

The complaint

Ms L and Mr L complain about Royal & Sun Alliance Insurance Limited trading as RSA ("RSA") and the decision to decline the claim they made, following water damage to the property they lived in.

Ms L and Mr L have been represented during the claim and complaint process by their father, also named Mr L. For ease of reference, I will refer to any comments made, or any action taken, by any of the family as "Mr L" throughout the decision.

What happened

Ms L and Mr L held a home insurance policy, underwritten by RSA, that covered the flat Ms L lived in. Unfortunately, around 7 October 2022, the flat was damaged by water ingress through the roof and ceiling. So, they contacted RSA to make a claim.

RSA instructed an independent surveyor, who I'll refer to as "B", to inspect the flat and the damage it had incurred. And B compiled a report following their inspection declining the claim, stating the damage had resulted from water ingress over time.

RSA took this report into consideration and took the decision to decline the claim for the same reasons. But Mr L was unhappy about this, so he raised a complaint. Mr L was unhappy with the claim decline, as he felt it should be accepted under both the flood and accidental damage sections. And he disputed B's report, explaining B hadn't inspected the roof itself on their attendance. So, he wanted RSA to overturn their claim decision and accept it.

RSA responded to the complaint and upheld it in part. They didn't think the damage was caused by an insurable event, explaining why they didn't think a storm or flood had occurred. And because of this, they didn't think the claim could be covered under the building and contents sections, or the accidental damage. So, they didn't think the decline should be overturned. But they did think they could've offered Mr L's daughter alternative accommodation up to the value of £250 under the Home Emergency aspect of the cover they provided so they offered to reimburse any costs Ms L incurred for this, up to that amount. Mr L remained unhappy with this response, so he referred his complaint to us.

Our investigator looked into the complaint initially and didn't uphold it. They thought RSA had declined the claim fairly, in line with the terms and conditions of the policy, as they didn't think the damage was caused by either a storm or a flood. And they thought the terms made it reasonably clear any accidental damage caused by water outside of these events wouldn't be covered. Our investigator thought it was most likely the ingress was caused by a blockage in guttering that had occurred over time instead. So, because of the above, they didn't think RSA needed to do anything more.

Mr L didn't agree, providing several reasons explaining why. These included, and are not limited to, his belief that B's report shouldn't be relied upon, as B failed to inspect the roof on their attendance. And he explained his unhappiness that neither storm nor flood were clearly defined within the policy. Mr L also provided further information that showed a separate

roofer had attended the building to clear the roof above, which included removing a blockage from the guttering and downpipes.

Our investigator considered these comments. And they returned to RSA for further information, including confirmation on whether they would accept the claim for escape of water, as the guttering would be classed as a fixed water installation. RSA responded explaining the claim would be declined on the basis the downpipes and guttering weren't damaged, and that a blockage was the reason for the water ingress which they deemed to be a gradual cause and maintenance issue, which fell under their wear and tear exclusion. This was put to Mr L, who explained his belief that as B failed to inspect the roof and the guttering, they didn't think RSA were fair to state for certain that the blocked guttering was the cause of the water ingress. So, he maintained his belief that the water damage was caused by a one-off insurable event that should be covered by the policy.

Our investigator considered all of the above and issued a second view, reaching the same outcome as their first. They explained their position regarding the storm and flood sections remained the same. And they thought RSA were fair to deem a blocked gutter to fall under the wear and tear exclusion and because of this, they didn't think RSA needed to do anything more.

Mr L continued to disagree, and he referred to RSA's file notes which he felt contradicted our investigators position. He maintained his position that, as B hadn't inspected the roof and guttering, RSA were unfair to rely on the wear and tear exclusion and had failed to prove that the claim shouldn't be covered. So, he thought it should be. As Mr L continued to disagree, the complaint has been passed to me for a 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.

First, I think it would be useful for me to explain exactly what I've been able to consider, and how. I appreciate Mr L, Ms L's father, is the property owner and has spent a lot of time and effort dealing with the claim, and the complaint. But according to the policy documentation, the policy holders were Ms L, his daughter, and Mr L, his son. So, as they are the policy holders, I'm only able to consider the impact caused to them.

I also note the property in question is a flat and so, repairs to the building would be the responsibility of the building owner, or the company managing the upkeep of the building on the owner's behalf. Because of this, I wouldn't expect RSA to complete these repairs, which include the repairs to the guttering and the roof.

And I want to recognise the inconvenience Ms L would've been caused when the damage actually occurred, which saw her needing to source alternative accommodation. And I've no doubt it would've been frustrating for her to learn the claim had been declined, meaning she, or her family, would potentially need to cover the cost of any repair work necessary to the internal damage in the flat.

But for me to say RSA should do something differently, such as overturn their original claim decision and pay for repairs to the internal damage, I first need to be satisfied they've done something wrong. So, I'd need to be satisfied that when declining the claim, they failed to act within the terms of the policy Ms L and Mr L held. Or, if I think they did act within these, I'd need to be satisfied they acted unfairly in some other way. And in this situation, I don't think that's the case.

