

complaint

Mr A complained because Royal & Sun Alliance Insurance Plc (“RSA”) declined a buildings insurance claim.

background

Mr A’s policy with RSA started on 6 October 2016. About six months later Mr A made a claim for damage that had been caused by a leak from a waste pipe under the bath. Three experts inspected the damage and provided their comments:

- RSA’s appointed loss adjuster said the leak had caused the joists to rot; the leak pre-dated the start of the policy; and the rot had occurred over a period of time. He also said there had been previous issues as the joists had previously been repaired.
- A damp specialist said the joists were affected by wet and dry rot and woodworm; this had been caused by a leaking bath; and it had been ongoing for more than six months.
- A disaster response and damage management consultant said the leak could have been running for a significant period of time before it was discovered, and it was likely to have preceded the start of the policy. He also said the joists were in a poor state of repair and that a repair had been done whereby wood had been attached to the joists in order to improve rigidity.

RSA declined the claim as it felt the leak and the damage occurred before the policy started. It referred Mr A to his previous insurer.

Our investigator felt the complaint should be upheld. She said the damage was discovered when RSA was providing cover so it’s responsible for the claim. But she recognised that some damage happened before the policy started (I’ll refer to as “non-insured damage”). So she explained that if RSA could distinguish the non-insured damage from the damage that occurred since 6 October 2016 (I’ll refer to this as “insured damage”), and if it could repair the insured damage in isolation, then it’s only liable for the insured damage.

RSA disagreed with our investigator. It said the policy provides cover if an incident occurs during the policy period – it’s irrelevant when a claim is actually reported. And it felt the expert evidence showed that the damage is historic and happened before Mr A bought the property – and therefore before the start of the policy.

my findings

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

Mr A’s policy provides cover for damage caused during the life of the policy by a range of insured events (including water escaping from any pipe). For any claim to be valid, it’s a requirement for Mr A to show three things:

1. that an insured event occurred
2. that the insured event caused damage to the property *and*
3. that the damage was caused during the life of the policy.

It's not disputed here that there was a leak from a pipe or that it caused damage to the property. The issue is when the damage occurred – specifically, whether any damage was caused after the policy started.

It important to note that the crucial date is the date the damage occurred – it's not the date the insured event occurred or the date the damage was discovered. That's because RSA isn't insuring the insured event; it's insuring the *damage caused* by the insured event. So the insured event doesn't necessarily have to happen during the life of the policy for a claim to be valid. There's nothing in RSA's policy that I could see which says that the insured event has to start during the lifetime of the policy.

To illustrate the point, Mr A's policy might end on day one and a new policy, with a different insurer, starts on day two. There's a fire on day one in a neighbouring property, although no damage is caused to Mr A's property. But the fire is hard to put out and on day two it spreads to Mr A's property and causes damage. Because the damage occurred on day two, it would be the new insurer who is liable for the damage. It doesn't matter (as far as this argument is concerned) that the fire started the day before it started insuring the property.

So, with that in mind, I conclude that it was unfair for RSA to have declined the claim simply because the leak started before the policy started. But that still leaves the question over whether there was any insured damage.

It's clear that there was some non-insured damage. All the experts refer to a longstanding leak that probably started long before the policy started. Reference has also been made to a previous repair being carried, which Mr A says he didn't do. But I'm not sure how significant the repair is because there's nothing to say that it was related to this particular leak.

For me, there are two important points upon which the outcome of this complaint turns. The first is the nature of the leak. The second is that the leak was never repaired – it only stopped when Mr A removed the bath to inspect the problem. What that suggests to me is that water escaped from the pipe every time the bath was used. And that water would most likely have caused some damage – even if it was to only make existing damage worse. That leads me to conclude that damage was most likely caused by water escaping from the pipe whilst RSA was insuring the property. And RSA is liable under the terms of the policy for the cost of repairing that damage. On that basis, I conclude that RSA's decision to decline the claim was unfair.

The difficulty of course is separating the insured damage from the non-insured damage. But as our investigator noted, if RSA can identify and separate the insured damage, and if that damage can be repaired without it needing to repair any of her non-insured damage, then that's all it needs to do. But any repair RSA pays for has to be lasting and effective. So, if it can't separate the damage, or if it can't properly repair the insured damage without repairing some (or all) of the non-insured damage, then RSA will have to pay for that non-insured damage to also be repaired.

my final decision

For the reasons outlined above, I uphold this complaint. I require Royal & Sun Alliance Insurance Plc to settle Mr A's claim subject to the terms and conditions of the policy and subject to my comments in the above paragraph.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 14 March 2018.

Paul Daniel
ombudsman