

The complaint

C complains that Royal & Sun Alliance Insurance Limited (RSA) unfairly declined a claim they made on their commercial property insurance policy.

Reference to RSA includes its agents.

What happened

C holds a commercial insurance policy with RSA. When a new tenant moved into the property next to them, the smoke, smell, and oil passed into their premises, damaging the stock and making the workspace unusable. C made a claim to RSA for the damage.

RSA declined the claim, it said the damage wasn't caused by something the policy provided cover for. It said the damage was caused by pollution or contamination, something the policy specifically excluded.

C wasn't happy with this, so complained to RSA, but it didn't change its stance. So, C brought their complaint to us.

Ultimately, our Investigator thought RSA was acting in line with the policy terms and conditions when declining C's claim.

C didn't agree, they thought their claim should be covered and asked for an Ombudsman's decision.

I issued a provisional decision explaining why I thought C's complaint should be upheld. It said:

- *C's policy covers them for a number of listed occurrences or perils. Of these perils. RSA says the only one relevant is "13. Any other accident".*
- *In the policy, under event 13 the policy excludes damage caused by contamination and pollution.*
- *Neither pollution nor contamination is defined, so it's reasonable to use a standard dictionary definition. Pollution can be defined as "damage caused to water, air, etc. by harmful substances or waste", and contamination can be defined as "the process of making something dirty or poisonous, or the state of containing unwanted or dangerous substances".*
- *I'm satisfied the damage to C's property constitutes pollution or contamination based on the above definition. The stock and the premises are unusable based on them containing the strong odour of cooking materials.*
- *But the policy says pollution and contamination isn't covered unless it's caused by another event covered by the policy (other than event 13).*

- *So I take this to mean if the pollution or contamination is caused by a listed event – the policy provides cover for it.*
- *Here, the pollution and contamination has been caused by smoke from the neighbouring premises, and smoke is something the policy provides cover for under event 1 “Fire, smoke, lightning, explosion and earthquake”.*
- *RSA considered whether the claim could be covered under section 1 of the policy, which covers damage caused by smoke. But ultimately decided not to. It said the damage was caused over time as opposed to a one-off event.*
- *The policy covers event(s), and that’s defined as “One occurrence or all occurrences of a series consequent on or attributable to one source or original cause.”*
- *RSA has said this doesn’t apply here because the damage was caused over a number of days and a number of events within those days. C disagrees and says the damage was caused on the first day – so thinks it should be classed as an event.*
- *I can RSA’s point of view here. But ultimately, I think the above definition, as written can be reasonably interpreted to apply here – the damage was caused by a series of occurrences (the cooking) attributable to one source (the premises next door). There’s nothing under event 1 or covering the policy as a whole, excluding damage caused over time. There is such an exclusion for event 13 “Any other accident”, but I think this damage fairly sits under event 1 “Fire, smoke, lightning, explosion and earthquake”.*
- *So, ultimately, I don’t find RSA’s decline of this claim fair. I think the damage is fairly defined as pollution and contamination, but the policy provides cover for that if it’s caused by an insured event. I’m satisfied what happened can be deemed as an insured event under the terms of the policy under the section providing cover for damage caused by “Fire, smoke, lightning, explosion and earthquake”.*
- *RSA should therefore accept the claim and settle it in line with the terms and limits of the policy.*
- *Not dealing with the claim will have also caused inconvenience to C in terms of having to chase and make their case – something I’m not persuaded they should have had to do. So RSA should also pay C £200 compensation to account for this.*

I recommended that to put things right RSA needed to:

- *Settle C’s claim in line with the terms conditions and limits of the policy*
- *Pay C £200 compensation for the inconvenience of unfairly declining the claim.*

Both RSA and C accepted that decision’s reasoning and outcome.

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.

Because both parties accepted my provisional decision, I see no reason to depart from its findings. Therefore, my final decision reflects my provisional one as set out above.

My final decision

For the reasons set out above, I uphold this complaint. To put things right for C, Royal & Sun Alliance Insurance Limited needs to:

- Settle C's claim in line with the terms, conditions, and limits of the policy
- Pay C £200 compensation for the inconvenience of unfairly declining the claim

Under the rules of the Financial Ombudsman Service, I'm required to ask C to accept or reject my decision before 18 December 2024.

Joe Thornley
Ombudsman