

The complaint

C, a company, complains about the progress of a claim it made under its Royal & Sun Alliance Insurance Limited ('RSA') rent protection insurance policy.

C's complaint is made by Mr H, but for ease of reference I shall refer to all submissions as being C's own.

All references to RSA include their claims handlers.

What happened

C's tenant left C's property in August 2021. The former tenant owed rent arrears and C said they had damaged its property. As a result, C made a claim on its RSA rent protection insurance policy. RSA paid C the rent arrears under the rent guarantee section of its policy. It also instructed a panel firm to recover the rent it paid to C as well as the cost of the damage from the former tenant. As matters stand, C complains it's no further forward in its claim against its former tenant for damage to its property.

C's complaint follows a previous complaint to the Financial Ombudsman Service. An investigator considered that complaint and said that RSA should pay C compensation for the delays C had experienced to date. He also said *"I don't know why (C's) claim still hasn't been issued. It may be this is due to factors outside RSA's control. But I would suggest RSA treat this matter as a priority and do everything they can to ensure it progresses quickly."*

Since that view was issued C has said not much more has been done to progress its claim and it has since received information to suggest that its former tenant is now out of the country- so any claim that might have been issued might well fail or prove difficult to recover. On the other hand, RSA say they instructed a panel firm who issued proceedings against C's former tenant but despite asking for updates from the panel firm, they hadn't received anything. RSA later said that the panel firm had issued proceedings, but the delays were down to the Courts and not anything the panel firm had done.

Our investigator considered C's complaint and concluded it should be upheld. He said that based on the evidence he'd seen, it wasn't clear whether C's claim had properly been issued. Given RSA were unable to provide evidence to confirm that proceedings had been started, the investigator said that RSA should instruct a suitably qualified legal professional to produce an appropriately reasoned retrospective assessment of C's claim that comments on the prospects of success and recovery from the tenant and/or their guarantor and the likely award a Court might make based on the information available in June 2022. He also went on to say that if the prospects of success and recovery are found to be over 50% then RSA should pay the sums assessed in respect of the property damage element of the claim to C plus any interest applicable interest.

RSA doesn't agree so the matter has been passed to me to determine.

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 uphold C's complaint for broadly the same reasons set out by the investigator.

Once a claim has been made and an insurer instructs a panel firm of Solicitors, it's correct that we wouldn't hold the insurer responsible for the panel firm's conduct. That's because firms of Solicitors are independent legal professionals with their own codes of conduct and a separate regulator. We do however expect insurers to take appropriate action where a policyholder has expressed dissatisfaction about their claim. In this case C complained about considerable delays in its claim being progressed. RSA offered compensation for this, which was later increased by the investigator in the previous complaint C made to the Financial Ombudsman Service. The investigator also said that RSA should treat the matter as a priority and do everything they could to ensure it progresses quickly. In light of that, it's less than satisfactory that C seems to be no further forward in its claim.

C made its claim in August 2021. From the evidence RSA have provided, it looks like the panel firm issued its claim in the wrong court in August 2022. The claim was returned to them the following month. Beyond that, there's no evidence to suggest the claim was reissued in the correct court or what the status of the claim is at all. In light of that, I'm not satisfied that RSA have done enough to ascertain exactly what has happened with regard to this claim or to put things right for C. It's not enough in my view to say they've contacted the panel firm on several occasions but heard nothing back. Nor is it enough to suggest this has discharged their duty to progress C's claim fairly and reasonably. They could for example have escalated things to senior management through the panel firm or considered appointing another panel firm, but RSA have supplied nothing to suggest they did anything like this. And I think it's reasonable to say if RSA had acted as it should have it's likely they would have established the correct position with the claim and ensured that remedial action that was required was carried out by the panel firm.

So, I agree that RSA need to do more in this case. In the absence of anything to properly show that C's claim has been issued, I have made an award on the basis that the claim has not been issued at all. But even if it has, C has said its happy to consent to the claim continuing in its name so that RSA can recover any sums they have already paid out and intend to pay out. As such I don't think this prejudices RSA's position at all as they've argued. In light of that I don't intend to address their submissions about this any further. But even if it does prejudice RSA's position, I think it's right for RSA to now put things right in the way I've directed below because the claim is now two and a half years on since it was made and I'm not persuaded, based on the evidence I've seen, that enough has been done by RSA to help progress matters for C. It's also now very possible that any claim against C's former tenant might not have prospects of recovery if they've left the country.

Putting things right

RSA should:

- instruct a suitably qualified legal professional to provide a reasoned retrospective assessment of C's claim that comments on the prospects of success and recovery from the tenant and/or their guarantor and the likely award a Court might make based on the information available in June 2022.
- If the prospects of success and recovery of C's claim are over 50%, then RSA should pay the sums assessed in respect of the property damage element of the claim to C plus

any interest applicable interest the legal professional says would've been recoverable to C.

- The legal professional instructed should be provided only with the documents available in June 2022. C will be entitled to provide the relevant person with any documents it wants to supply as long as they were available to it up to June 2022.

The legal professional should not be told of the status of C's claim- either in terms of whether a claim might have been issued at Court or the fact that C's former tenant might have left the country.

My final decision

For the reasons set out above, I uphold C's complaint against Royal & Sun Alliance Insurance Limited and direct them to out things right as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask C to accept or reject my decision before 26 March 2024.

Lale Hussein-Venn
Ombudsman