

## **complaint**

Mrs C has complained about her let property insurer Royal & Sun Alliance Insurance Plc (RSA) in respect of claims she made to it for lost rent and malicious damage.

## **background**

Mrs C had to take action to remove her tenant from the property. Possession was gained on 12 May 2017. There were some rent arrears and when Mrs C visited the property she found lots of damage that needed repairing before the property could be re-let. She made claims to RSA for lost rent, council tax and malicious damage.

RSA felt that the damage wasn't all malicious and that, for the parts which had been caused in that manner, they had likely happened at different times. It said council tax wasn't a claimable item. Mrs C submitted repairs estimates totaling £10,440.65. RSA said, at the end of September 2017, that it would pay a total of £5,688.50. It explained how it had reached this figure and that included confirmation that five excess payments were being deducted.

Regarding lost rental income; RSA said Mrs C had taken cover based on an annual income of £450, whereas the true rate was £450 per *month*. It said she was underinsured and, having taken that into account, all it could pay her was £37.50.

Mrs C was unhappy. As well as feeling the settlement offer was too low, she felt she'd been treated poorly by the loss adjuster and that the claim had taken too long. She accepted the settlement on an interim basis and complained to this service. She later, around 3 July 2018, completed the reinstatement of the property.

Our investigator felt that the damage had only occurred after the tenant had been asked to move out and so felt RSA should only apply one excess. Regarding rental income he noted RSA couldn't show what Mrs C was asked when she arranged the policy and felt the schedule was likely not clear enough to let Mrs C know a mistake may have occurred. On balance he felt RSA should pay her claim based on rental income of £450 per month.

Mrs C didn't think the view issued answered the concerns she'd raised about items being missed from the settlement or the seemingly arbitrary deductions that had been applied to the repair estimate amounts. Our investigator then told RSA it should review its settlement; paying for anything that appeared to have been caused maliciously.

RSA said it felt it had settled the damage claim fairly. It said it could have set this up as multiple claims but instead had only logged one and only taken an excess from each grouped area of damage. It felt Mrs C had made a mistake regarding the rental income and it should be allowed to apply the terms of the policy accordingly.

The complaint came to me for a decision to be made. I noted that RSA felt it had already made a fair settlement for what it considered amounted to the malicious damage at the property. So I felt it was necessary to look at the disputed repairs. And I felt a specific amount should be set regarding what rental income RSA should pay. I also wanted to share my view with the parties on the claim handling concerns Mrs C had raised. I issued a provisional decision setting out my views on the complaint and what I felt RSA needed to do to put things right. I said:

*“my provisional findings*

*malicious damage*

*I have some sympathy with RSA's decision to settle in the way that it did. But I'm not convinced that the actual settlement made was wholly reasonable. There were eleven estimates. RSA agreed to make some payment against seven of them, having first taken an excess from five of them. The remaining four it refused to pay for a variety of reasons. I've looked at each below. I've then considered the situation with the excesses.*

*Supply and install bathroom suite – The estimate for this was £950. RSA accepted the bath had been damaged so said it would deduct the excess from the estimate and pay 50% of the remaining cost. Mrs C said the sink had been damaged as well. RSA said that would be a separate claim and attract a separate excess. Here I think RSA was wrong. The damage reported to bath and sink are the same – splashed gloss paint. So it's the same damage in the same area – reasonably then this damage has been caused as one act and RSA is liable for replacing the bath and sink. I'm not convinced it was ever liable for replacing the toilet though, or reasonably needed to pay towards that. I say that because I haven't seen that it was damaged such as to need replacing or that to not replace it would create a lack of match in the bathroom (it seems to have been a standard white suite). Because Mrs C's quote isn't broken down, I don't know what each of the individual items cost to supply and fit. I think it's fair and reasonable, in the absence of evidence otherwise, to break the cost into thirds; £316.68 per item. That means that for the bath and sink RSA reasonably has to pay £633.36.*

*Cleaning – The estimate for this was £140. The estimate referred to both general cleaning, and cleaning after building work. RSA said this cost was below the excess so wouldn't be paid. I take from this that it would have paid any cost over and above the excess. Whilst I'll be looking below at what excesses I think RSA can reasonably charge I think the cleaning costs are necessary as a result of the malicious damage and, therefore, wouldn't be subject to an individual excess. RSA should pay £140 for cleaning.*

*Supply and fit nine internal doors – The cost for this was £675. RSA deducted the excess and paid the rest. So, there's no debate regarding the extent of RSA's liability for the cost of doors, that's £675. I'll deal below with what excess RSA can charge.*

