

The complaint

Mrs C complains that Royal & Sun Alliance Insurance Limited (“RSA”) rejected a claim on her landlord home insurance policy, said the policy was void and asked her to repay money that had been paid out on the claim.

What happened

Mrs C had a landlord’s insurance policy with RSA for a property that was rented to tenants. In June 2022 there was an escape of water which caused extensive damage to the property, leaving it uninhabitable. Mrs C made a claim on the policy in respect of the property damage.

In January 2023, she made a claim for loss of rent. This was on the basis the property couldn’t be rented until repairs were completed. RSA asked for evidence in support of the claim for loss of rent and carried out enquiries over the following months.

In June 2023 RSA told Mrs C it considered the claim was fraudulent because Mrs C had claimed for lost rent of £860 per week but the actual rent was £675. The property had been occupied by Mrs C’s husband after they separated. The amount he was paying included £675 for rent and £185 for other expenses.

RSA declined the whole claim and said the policy would be treated as void from 12 January 2023, the date when the loss of rent claim was made. It referred to the fraud term in the policy conditions and said Mrs C was not entitled to any benefit under the policy. RSA said she would need to repay money that had been paid to her in relation to the claims.

Mrs C complained but RSA didn’t change its decision. It said Mrs C had clearly exaggerated her claim for loss of rent and confirmed the policy was void as from 12 January 2023. So Mrs C referred her complaint to this Service.

Our investigator did not think RSA’s decision was fair. She said there may have been some confusion about the amount of rent paid but didn’t think Mrs C had acted in a fraudulent way. She asked RSA to reinstate the policy and cover the claim.

RSA did not accept the investigator’s recommendations and requested an ombudsman’s decision.

RSA made a number of points in support of its decision to reject the claim and void the policy. I’ll summarise some of the key points as follows:

- Although there was no tenancy agreement, it has accepted Mr C was a tenant – the issue is that Mrs C gave false information about the amount of rent.
- When presented with the evidence, Mrs C acknowledged she had made a ‘mistake’ and the rent was £675 per week, not £860.
- Previously, both she and her husband had confirmed in writing that the rent was £860 and did not include other expenses.
- Her explanations were inconsistent throughout – she initially referred to rent of £2,000 per month but later claimed loss of rent of £860 per week.
- It specifically asked her to confirm she was paid £860 per week for rent and she

confirmed this but wanted the word 'rental' to be removed and was evasive about this.

- It issued a challenge to Mrs C in April 2023 after listening to calls from when the claim was originally reported. After being challenged, she admitted the rent was actually £675 per week and the remaining £185 was for other expenses.
- If this had not been challenged, she would happily have accepted £860 per week.

After considering these points I issued a provisional decision saying I was minded to uphold the complaint. While I accepted it was fair for RSA to treat the loss of rent claim as fraudulent, my view was this was separate to the claim for property damage. So RSA could treat the policy as cancelled from 12 January 2023, but should settle the claim for property damage in line with the remaining terms and conditions.

I set out my reasons as follows:

In making my decision I need to consider what's fair and reasonable in all the circumstances of the case, taking into account relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and (where appropriate) what I consider to have been good industry practice at the time.

The relevant industry rules and guidance say insurers must deal with claims promptly and fairly; provide reasonable guidance to help a policyholder make a claim and appropriate information on its progress; and not unreasonably reject a claim.

The Insurance Act 2015 sets out that where someone makes a fraudulent claim, the insurer

- *is not liable to pay the claim,*
- *may recover from the insured any sums paid to them in respect of the claim, and*
- *may by notice to the insured treat the contract as having been terminated with effect from the time of the fraudulent act.*

If the insurer does treat the contract as having been terminated, it

- *may refuse all liability to the insured under the contract in respect of a relevant event occurring after the time of the fraudulent act, and*
- *need not return any of the premiums paid under the contract.*

The initial claim was for the property damage. The policy provides cover for damage to the property caused by an escape of water. So this claim was something the policy would cover.

Mrs C later added a claim for loss of rent. Loss of rent claims are listed as one of the "Additional Covers" under the Buildings Section of the policy. Under this section, if the policyholder suffers any loss or damage which is covered under the Buildings Section and the building is not habitable as a result, RSA will pay the rent that would have been received but has been lost.

So if Mrs C had a valid claim for property damage she could also make a claim for the loss of rent, which would be paid under this separate head of cover. She made this claim in January 2023, around six months after the claim for property damage. It's this claim that RSA says is fraudulent, and that's why it said the policy was void from January 2023, the date when she submitted this claim.

The crux of the matter is whether Mrs C exaggerated her claim by saying the loss of rent was higher than it really was. I've considered the evidence RSA gathered about this.

