DRN-5232582

The complaint

Mrs J and Mr J are complaining that Royal & Sun Alliance Insurance Limited (RSA) declined a claim they made on their buildings insurance policy.

Mrs J has handled the claim on Mrs J and Mr J's behalf so for ease of reference I shall refer to her throughout.

What happened

In January 2024 Mrs J contacted RSA to claim for damage to her property arising from a burst pipe. She said she'd returned from holiday to find extensive water damage to her property.

RSA later declined the claim because it considered the property to have been unoccupied. It said the policy required her to be living in the property, but it didn't think she was. Mrs J disputed this. She said she was spending a lot of time at her partner's house and was selling the house. But she said she would go into the property 2-3 times a week to ensure it was in a good condition to sell. And she said they would occasionally stay there too. She said the policy documents sent to her only said it wasn't to be unoccupied for 60 days and she maintained it wasn't.

I issued a provisional decision upholding this complaint and I said the following:

"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 intend to uphold this complaint and I'll now explain why.

RSA says a property is considered to be unoccupied if the house is not lived in for more than 60 days in a row. It doesn't think Mrs J did so. While I note RSA's comments surrounding what the policy terms actually say, I don't intend to make a finding for this for two reasons.

Firstly, it's a well-known principle that an insurer has to show a breach of a policy condition/exclusion must be material to a loss incurring if an insurer wishes to rely upon it to decline a claim. I don't believe whether Mrs J regularly lived in the property or not was material in this instance. Mrs J was on holiday when the pipe burst. So the property was always going to be empty when the pipe burst and it seems to me it's likely the loss would have incurred to the extent it did even if the property was "unoccupied" as RSA purports.

Secondly Mrs J says she reviewed the policy documents RSA sent her to understand what the policy did and didn't cover. She said the Insurance Product Information Document (IPID) RSA provided her simply said it didn't cover escape of water if she left her home unoccupied or unfurnished for more than 60 days. She said the document RSA gave her made no reference to her having to live there. I've found Mrs J's testimony consistent here and I'm persuaded she did regularly visit the house.

RSA hasn't made it clear in the IPID that she needed to "live" in the property for it to consider the property occupied. It's not unreasonable for Mrs J to think she was "occupying" the

property. RSA had a duty to highlight significant and unusual terms and it sought to do this in the IPID. But I'm not persuaded RSA has clearly highlighted the term sufficiently clearly enough for Mrs J to realise her actions weren't sufficient for RSA to consider the property occupied. I'm persuaded Mrs J did read and act upon the information contained within the IPID. So I think she's lost out because RSA didn't include sufficient detail within it.

Putting things right

Ultimately, I intend to conclude it was unfair Mrs J's loss wasn't covered. Mrs J has told us that she's since sold the property. And I understand she sold it in a damaged state. So RSA can't now reinstate the property in line with the policy terms. It seems to me that Mrs J's loss is the loss in value of the property. So I intend to say RSA should cover the loss in value.

She would need to provide evidence of what the property was reasonably worth – taking into account reasonable information given it was for sale before the loss and RSA can take into account the length of time it had been on the market. And RSA should pay the difference in this value to what she actually received for the property."

Mrs J responded to accept my provisional decision. She said before the incident she'd accepted an offer on the property for £340,000, although that sale later fell through because the buyer couldn't sell their own property. She said the property was then put back on the market in November with a new agent at a price of £325,000 - £330,000. She said she later listed the property in its damaged state and accepted an offer of £240,000.

RSA didn't accept my provisional decision and said the following:

- It disagreed it hadn't clearly set out the unoccupancy requirements.
- Mrs J had said the property was unoccupied when taking out the policy.
- The policy schedule includes endorsements where the property is unoccupied – one of which requires the water to be turned off at the mains and the heating system drained down.
- It asked for further clarity on how the redress was to be calculated if I was to uphold the complaint.

I issued another provisional decision saying I intend to now uphold the complaint based on the endorsements RSA referred to. However, Mrs J responded to my provisional decision to say these were only added after the claim.

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've decided to revert to my initial findings and I'll explain why.

Having reconsidered everything, I agree with Mrs J that the endorsements were added *after* the claim when the policy renewed in June 2024. Mrs J has provided a copy of her schedule of insurance for the year before and the policy didn't include them. It seems she updated her policy details following the claim. So they were not relevant at the time of the claim. And it follows that it's not fair for RSA to look to rely upon them to decline the claim.

Ultimately, other than maintaining it had clearly shown the relevant terms and conditions, RSA didn't provide anything material in response to the findings in my first provisional decision. So, for the reasons I set out in my provisional decision, I still think the following:

- RSA hasn't shown the breach of the policy condition/exclusion was material to the loss occurring.
- RSA didn't make it clear in the IPID that she needed to "live" in the property for it to consider the property occupied or highlight it in any other way outside of the policy terms. So I still don't think it did enough to highlight the relevant key terms in the policy. And I think Mrs J has lost out as a result for the reasons I set out in my provisional decision.

Putting things right

Since I issued my provisional decision, Mrs J has shown that she initially had an offer accepted on her house before the claim of £340,000, but that fell through – unrelated to the claim. It was relisted in October 2023 to seek to realise in excess of £325-330,000. She has shown she subsequently sold the property for £240,000. So it seems to me that Mrs J has lost around £85,000 – having considered property fluctuations and estate agent fees.

It's important to note that the damage to the property was extensive. So it would no doubt have a significant impact in the value of the house. And I think this loss is reasonably foreseeable from RSA not paying the claim.

RSA has said it could have used its own trades persons at preferential rates to repair the property. And it believes it's been prejudiced from doing this. But it didn't repair the property when she made the claim. For the reasons I've set out above, I think Mrs J and Mr J have lost out because of what I think RSA did wrong. And I don't think RSA has given me anything to conclude it's unfair to require it to cover Mrs J and Mr J's losses.

My final decision

For the reasons I've set out above, it's my final decision that I require Royal & Sun Alliance Insurance Limited to pay Mrs J and Mr J £85,000 in compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs J and Mr J to accept or reject my decision before 10 February 2025.
Guy Mitchell
Ombudsman