DRN-2812072

The complaint

Mr and Mrs H are unhappy with Royal & Sun Alliance Insurance Plc ("RSA")'s handling of a claim made under their home insurance policy.

All references to RSA include its appointed agents.

What happened

The background and subsequent developments to this claim are extensive. So, what follows is a summary of the key events relevant to my decision. But I want to reassure both parties that I've read and carefully considered everything that's been provided.

In November 2016, Mr and Mrs H's basement flooded. The flood was linked to tree roots blocking a service drain which caused the water to back up.

Mr and Mrs H raised a claim with RSA who appointed a loss adjuster to assess the damage. It took around a month before the basement was emptied of water and for drying works to begin.

In February 2017 the loss adjuster arranged for a surveyor (E) to visit the property and draw up a scope of repairs. E assessed the damage which included cracking to rooms on the ground floor, and damage to the basement. In July 2017 the claim was reassigned to a new loss adjuster due to the overall value and likely cost of repairs.

In September 2017 Mr and Mrs H were told by the loss adjuster that the surveyor was preparing a scope of work "*for all other repairs associated with the leak from the defective drain.*" The scope was provided to Mr and Mrs H in January 2018 and they noticed that the repairs to the cracking on the ground floor had been excluded. They queried this with the loss adjuster but agreed the scope so that the repairs to the basement could start.

As the basement repairs neared completion, Mr and Mrs H chased the loss adjuster regarding the cracks on the ground floor. They were told that E felt the cracks were historic and not directly linked to the flooding, which is why they were excluded from the scope of repairs.

Mr and Mrs H disagreed and provided further evidence to the loss adjuster to support their claim. The cracks were then monitored between May 2018 and December 2018 and deemed stable in January 2019.

The loss adjuster accepted liability for cracking in three rooms but excluded the cracks elsewhere in the property, saying they didn't believe these were linked to the flood. Following some discussion between the parties it was agreed that the remaining cracks would be covered by the claim, and Mr and Mrs H asked RSA to provide a contractor to do the repairs.

In May 2019, the appointed contractors provided Mr and Mrs H with the scope of repairs to the ground floor. Mr and Mrs H were unhappy with the scope and complained. They were concerned the repairs didn't consider the full extent of the damage, and of the overall time taken to reach this point of the claim. RSA provided a final response dated 4 June 2019 and didn't uphold the complaint. It said it had relied on E's findings to prepare the scope.

Mr and Mrs H arranged for their own surveyor (B) to review the damage and provided the report to RSA. The appointed contractors then revisited the property in September 2019 and provided an updated scope of works with increased repairs and costs. As a result, RSA told Mr and Mrs H that a further loss adjuster (S) would be required to visit the property and validate the costs.

In October 2019, S confirmed the additional costs and repairs and Mr and Mrs H asked for RSA's contractors to do the work. Mr and Mrs H tried to get a start date for the works but were told there were some final amendments required to the scope of works.

In December 2019, RSA told Mr and Mrs H that the works to the ground floor were excluded from the current claim as they were a result of heave. So, RSA told them a new and separate claim needed to be raised to deal with the damage under the relevant section of the policy, and by the relevant experts. RSA then closed the original claim.

Mr and Mrs H disagreed with RSA's approach and raised a further complaint. They didn't agree the repairs should be split into two separate claims, or that they should pay a separate excess for dealing with the damage under the 'subsidence, heave, and landslip' section of the policy when the damage had been previously assessed and agreed to be covered.

RSA said the excess for this part of the policy (£1,000) would be waived by way of apology for the delays caused. But it maintained its position that a separate claim needed to be raised and provided a further final response to the matter in April 2020.

Mr and Mrs H disagreed with RSA and referred their complaint to our service. In summary, they asked us to consider:

- The impact and additional burden of proving the insurable damage to the ground floor after initially being told it would be covered under one claim.
- RSA's lack of action after being put on notice in 2018 that further works were required to the ground floor.
- Whether RSA's decision to record the ground floor damage as a separate claim was fair.
- The security and safety concerns caused by the lack of repairs to the ground floor, which included split window frames and de-bonded lathe and plaster ceilings.
- The additional stress and pain that had been caused by the overall time taken by RSA to deal with the claim, which by this point spanned around three and a half years.
- The overall mismanagement of the claim by RSA's loss adjuster and the tone of some of their communications.

Our investigator looked at everything and recommended the complaint be upheld. They concluded that our service could consider Mr and Mrs H's claim journey from November 2016, because RSA's position substantially changed between its final response letters of June 2019 and April 2020.