RSA told Mrs C that throughout the claim she'd insisted the rent was £860 per week but that wasn't correct and the claim was clearly exaggerated. Mrs C said she hadn't intended to

claim for the rent and was only concerned about the damage. She argued that once she realised what RSA needed, she had given an accurate breakdown. Looking at the correspondence, I don't think that's correct.

RSA asked several times over a period of some months for clarification of the rent payments. For example, in one email RSA said "It is essential that it is established that the £860 per week credit to your account is purely in relation to rental... and does not include any other possible agreed payments". In a phone call, she was again asked to confirm the £860 was specifically for rent and she said it was. RSA also wrote to her husband asking him to confirm the sum of £860 was specifically for rent and nothing else. He said it was.

This wasn't a question of Mrs C being asked once and being confused about the information required. The enquiries went on for some months. She had several occasions when she was prompted to clarify the correct position but didn't do so, continuing to maintain that £860 was purely for rent when that wasn't the case.

I also note that in August 2022 when discussing the damage claim, Mrs C said the tenants had moved out but they had paid the rent to her husband, who then paid her £875 per week. I appreciate she wasn't at that point making any claim for rent but the information she gave then wasn't accurate.

Looking at the sequence of events as a whole, I think RSA's decision to treat the rent claim as fraudulent was reasonable. It asked over a period of months for clarification of the rent and it was made clear to Mrs C she needed to claim only for the rent itself, not for any additional amounts she received from her husband, but she continued to maintain the rent itself was £860 when she would have known that wasn't correct. Exaggerating the amount of a claim amounts to making a fraudulent claim.

I've set out above the remedies an insurer is entitled to under the Insurance Act where a claim is fraudulent. RSA said the policy was void from January 2023 and so Mrs C wasn't entitled to any benefits under the policy. If a policy is void, it's as if it never existed – so it would be void from the date it was taken out. It wouldn't be possible to void the policy from a later date.

In any event, the remedy allowed under the Insurance Act is not to treat the policy as void from the outset. What RSA was entitled to do was to cancel the policy from January 2023, when the loss of rent claim was presented.

RSA doesn't have to pay that claim and may keep all the premiums. But any claim made before that date is still valid. That means RSA should pay the property damage claim, which was made some months earlier. These were two claims, made at different dates and under different sections of the policy.

RSA may still record the loss of rent claim as fraudulent and Mrs C would still need to declare this when taking out other insurance. If it has paid any sums to Mrs C in respect of the loss of rent claim, RSA may recover those. But the original claim for property damage should be paid.

Replies to the first provisional decision

Mrs C replied to say she was grateful the property damage claim would be covered but wished to clarify some points, as follows:

- The rent was initially £675 per week but was increased by £185. She always maintained this was the rental income when asked by RSA because this was the rent increase both parties agreed to after she had the property fully redecorated, carpeted

and furnished.

- She agreed with her husband that for the increased rent she would undertake additional obligations which included a gardener and cleaning the property. This all formed part of their agreement for the rent increase of £185 per week.
- She also agreed to undertake other obligations such as stocking his fridge and helping with his ironing. But the reality is that her husband was in hospital most of the time and this didn't have any effect on the rent increase.
- By trying to explain the £185 per week increase in rent she has left herself open for it to be used against her.

Mrs C also questioned whether she actually made a claim for loss of rent. She said her recollection is that she was asked about the rent and provided details in order to illustrate the financial impact on her of the damage to the property. She asked for clarification of this.

RSA provided detailed comments in reply to the provisional decision, including reference to the relevant law and court precedents about what amounts to a fraudulent claim. I won't set out all the points in detail but in summary, RSA said the correct position is:

- It accepts the correct terminology is to refer to the policy as being terminated from the date of the fraudulent act, not void.
- Where part of a claim is honest and part fraudulent, the entire claim may be rejected.
- The "fraudulent claim" is to be distinguished from the "fraudulent act". The fraudulent act determines when the insurer's liability ends and the contract may be cancelled. If a genuine claim is made but the policyholder later adds a fraudulent element, the date of that fraudulent act is relevant for deciding when the policy ends. But the whole claim may be rejected.
- Liability under an insurance policy arises when damage occurs. This was all one claim, and it would be wrong to separate the loss of rent claim from the property damage claim.

Second provisional decision

After considering the further comments from both Mrs C and RSA, I issued a second provisional decision. I explained that having considered the additional information I was now minded not to uphold the complaint, because:

- I was satisfied the correspondence shows Mrs C did make a claim for loss of rent. There was discussion about this and extensive correspondence about it. She later said she was willing to drop the loss of rent claim if that allowed the damage claim to proceed. That wouldn't have been relevant if there was no claim for loss of rent.
- Where any element of a claim is fraudulent, the insurer may reject the whole claim. The issue is what "the claim" is – whether this was all one claim or two claims that should be considered separately.
- My initial view was that this was two separate claims. But having thought carefully about the points RSA made I came to the conclusion it would not be fair to treat this as two separate claims.
- The policy terms say a loss of rent claim can only be made where the property has been damaged and the home can't be lived in as a result of that damage. And although it's an additional cover, the loss of rent cover is part of the same section of the policy and only arises as a result of the damage claim.
- RSA had referred to the legal authority for the position that, where additional claims

arise from the same incident, these are all part of the same claim. The insurer's liability arises from the insured peril. So it wouldn't be fair to say the property damage and another issue arising from the same incident are separate.