*Carpet replacement – The cost for this was £1,851.50. RSA deducted the excess and paid the rest. So, again, there's no debate regarding the extent of RSA's liability for the cost of replacing the carpets, that's £1,851.50. I'll deal below with what excess RSA can charge.*

*UPVC – The cost for this was estimated at £380. RSA said it would deduct the excess and pay the remainder. Mrs C said that didn't account for the broken door panel. However, the estimate did list a new door panel as being part of the work priced for. So I think RSA's liability, before consideration is given to the excess it can apply, is that reflected by the estimate of £380.*

*Decoration – The estimate for this was £1,720. RSA said it felt that the estimate equated to betterment in some respects. It felt it would be fair for it to deduct an excess and then pay £1,000. I have a problem with this part of RSA's offer because it hasn't explained or set out what it thinks is betterment or how a figure of £1,000 has been reached.*

*However, I can understand why it doesn't think it should be responsible for re-painting the whole house. I can't readily see from the damage listed by Mrs C, why every room would need decorating as a result of malicious damage. I can see that in the kitchen the walls were gouged and that in one bedroom there was graffiti on the wall. So I accept that these rooms would have needed redecorating. But there's nothing similar listed against the other rooms that would make me think they'd need redecorating. So, unless Mrs C can persuade me that more rooms needed decorating as a result of malicious damage, I won't say RSA should pay more. That means that the cost I'm currently satisfied RSA is liable for in respect of redecorating is £1,250 (the amount RSA applied the excess to), and I'll consider what excess RSA can charge below.*

*Skip – The estimate was for £470 (£564 including VAT). But this was broken down to £210 each for two skips and £25 each for two permits for the skips (plus VAT). RSA said it would pay £250 for one skip. It didn't seek to take an excess. Mrs C said she could accept that only one skip should reasonably be covered by RSA because the tenant left a lot of stuff that needed disposing of which RSA wasn't responsible for. But she couldn't understand why it wouldn't pay for a permit to go with that. I think Mrs C has a point. I'm satisfied that RSA should be paying £277 for a skip and permit (£235 plus VAT).*

*Kitchen and lighting – The estimate for the kitchen replacement was £3,864, and Mrs C's cost for the replacement lighting was £63.82. Regarding the lighting RSA said this would be a separate claim and fell below the excess. Therefore, it wouldn't pay for it. As RSA accepted multiple other items and areas of damage in the kitchen as having occurred together, I don't see that it's fair to single out the lighting as being separate. So I'll factor that in here. That will be its whole cost because this item did require replacement.*

*Regarding the kitchen quote RSA said it could contribute 50% (£1,932). It didn't seek to take an excess. But, similar to the decorating, RSA didn't give any reasoning for it paying 50% or to explain why it felt this was fair. However, also similar to the decorating, I can see damage in the kitchen that RSA likely wasn't liable for under the policy – such as peeling cupboards. Further, whilst I've seen pictures showing cupboard doors hanging off, I haven't seen that these couldn't be repaired, or that all the carcasses or worktops were damaged beyond repair such as to reasonably require RSA to pay for a full new kitchen. I also can't be satisfied that Mrs C's replacement estimate reflected a kitchen like that she had before. The damaged units appeared to have a standard painted wood effect finish, whereas the estimate details "white gloss". And gloss units are both different to and often more costly than wood/wood effect. So again, on this occasion, I am prepared to accept that RSA having made some offer towards the kitchen, even though it hasn't quantified that sum, is reasonable. I'll add the cost of the lights to the offer for the kitchen. That means I find that RSA's reasonable liability for resolving damage in the kitchen is £1,995.80.*

*Locks – The cost for this was £87.33. RSA said this would relate to a separate incident of damage, therefore, attracting its own excess. As such, because the total repair cost was below the excess amount it wouldn't pay anything. I take from this that it would have paid any cost for this above the excess. Therefore, I think RSA's liability for lock repair can be seen to be £87.33 and the issue of what excesses it can take from the overall settlement will be considered below.*

*Fireplace – The estimate for this was £239. RSA said this would be a separate claim and subject to a further excess. As the cost was less than the excess amount, it wouldn't pay anything for this. As with the locks above, I see RSA's liability for this – given its only*

*objection against payment is the excess – to be £239, with the excess issue being considered separately.*

*Excess – I've considered whether RSA has acted fairly in seeking to apply multiple excesses. I think it could reasonably have applied three but not five. That's because the policy clearly allows for an excess to be taken for each of the different types of damage covered. Whilst RSA hasn't sought to split the damage out in any way, I think I can see at least three different types of damage having occurred (malicious damage, accidental damage and theft). I can't reasonably ignore that. I think it's fair to reflect the different types of damage, even though RSA is prepared to log only one claim, by allowing three excesses to be taken.*

