

## **The complaint**

Mr N complains about Royal & Sun Alliance Insurance Limited ('RSA') declining his claim for malicious damage under his commercial (rental property) buildings insurance policy.

## **What happened**

The background to this complaint is well known to Mr N and RSA and has occurred over a number of years. In my decision, I'll focus mainly on giving the reasons for reaching the outcome that I have.

In March 2019, Mr N registered a claim for malicious damage under his buildings insurance policy. RSA said the property had been left unoccupied for longer than the policy permitted and declined the claim. Mr N disputed the unoccupancy. RSA then said that Mr N hadn't presented the claim honestly.

Mr N raised a complaint and as he remained unhappy with RSA's response, he referred it to our Service for an independent review. Our Investigator considered the complaint and recommended that it be partially upheld. As both parties didn't accept her outcome, this complaint has been referred to me for a final decision.

## **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.

Our Service is an alternative, informal dispute resolution service. Although I may not address every point raised as part of this complaint - I have considered them. This isn't intended as a discourtesy to either party – it simply reflects the informal nature of our Service.

Mr N initially used a broker and then a representative when bringing this claim. Any reference to Mr N includes the actions/responses of those acting with authority on his behalf.

### *The scope of my decision*

It's not the role of this Service to determine whether or not the claim was presented fraudulently or not. Our role here is to determine if RSA have fairly and reasonably considered and investigated the claim before reaching that position.

My second main consideration is whether or not RSA have fairly declined the claim - in line with the policy terms.

### *Key findings – the presentation of the claim*

RSA will be well aware that recording a fraudulent claim can have future financial implications for a policy holder whether they are a commercial customer or not. Generally, the threshold for making a fraud allegation is much higher than that of declining a claim in line with the policy terms. They've referred to the following in their decline letter:

*“We believe that your claim has not been honestly presented, and you are in breach of the requirement to present your claim in good faith.”*

RSA have relied on a combination of various parts of the evidence to justify their position – rather than any single, key and persuasive part of the evidence. For example, they’ve referred to Mr N’s account of the history of the letting of the property, his letting arrangement and payment terms. They’ve also referred heavily to the testimony of his former letting agents. Although RSA have placed heavy emphasis on that agent telling them the property had been let as ‘vacant’, when RSA later asked for this confirmed in writing, it wasn’t forthcoming.

I’ve also carefully noted that RSA have referred to evidence from Mr N’s former tenant as being unreliable (as they weren’t able to verify it) and the time taken for this evidence to surface. The other side of this argument is it could well be reliable evidence - it just hasn’t proved possible yet to substantiate it. By this I mean, dependant on the terms on which a tenant left or contact details held for them, the tenant may have been difficult to follow up with.

I’ve also note that RSA have leaned heavily on when the evidence from the former tenant came to light (after the claim decline). But in my experience, it wouldn’t be unusual that further evidence might come to light after an initial claim decline.

Having carefully considered the available evidence provided by both parties, I agree with RSA that there are parts of the evidence in the claim that naturally invite questions and scrutiny - but on balance, I find that RSA have acted unfairly when alleging that Mr N dishonestly presented this claim.

However, this doesn’t mean that this claim should automatically succeed as a result. I’ll explain why below.

#### *The declined claim*

The starting position with any claim is the insured (Mr N) has to be able to (within reason) prove/evidence their loss and the circumstances of their claim. Responsibility then passes to the insurer (RSA) to consider and investigate the claim in line with the policy terms.

RSA declined this claim for malicious damage, as they said Mr N’s property had been vacant for longer than the policy terms allowed.

Having carefully considered the evidence, I find that Mr N has not satisfactorily been able to show (within reason) when the loss occurred or when his property was vacant from. Mr N has not been able to satisfy RSA on the circumstances leading up to the discovery of his loss, who was staying in the property and the date of their tenancy. I find RSA’s position here (declining in line with the policy terms) to be reasonable and I wouldn’t seek to interfere with their decline of the claim.

RSA say Mr N’s lettings agent told them (but didn’t confirm in writing) that they’d been instructed to let the property as vacant on 10 January 2019. I’ve kept in mind that Mr N’s lettings agent wouldn’t stand to benefit from a business relationship perspective by saying anything that prejudiced Mr N’s claim. I’ve also carefully considered Mr N’s recent email provided after our Investigator’s assessment. The email is dated 14 January 2019 and is from the lettings agent. The email refers to various rubbish and appliances outside the property, the garden needs sorted and the house cleaned before they can ‘move anyone into the house’.

I've also kept in mind that even if a tenant left suddenly, generally there would usually be evidence showing amendments to utility bills and/or council tax etc or deposits being returned etc. But Mr N hasn't presented any such evidence for RSA's consideration. I've kept in mind that even if a lettings agency had previously been managing his property, they'd also likely have kept such records.

RSA have said it would be unusual that a property would be having photos taken for advertising if a tenant was still in the property. Mr N says this shows there was still a tenant in the house who had intended to leave on or before 25 February 2019 and the taking of photos was to avoid an untenanted period/break in rent for Mr N. I also note the email refers to '*a few other items that have been let [sic] in the house also but nothing major*'. I don't find RSA's challenge on this point to be unreasonable.

On balance, having very carefully considered the available evidence, I find that RSA have currently fairly declined the claim based on the evidence presented for their consideration. Mr N has been unable to (within reason) clear up the circumstances of the lead up to this claim despite being given multiple, adequate opportunities by RSA to do so.

RSA initially avoided this policy and said they'd retain premiums paid. When it became apparent that the policy had ran to term, they told our Service:

*"we cannot void the policy as the policy expire the day before the fraudulent act so we have changed the letter to decline the claim."*

I consider this fair.

### *Summary*

- I find that RSA acted unfairly in alleging that Mr N had dishonestly presented the claim.
- However, I also find that Mr N has not yet been able to substantiate his claim and therefore RSA have fairly declined it.

This will not be the outcome that Mr N wanted, but it brings to an end our Service's involvement in trying to informally resolve his dispute with RSA. Mr N retains all other dispute resolution options.

### **Putting things right**

Royal & Sun Alliance Insurance Limited now need to remove from all relevant internal or external records and/or databases, any records of Mr N presenting a fraudulent claim for their consideration.

### **My final decision**

My final decision is that I partially uphold this complaint. Royal & Sun Alliance Insurance Limited now need to follow my direction as set out under the heading '*Putting things right*'.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 19 December 2024.

Daniel O'Shea  
**Ombudsman**