

## **The complaint**

The trustees of a trust, which I will refer to as T, complain about the handling and settlement of T's commercial insurance claim by Royal & Sun Alliance Insurance Limited (RSA).

## **What happened**

The following is intended as a brief summary only. Additionally, although various other parties and individuals have been involved in the background to this complaint, for the sake of simplicity, I have just referred to T and RSA.

T owns a commercial property and held a commercial insurance policy underwritten by RSA. The policy offered a number of areas of cover, including property damage and loss of rent. In December 2022, T's property suffered water damage as a result of pipes bursting and a claim was made.

T appointed a loss assessor to help manage the claim. Very early on, it was noted that T may not have insured the property at the correct value. And that this meant it was unlikely all of the claim would be met by RSA. This proved true, with RSA applying the "average clause" within the policy and only meeting 60% of the property damage claim.

Whilst the tenant occupying T's property had not moved out, as they were unable to fully use the property, T had agreed a 50% reduction in rent. RSA initially disputed that such a large reduction was required. However, ultimately it agreed to cover this – but only for a period of six months. RSA said that this was adequate time for the repairs to have been completed, and that T ought to have acted to mitigate the ongoing losses – particularly as the underinsurance situation meant that the claim was being settled by way of cash settlement.

T was unhappy with this, saying that the cash settlement of the claim was not made until October 2023. And that it was unrealistic to expect it to have carried out the required repairs prior to this being received, especially as it was suffering a loss of income relating to the rent.

RSA accepted that there had been a delay, that it was responsible for, of around two months in progressing the claim. And offered T £100 in compensation for this. But did not change the rest of its decision.

T brought its complaint to the Financial Ombudsman Service. Our Investigator recommended that it should be upheld. He said it wasn't clear that RSA had acted fairly by relying on the average clause rather than the remedy under the Insurance Act 2015 (the Act). But as RSA were, at that time, unable to provide details of the premium it would've charged to cover the correct property value, it should do this and then settle T's claim in whichever was the more beneficial way.

Our Investigator also said that it was unreasonable to have expected T to complete the majority of the building works prior to the settlement of the property damage claim, and that RSA had not shown the length of time the claim had taken was as a result of T's (in)actions. So, he recommended RSA settle the loss of rent claim for a period of 12 months.

Our Investigator also recommended RSA add interest to the additional settlement(s) and pay T a further £150 compensation.

T agreed, but RSA did not. So, the complaint was passed to me for a decision.

Since that time, I have been in correspondence with RSA. RSA provided me with the premium information that showed that applying the remedy available under the Act, would mean that T's property damage claim ought to have been settled at 66.85%.

However, I also pointed out that the terms of the average clause actually require the calculation under that clause to be based on the "sum insured" rather than the "declared value". This meant the claim should actually be settled, on the basis of the average clause, at 78%. RSA agreed to this. However, it did not fully agree with the rest of the Investigator's recommendations. T has also been made aware of this increase in the settlement, but did not have any further significant comments.

### **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 am upholding this complaint. I'll explain why.

Both parties have provided detailed submissions. I have considered all of these, but I am not going to comment on each aspect of this complaint. Instead, I have focused on what I consider to be the key issues. This is not intended as a discourtesy, but rather reflects the informal nature of the Financial Ombudsman Service.

The issue of underinsurance has largely been resolved. T seemingly accepts that it did not have the right level of cover in place. And both parties have also now agreed that the appropriate settlement of the claim ought to be at 78% of the value of the claim. As a result, I have not discussed this issue further.

The main remaining issue relates to the loss of rent. Whilst initially disputed, RSA has accepted that it is appropriate to pay T the 50% reduction it provided to its tenant. The issue is the length of time this period should apply to.

Due to the issue of underinsurance, it seems to have been agreed at a reasonably early point that the claim would be settled by way of cash payment and that it would be for T to carry out the required repairs to the property. RSA has said that this process ought to have commenced a long time prior to the settlement it made in October 2023. However, even if it is reasonable to have expected the works to have commenced, it does not seem reasonable to have expected T to have completed them prior to this payment. T was experiencing a loss of income that RSA was aware of, and RSA was responsible for meeting the majority of the cost of repair.

At best, T could have completed the first part of the works. But as the early stages would most likely involve the stripping out of the damaged property, this would have been unlikely to have resulted in a change to the loss of rent.

RSA has indicated that T caused delays to the progress of the claim. But I don't agree this has been evidenced. And RSA has not appropriately explained why it took the length of time it did to agree the settlement of the claim. It should be noted that no substantial interim payments were made.

The fact that the eventual settlement was actually incorrect also adds to my finding that it was unreasonable for RSA to have expected T to complete the works within six months of the claim event.

RSA did not make its settlement until October 2023. It is reasonable that T then needed to have some time to complete repairs. T has said that a period of two months after this settlement was needed. And, I am persuaded this is reasonable in the circumstances. T suffered a loss of rent during this period that RSA ought to have covered.

T has been without the additional settlements payable in relation to the property damage and the loss of rent claims. To reflect this, I consider that it is reasonable for RSA to add interest to these increases. In the absence of any specific evidence, I consider that it is fair and reasonable that this interest be 8% simple per annum. And that this be payable from 11 October 2023 to the date this complaint is settled.

RSA has said that, as T is a commercial customer, the claim negotiations would not warrant any further compensation. However, regardless of the type of customer T is, it still experienced inconvenience as a result of RSA's handling of the claim that ought reasonably to have been avoided. Were it not for the involvement of a loss assessor, which has mitigated the impact on T, I might be directing an even higher award. Given the circumstances though, I agree with our Investigator that an additional £150 is fair and reasonable.

### **Putting things right**

Royal & Sun Alliance Insurance Limited should put things right by:

- Recalculating the property damage claim on the basis that 78% of this should be covered by the policy. And paying T the difference between this and the 60% settlement already made.
- Recalculating the loss of rent claim on the basis that this should be covered until mid December 2023. And paying T the difference between this and the six months' loss of rent already paid.
- Add interest, at a rate of 8% simple, to these amounts from 11 October 2023 to the date of settlement. And pay T this amount.
- Pay T an additional £150 compensation to reflect the avoidable inconvenience caused to it and its trustees.

### **My final decision**

My final decision is that I uphold this complaint. Royal & Sun Alliance Insurance Limited should put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask T to accept or reject my decision before 17 June 2025.

Sam Thomas  
**Ombudsman**