is something I can consider.

I've carefully considered Mr P's concerns about the service provided by D and RSA. D paid Mr P £250 compensation for the service received during the claim. Mr P didn't agree with this sum. He says the way RSA handled things has reduced his chances of making a successful recovery of his excess. While I appreciate his point of view on the matter, I've seen no legal opinion or evidence to support that, so I'm not persuaded that's the case. However, I acknowledge the service would have caused some additional upset and inconvenience for Mr P, over and above what I would expect to see during a normal recovery process. But I'm satisfied £250 is fair compensation and is in line with what I would direct in similar circumstances. So, I'm not asking RSA to do anything further.

My final decision

For the reasons set out above, I don't uphold this complaint. I consider the £250 already paid to Mr P is fair and reasonable in the circumstances. I make no further award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 6 March 2025.

Adam Travers
Ombudsman