*I'm not going to allow RSA to apply any more excesses than that though. The policy isn't clear about an excess being taken in respect of every instance of a type of damage occurring. And in fact it explains that an excess will be taken from the settlement amount paid for each claim. Whilst it isn't clear that all this damage happened as part of one instance, Mrs C made one claim to RSA as soon as all of the damage was found. So I think three excesses, to reflect the three claims RSA could reasonably have logged, are the most it can reasonably apply.*

*Overall damage claim payment – Three excesses equate to £750. The total of the sums above, that I found RSA to be liable for regarding damage, is £7,528.99. Taking £750 from that amount leaves a figure of £6,778.99 for RSA to pay as a fair and reasonable settlement of the damage claim. If RSA has already paid the £5,668.50 offered, it can deduct this from the amount I've found it's liable to pay and pay the remainder. I think it's reasonable to require it pay interest\* on the amount now due from 29 September 2017, which is the date of its settlement offer, until payment is made.*

#### *lost rent*

*Whilst the policy gives an allowance (in rather unclear terms) for RSA to settle proportionally where the sum insured is less than the income, RSA has been unable to show us what Mrs C was asked about the amount of cover when she arranged the policy. It has shown us the schedule but that isn't the same thing. It has shown us a screen shot showing what information appears if a 'help' icon is selected. But in order to fairly rely on a proportional settlement term within a policy, RSA first has to show that it asked a clear question about the sum to be insured when the policy was arranged. The information within the help icon is insufficient in that respect, and the other documents came after the sale. So I'm satisfied that it's not fair or reasonable for RSA to seek to settle the loss of rent claim proportionately.*

*RSA's proportionate offer for loss of rent was based on one month's loss. It hasn't though explained why that is a fair period. And its settlement offer – regarding repairs as well as lost rent – wasn't made until four and a half months after the loss was notified to it. So I'm not satisfied that's a reasonable assessment of Mrs C's likely loss. I've considered then what period should be applied. As a starting point RSA should fairly cover the loss incurred during those first four and a half months.*

*There were clearly some substantial repairs that were required. And whilst Mrs C has challenged RSA's settlement in that respect, and I've found it wasn't wholly reasonable, the end figure I've determined that RSA should pay isn't vastly different. I don't think it's so different that the lesser amount would likely have greatly impacted Mrs C's ability to*

*carry out the repairs in a timely manner. Therefore, if repairs took longer than they reasonably should have done, I've not seen anything that makes me think that was likely RSA's fault. I see that the settlement was offered in September 2017 and Mrs C had completed repairs, sufficiently to allow the property to be re-marketed, by the beginning of April 2018. That's around six months later.*

*I note though that RSA's settlement for the kitchen, arguably the most time consuming piece of reinstatement work, was made on a 50% basis. And I felt that was fair. I've also found it wasn't responsible for the entire bathroom replacement or all of the decorating work. So it can't fairly be said to be responsible for the whole six month period of repair/lost rent.*

*I think it's reasonable to apply the same basis to the loss of rent period as applies to the repairs – it had roughly 50% liability for resolving the damage, so that would equate to roughly half of the period necessary for repairs to be carried out. That means I think RSA should pay for three months lost rent for the period after which its settlement offer was made, in addition to the four and a half months I've said above it should pay. That gives a total of seven and a half months liability for RSA for lost rent, at £450 per month - a total of £3,375 (less the previously offered £37.50 if this has already been paid). I think interest\* on each monthly rental amount that makes up this figure should also be paid from the date it would have been accrued until settlement is made.*

*The cover doesn't seek to take an excess in respect of loss of rent claims. But it does only cover for rent lost as a result of the insured damage. Sometimes I might view that as including any period necessary for re-marketing the property in order to secure new tenants. However, here, because the tenants were evicted the need to re-let the property really stemmed from that, rather than the insured damage. So RSA's liability to Mrs C regarding lost rent is limited to what I've set out above.*

*Similarly the loss of rent section does provide cover for "any costs, including legal fees, which you incur in re-letting the buildings". However, this loss, like the rent itself has to have resulted from the damage covered by the policy. Here, in my view, the cost of re-letting the property stems from the tenant having been evicted rather than the property having been damaged.*

#### *claim handling*

*I haven't seen anything that makes me think the loss adjuster acted poorly here, as Mrs C has alleged. His emails seem professional and, it's quite usual for a full mandate to be requested in this sort of instance, rather than just relying on authorisation given within a chain of emails. As far as I can see, once the loss adjuster had a mandate from Mrs C's loss assessor, the adjuster and assessor dealt directly with each other.*

