

The complaint

A charity, which I'll refer to as C, complains that Royal & Sun Alliance Insurance Limited (RSA) has unfairly turned down a claim under its Voluntary Organisations Insurance Policy.

What happened

The background to this complaint is known to both parties and so I won't repeat it at length here.

Briefly, C owns a property which is used by children and their families for a respite break. The property is used by families either during or having completed treatment for cancer.

The property was last used by a family in 2019. C said it hadn't been used for a number of years since, due to the Covid-19 pandemic.

C said the property was regularly checked for routine care and this was last completed in March 2023. A short time later, in April 2023 there was a large water leak which caused extensive damage to the property. A plumber identified that the source of the leak was from a hot water storage tank.

A family had booked to use the property in August 2023, however the booking had to be cancelled due to the leak and subsequent damage.

C made a claim for the leak and damage under its Voluntary Organisations Insurance Policy. RSA instructed a loss adjuster to validate the claim on its behalf. RSA declined to provide indemnity under the policy and relied on an exclusion in the policy which said under the escape of water peril, damage was excluded in respect of any building which was empty or not in use.

C didn't agree with RSA's reasoning for declining its claim. C said that due to the circumstances in which the property is used, there will be times it is vacant if no families require it. However, the property is always checked on, including the periods it is not being used by a family. C said the property is kept in good working order, so it is ready when a family requires it.

RSA maintained that the policy didn't provide cover due to the above exclusion. C brought its complaint to the Financial Ombudsman and an investigator looked at what happened. Our investigator didn't recommend that this complaint be upheld. He was satisfied that the property wasn't 'in use' and therefore the policy exclusion applied. He concluded that RSA's decision to decline the claim was fair and reasonable.

C didn't agree with or investigator's findings. In summary, C argued that the property was regularly checked and that the water leak would have happened irrespective of whether it was in use or not. C was also argued that one hand it was accepted the property would be intermittently used but then also applied the exclusion for being not in use. C explained that the reason the premises wasn't used was due to the impact of covid-19 on immune suppressed families which continued into 2022 while cases of Covid-19 were still being

reported. C also complained that RSA did not handle the claim promptly or fairly – the delay in remedial works contributed to the overall cost of the claim.

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.

The crux of this complaint centres on RSA's decision to decline C's claim for escape of water and subsequent damage. The relevant rules and industry guidance say that RSA have a responsibility to handle the claims promptly and fairly and they shouldn't reject a claim unreasonably. I have to decide if I think RSA have applied the terms of the policy in a fair and reasonable manner when declining C's claim. Having reviewed everything available to me, I think they did. I understand C will be disappointed by this and I'm very sorry for the position it finds itself in, but I'll explain why I have made this decision.

I'd like to start by explaining what my decision covers. From what I've seen, it seems to me like there are several parts to C's complaint - the suitability of the insurance policy, the claim decline and RSA's handling of the claim. I understand this policy was sold through a broker and C has raised a separate complaint to the broker about the suitability of the product. My decision therefore focuses on RSA's decision to decline C's claim.

When considering whether or not it was reasonable for RSA to decline C's claim, I have looked closely at the relevant policy terms and conditions.

The relevant section states:

“Covers...

5 Escape of water or oil from any tank apparatus or pipe excluding Damage

- A) by water discharged or leaking from an automatic sprinkler installation
- B) in respect of any Building which is empty or not in use”

RSA said that the property hadn't been 'in use' since 2019 and therefore the above exclusion applies.

While C accepts that the use of the property was intermittent, it says that its care and management was constant and therefore the above exception doesn't apply because essentially it was 'in use'.

C's insurance schedule listed the insured property as a holiday home and C also accepts that was its only intended purpose. I am therefore satisfied that the property was to be used as a holiday home.

In order to make a finding that RSA's decision to decline C's claim was unfair and unreasonable, I'd need to be satisfied that the property was 'in use' when the escape of water happened.

The policy doesn't define what it means by 'in use'. Where a word isn't defined in the policy, we apply the word's everyday and commonly used meaning. The meaning of 'in use' in this context would be 'is it being regularly used by people'.

C accepts that the property hadn't been used as a holiday home since 2019 but argues that

its care and management of the property, should mean it was 'in use'.

As I've said above, the intended purpose of this property was for it to be used as a holiday home and I'm satisfied that it hadn't been used as such since 2019. While I understand why the property won't always be occupied and its use may be intermittent, I need to consider whether it not being used by a family for almost four years, apart from someone checking in on it, could still be considered as being 'in use', and I don't think it can. I'm not satisfied that the care and management of its running satisfies the requirement for the property to be 'in use'. Someone checking the property is not the same as living in it and using its facilities. I therefore think that RSA have acted fairly and reasonably by saying the property wasn't 'in use' when the escape of water and damage occurred. RSA's decision to apply the policy exclusion was therefore fair and reasonable.

C said the property wasn't being used as a respite home due to the Covid-19 pandemic and the impact of it on immune suppressed families. While I have no doubt that this was the case and I appreciate that C was probably in a very difficult situation, I'm satisfied that RSA have demonstrated the policy exclusion applies.

Further to the investigator's opinion, C also raised concerns about claim delay. As the investigator pointed out, RSA haven't been made aware of this part of C's complaint. And in any event, because I'm satisfied RSA justified their reason for declining C's claim, I make no finding on this.

As I explained above, I can only consider the issues that are RSA's responsibility under this complaint. And the way a broker sells a product and its suitability, are not RSA's responsibility. RSA is only responsible for its policy terms, and for considering claims under those terms.

Having considered everything carefully, overall, I think RSA acted fairly and reasonably in declining C's claim due to a policy exclusion. While I sympathise with C's position, I don't think there are any fair or reasonable grounds for me to say RSA did anything wrong in the circumstances of this complaint.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask C to accept or reject my decision before 15 January 2024.

Ankita Patel
Ombudsman