Before any claim is accepted on an insurance policy, the onus is on a customer to show there was an insurable event that caused the damage. I've read the terms and conditions of the policy carefully, to consider whether I think there was an insurable event.

To begin with, I've thought about whether there was a storm at the time of the damage, even though I note this isn't the event Mr L feels the claim should be accepted under. And I note the policy itself doesn't define a "storm" which, while I accept would be frustrating for Mr L, isn't a set requirement.

So, where a definition isn't provided, I've thought about the weather conditions under our service's own approach, which follows standard industry approach and guidelines. And although I don't think there's any dispute the weather conditions were poor at the time the damage happened, I've seen the weather reports from around the time the damage occurred and neither the rainfall nor the windspeed meet our criteria for a storm. So, I can't say RSA have acted unfairly or outside of the terms of the policy when declining the claim because of the same.

I've then considered whether the event that caused the damage would be defined as a flood. And again, the policy doesn't define RSA's own interpretation of a flood. So, I've thought about the event considering our services own approach.

When considering a flood, it's important to note a flood is usually a build-up or overflow of water, either slowly or sudden, over an area of land. And crucially, when considering the flooding of a home, this is usually where water levels rise up from the ground and into a property. In this situation, the water has entered the flat from above, through the roof. Because of this, I don't think I can say the event meets the flood definition, as the land around Mr L's property wasn't flooded.

So, I don't think RSA were unfair to state there was no qualifying storm or flood. And because of this, I don't think RSA have acted unfairly when declining the claim under these insurable events. I also note within the terms and conditions, under the accidental damage cover for both the building and contents aspect of the policy, it states that "*damage by water entering your home other by storm or flood*" will be excluded. So, as I think RSA were fair when deciding there wasn't a qualifying storm or flood, I also think they were fair to decline the claim for accidental damage.

But I do note both the building and contents aspect of the policy provide cover for water escaping from "*fixed water systems*". And from all the evidence available to me, it seems most likely that the guttering serving the roof of the flat was blocked and this is what caused the water on the roof to build up, before entering the flat and causing the damage. So, I do think the circumstances of the claim falls under this insurable event, as the rain water was escaping from a fixed water system, in this case the guttering and downpipes.

I note Mr L doesn't think it's fair to assume this. And I agree with Mr L that the report compiled by B shouldn't be considered against this event, as B didn't inspect the roof when I would've expected them to. But I do note B stated on the day they attended that a separate contractor was completing repair work to the roof on behalf of the building owner. And B have explained this contractor told them they were there to repair the roof, as there had been water ingress in the communal areas separate to the ingress in the insured property. And this correlates with Mr L's own testimony, and the information he's provided, which shows an invoice for the work this contractor completed which included the unblocking of the guttering and the removal of leaves and vegetation from the roof itself.

So, based on the above, I think it's reasonable to assume there was a blockage at the time of the damage, as this was highlighted on the day by the contractor that attended and provided a quote for works. And there has been no further leaks since the blockage has

been removed from the information I've seen. I also note there was nothing on the invoice to suggest the guttering or pipework itself was damaged so, based on this, I think it's reasonable to assume that had there been no blockage, the guttering would've allowed the rain water to drain away as intended. And I think it's reasonable for me to assume, based on the balance of probabilities and the fact no further leaks have occurred since, that this would've prevented the damage from occurring.

The policy conditions explain that Mr L and his family must "*take all reasonable steps to... keep all the property insurance, in good condition and in good repair*". And it states that if they don't "*a claim may be rejected*". It also goes on to explain within the general exclusions under the heading "*wear and tear*" that any damage that happens gradually would be excluded.

In this situation, Mr L has accepted the guttering and pipework hadn't been cleared for some time. And I think it was reasonable for RSA to assume that the blockage itself would've occurred gradually, as I've seen nothing to suggest the blockage was caused by anything other than vegetation and debris. So, while I recognise there may be dispute over who should be responsible for keeping the gutters and roof clear, I think the failure to do so has directly led to the blockage which in turn most likely caused the water ingress and so, the damage to the inside of the insured property.

And because of the above, I don't think I can say RSA have acted unfairly when relying on the exclusions above to continue to decline the claim. And because of this, I don't think I can say RSA need to do anything more on this occasion.

I understand this isn't the outcome Mr L was hoping for. And I want to reassure Mr L I've thought carefully about the financial implications this decision will have, as well as the things RSA could've done better which does include B's failure to inspect the roof when they attended.

But crucially, I don't think I can say for certain B's failure to do so impacted the claim decision here because on the same day, it's been confirmed that a separate contractor was already repairing the roof, which included removing blockages from the guttering. So, I don't think I can be satisfied B inspecting the roof would've made a difference. And while I understand the complications caused by the property being a flat meaning some of the building maintenance may not have been the sole responsibility of Mr L, it definitively wasn't the responsible for RSA in their role as the insurer. So, I don't think it means they should assess the claim differently to how they would if Mr L owned the entire building.

My final decision

For the reasons outlined above, I don't uphold Ms L and Mr L's complaint about Royal & Sun Alliance Limited trading as RSA.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms L and Mr L to accept or reject my decision before 28 December 2023.

Josh Haskey
Ombudsman