*I realise it must have been frustrating for Mrs C for the claim to have taken several months, and likely more so once only a partial settlement was offered. However, I don't think a period of around four months was too long in the circumstances here. I see that in July Mrs C was still arranging estimates for the work and that once these were received RSA felt it necessary to make enquiries. There was a query over one contractor in respect of VAT. These enquiries concluded towards the end of August, with RSA's offer – having given consideration to the damage and the extent of the estimates for repair – coming at the end of September. I'm satisfied it didn't cause any unreasonable delays.*

*overall*

*I think RSA didn't offer a fair settlement for Mrs C's claim, both in terms of the cost to repair damage and rent lost. I think it now needs to pay more to Mrs C. But I'm not going to require it to pay compensation as I think it handled the claim reasonably."*

In response Mrs C said:

- bathroom – was I suggesting that £316.68 was the cost for supply and fit of the toilet. She said a basic toilet costs around £100.
- decorating – whilst I'd referred to the list she'd submitted, the photos provided showed that every room of the house needed decorating.
- kitchen – doors and worktops couldn't be repaired. There was a lot of work to be done in the kitchen and reducing the estimated cost by 50% is too much.
- estimates – she was never given advice about what to get estimates for or that the estimates obtained weren't detailed enough.

### **my findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

*bathroom* – because Mrs C's estimate isn't broken down and I didn't think RSA was responsible for paying for all of it, I had to determine what a fair contribution towards that total would be. There were three items included in the estimate for replacement. Prices for sanitary items vary, as do the costs for fitting each item. And I have no way of knowing what style or type of item was subject of the estimate; whether it was basic or not. With only the fact of one price to cover three items to work with, I felt that the only fair option was to split the cost three ways. That means that RSA, being responsible for two out of the three items (not the toilet), fairly has to pay two-thirds of the estimate; £633.36

*decorating* – the photos show every room. But the list that Mrs C provided stating what she was claiming for, for which the photos were provided as illustration, didn't include damage that would necessitate decorating in every room. And I'm mindful that most tenanted properties need redecorating between tenants but not as a result of any insured damage. In this case I can only require RSA to resolve decorations that have been affected by malicious and/or accidental damage and/or theft. I realise Mrs C would like me to make RSA pay more but, having considered everything, I remain satisfied that what I said provisionally, regarding the costs for decoration that RSA should pay, is fair and reasonable. I'm not going to amend my provisionally suggested award for this.

*kitchen* – I have no evidence which shows that the cupboard doors couldn't be repaired and had to be replaced. Even if that were the case, it wouldn't necessitate all the carcasses being replaced. Nor would some water damage in the sink area. And if the carcasses hadn't been replaced there wouldn't have been any need to remove and re-fit all of the appliances. The gloss replacement chosen by Mrs C may not have cost more than she'd have paid for units like those she had before. But again I have no evidence to show this is the case. And in my experience gloss often costs more. I understand Mrs C's frustration but having reviewed matters I remain of the view stated provisionally – RSA's offer to pay for half of the kitchen estimate, once the cost of the lights is added, is fair and reasonable. I'm not going to amend my provisionally suggested award in this respect.

*estimates* – I appreciate that Mrs C obtained estimates that she felt were sufficient. If RSA had been prepared to accept liability for all of the repairs then they probably would have been. But because the estimates covered work that RSA felt it wasn't liable for, and I was satisfied it wasn't liable for, the level of detail wasn't sufficient to determine the exact cost incurred by Mrs C in fixing insured damage. However, because I'm able to assess complaints on a fair and reasonable basis I've still been able to determine that RSA's settlement was insufficient and set out what I think it reasonably needs to pay. It's quite standard for insurers to ask for estimates without advising what should be included in them. So RSA didn't do anything wrong by not advising Mrs C in this respect.

Having considered the points raised by Mrs C, I remain satisfied that my provisional findings provide a fair and reasonable settlement for this complaint. Those findings now form part of this final decision.

### **my decision**

I uphold this complaint in part. I require Royal & Sun Alliance Insurance Plc to pay Mrs C:

- £6,788.99, in settlement of the damage claim but less any settlement already made in this respect, plus interest\* from 29 September 2017 until settlement is made.
- £3,375, for lost rent, plus interest\* on each monthly amount that makes up this sum from the date it would have been accrued until settlement is made.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 23 September 2019.

Fiona Robinson  
**ombudsman**

\*Interest is at a rate of 8% simple per year and paid on the amounts specified and from/to the dates stated. If Royal & Sun Alliance Insurance Plc considers that it's required by HM Revenue & Customs to take off income tax from any interest due to Mrs C, it should tell her how much it's taken off. It should also give Mrs C a certificate showing this if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.