

complaint

Ms L is unhappy Royal & Sun Alliance Insurance Plc (RSA) turned down a claim she made under a home insurance policy.

background

In 2012 Ms L took out buildings and contents insurance through a broker with RSA for 'property A'. The policy allowed short term lets and the application was made by her partner Mr E. As part of the application process he said the property was their primary residence. But he said they were planning on renting it out for some of the year and said "*I would speculate we'll be there about nine months... that's my speculation it could be six but it won't be less than six*". RSA sent out renewal documentation for the policy in December 2015 which listed the information they provided, including that property A was their main residence.

Last year there was a water leak at the property. Ms L made a claim for the damage this caused and loss of rental income. RSA looked into this and said it didn't think the property was being used as their main residence. It said the number and frequency of holiday bookings suggested they were spending more time at a rented property. This was in a different county and was where their children went to school. And it said Ms L hadn't made it aware of this. It accepted this wasn't deliberate but said if it had been aware it would have offered a different policy which would have cost more. It said it would only pay a proportion of the claim as Ms L had only paid a proportion of her premiums.

Our investigator thought this was fair. She felt it was reasonable of RSA to say a main residence should be the place where you live most. And it was reasonable of it to conclude that wasn't the case for property A. As RSA would have charged more if it had known about this it was fair for it to pay a proportionate amount of the claim.

Ms L and Mr E didn't agree. They felt as long as property A wasn't let out for more than six months they should be covered under the policy. And they said they were registered to vote at property A and it was registered with HMRC as their main residence. They thought the claim should be paid in full. So I need to reach a final decision.

my findings

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

I know the water leak has caused quite significant damage at property A. I can understand why Ms L is so disappointed that RSA has only agreed to pay a proportion of her claim. But I

don't think it's treated her unfairly. I'll explain why:

- The policy definition of '*home*' includes that this is someone's main residence. I know Ms L and Mr E believe this applies to property A. I've taken into account what they've said about where they vote and their registration with HMRC. And I appreciate that main residence isn't further defined in the policy terms. But in the absence of a definition I don't think it's unreasonable to define main residence as the place where you live most. So I've thought about whether this applies here;
- I've seen information about bookings for property A which suggest since the insurance was taken out the rental occupancy rate was around 46%. So for this to be Ms L and Mr E's main residence they'd need to have been living there for almost all the rest of the time. I've looked at the detail of the booking history and I don't think that's likely. That's because although there are some quite long gaps between bookings in most cases there's a break of only a few days;
- RSA also says when it met with Mr E following the claim he said the property was let out to an agent for around 60% of the year (including time when it was available to the agent for booking but a tenant hadn't been found). And I can see their claim included six months loss of rental income for property A. I understand this was because Ms L and Mr E entered into a contract with a lettings agent for them to have exclusive use of the property from March to September 2016. It also appears Ms L and the children only lived at the property during school holidays if it wasn't being rented;
- Taking all of that into account I don't think it was unfair of RSA to conclude this wasn't their main residence. I appreciate when Ms L took the policy out in 2012 that might not have been apparent (because they hadn't started letting it). But they were sent renewal documents for the policy in December 2015. This contained a summary of the information provided when the policy was taken out, including that property A was their main residence. The covering letter asked Ms L to ensure these details were correct;
- Ms L had a duty to take reasonable care in doing so and to make sure the information she provided was accurate. And I think the change in the use of property A was significant enough that Ms L should have told RSA about this. But she didn't do so. RSA has accepted that wasn't deliberate and I agree but I don't think she did take reasonable care. RSA says if the correct information had been provided it would have offered a different policy which would have cost more. And it's provided a quotation which sets out what the premium would have been. So I think it's acted fairly in deciding to pay the claim in proportion to the premium that was actually paid.

my final decision

I've decided not to uphold this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Ms L to accept or reject my decision before 13 March 2017.

James Park
ombudsman