- Looking at the policy terms again and taking into account the further submissions, it was fair for RSA to deal with this as one claim. That means all of the claim may be rejected.
- This would be very disappointing for Mrs C and I had thought about this carefully before reaching this conclusion. But where a fraudulent claim is made, the law says the insurer may reject the whole claim, need not make any payment and may recover any payments already made. And it was fair to treat this as one claim.

Replies to the second provisional decision

RSA has replied to say it accepts the second provisional decision and has no further comments.

Mrs C does not agree with the second provisional decision. She's made extensive further comments. I'll summarise some of the key points as follows:

- The evidence she's provided from herself, her husband, solicitors, neighbours and others hasn't been taken into account.
- The rent was £675 from February 2021 until August 2021, when it was increased. This was because she had then fully furnished the property, which had previously been let unfurnished.
- She took it on herself to get a gardener and cleaner. In respect of the other 'extras' she agreed to help her husband as he was unwell; she was providing support for him as a compassionate person. But none of this affected the rental amount.
- This is no different from her receiving rent from a flat and paying communal charges for a gardener, ground rent or cleaning services, or a retirement home charging more for services.
- RSA has manipulated the situation and twisted her words on what was agreed.
- She has been completely open and honest about everything. She didn't need to provide all the additional information to justify the increased rent, which was solely due to the property being furnished.
- This was all confirmed by the tenant who had clarified the rent increase was due to the property being fully furnished, and a gardener and cleaner being provided, as well as her gesture of goodwill to support him when he was unwell and in hospital.
- She has never referred to the rent received from the tenant at the time as £2,000 per month; this was referring to previous tenants.
- She admitted the rent had been £675 and was increased to £860 for other expenses as explained and confirmed by the tenant. The increase reflected that the property was fully furnished and the garden maintained, based on an updated valuation, inflation and so on, as well as other support she was prepared to give if needed. This does not mean the rental value was not £860.

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 have only summarised some key points above but I have considered all the further comments from Mrs C and reviewed the file again in the light of her additional comments. Having done so it remains my view that the complaint should not be upheld. I'll explain why.

Mrs C's further comments don't focus on whether this was one or two claims – they concern whether she gave accurate information to RSA. I think it was made clear, on more than one occasion, Mrs C needed to confirm what was paid purely for rent to occupy the property and not any other payments. Even by her own account the payments were not just for rent, and this is confirmed by what her husband has said.

The increase may have reflected the fact the property was now furnished, but it reflected other factors as well, as confirmed in a letter from her solicitors, which said

“In return for an increased rent of £860 a week, our client agreed to provide this support by undertaking additional obligations including to maintain the garden, clean the house weekly, undertake necessary repairs, stock the fridge and do [Mr C's] ironing and laundry.

Therefore, from 27 August 2021, to reflect these further obligations, [Mr C] began to pay an additional £185 in rent, increasing the existing weekly payment of £675 to £860 a week.”

I appreciate Mrs C may consider the payment was all rent – and referred to it as such. This was a difficult time and she was trying to support her husband through his illness. But the increased payment covered the range of services she agreed to provide. The increase was to reflect these “further obligations”. She says it's no different from paying communal charges for a gardener, ground rent or cleaning services, or a retirement home charging more for services. But in those scenarios too, there would be a difference between the amount paid to occupy the premises and amounts paid for other services. RSA asked Mrs C several times to confirm the amount paid did not include anything else.

As for her point that she has always been fully open about arrangements, I don't think that's the case. In her call in June 2022, shortly after the incident, she said there were tenants in the property who had to move out after the flooding incident. She said she was getting £2,000 per month and it *“goes to my husband and he transfers to me £875 a week into my bank – I get £875 from my husband...”*

She said the property had been rented out for years – since around 2015 – but she couldn't remember how long those tenants had been there because *“I didn't really deal with it, my husband dealt with that; he gets paid the rent, he transfers the £875 every week.”*

She was talking as if the previous tenants had been living in the property until recently, this was being managed by her husband who collected rent from them and passed money onto her, and the tenants moved out as a result of the flooding incident. But that wasn't accurate; her husband was the tenant.

For these reasons, I think it was fair for RSA to treat this as a fraudulent claim. And for the reasons set out above it was fair to deal with this as one claim, which means all of the claim may be rejected.

My final decision

My final decision is that I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 11 April 2024.

Peter Whiteley
Ombudsman