Our investigator concluded it was reasonable for RSA to assign the ground floor damage to a new claim based on the terms of Mr and Mrs H's policy. But they concluded that RSA's actions had led to significant and unnecessary delays in the progression of the claim. And they concluded that there was sufficient evidence to put RSA on notice that the ground floor damage would likely need to be investigated under a separate policy section at a much earlier stage of the claim (around March 2018).

Our investigator considered Mr and Mrs H's testimony about the impact this claim has had on their lives. They concluded it was both plausible and persuasive and that RSA's actions had caused them significant distress and inconvenience above what would reasonably be expected for a claim of this nature. This included the impact to Mr H's health during the claim. So, in addition to waiving the £1,000 excess for the second claim, they recommended RSA pay Mr and Mrs H £4,000 compensation.

Our investigator also recommended RSA reimburse Mr and Mrs H for the cost of B's report, on the basis that had RSA addressed the ground floor damage correctly in March 2018, then B's report wouldn't have been required.

RSA didn't agree. It said it hadn't been made aware of the points raised by Mr and Mrs H about the impact, distress, and inconvenience of the claim. And it felt that some of the points raised by Mr and Mrs H were outside of its control. RSA added that it didn't think it was fair or reasonable for our service to consider the full claim timeline as it said Mr and Mrs H could've referred the matter to us sooner following its June 2019 final response.

However, RSA did acknowledge the need to resolve the matter, and offered an additional £2,000 compensation as well as waiving the £1,000 excess for the distress and inconvenience caused.

Mr and Mrs H didn't accept RSA's offer and asked for an ombudsman to make a final decision, so the complaint has now been passed to me.

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.

When making a decision on a complaint I usually consider matters as they stood at the time the business issued its final response to the complaint. I've considered whether its impractical to do so here – for instance because the situation has moved on. But since no further evidence or information has come to light, I'm satisfied I have everything I need in order to arrive at a relevant, and fair answer.

RSA's final response issued in April 2020 materially changed the outcome of Mr and Mrs H's complaint. RSA now agreed that further works were required when its previous final response in June 2019 didn't. And it upheld Mr and Mrs H's concerns by offering compensation, as opposed to rejecting them in the previous final response.

I'm satisfied that whilst RSA didn't explicitly withdraw the referral rights from it's June 2019 final response, its actions mean that the referral rights it gave in June 2019 were implicitly withdrawn and replaced by the referral rights in April 2020.

So to be clear, I will be considering matters from the point Mr and Mrs H first raised their claim in November 2016, to the point that RSA issued its final response in April 2020.

I'll first consider RSA's actions in recording the damage under two separate claims. I'll then consider RSA's handling of the claim to determine whether its offer of compensation is fair and reasonable.

Was RSA's decision to record two separate claims reasonable?

RSA's position is that a new claim was required so that the relevant specialists could assess the ground movement, validate the cause of the damage and the extent of its liability. Having considered the relevant policy terms, I think RSA's position is reasonable. I say this because the section of the policy under which Mr and Mrs H's claim was accepted (cover 3) specifically excludes *"Damage to any part of the buildings by Subsidence cover 4, as a result of escaping water.*"

The policy further goes on to define "*Subsidence cover 4"* as:

"Subsidence or heave of the site on which the buildings stand or of land belonging to it, or landslip. Subsidence means downward movement of the site on which your buildings stand by a cause other than the weight of the buildings themselves. Heave means upward and/or lateral movement of the site on which the buildings stand caused by swelling of the ground. Landslip means downward movement of sloping ground."

So, based on the policy terms I think it is clear that any ground movement which falls into the above definition under *"Subsidence cover 4"* can be fairly excluded from a cover 3 claim.

I don't think this exclusion is unusual in relation to policies of this type. I can understand Mr and Mrs H's point that the damage likely originated from the same proximate cause – the escape of water. And I can also see that RSA made enquiries with its contractors to see if this scenario could be avoided given Mr and Mrs H's claim journey to that point. But ultimately it was agreed that the relevant specialists would be required to ensure that both the insured risk and cause of damage had been correctly identified, to validate the scope of works, and to ensure any repairs are effective and lasting. I don't find this approach unreasonable.

I'll factor the length of time it took for RSA to reach this decision into my consideration of how the claim was handled overall. But having considered the evidence, I don't find that RSA has acted unfairly by requiring the ground floor damage to be assessed under a separate claim under the policy.

Claim delays and handling

I've considered that claims relating to escape of water/flooding and ground movement can be complex and will often incur delays whilst the parties determine the best way forward. And I've weighed this up against RSA's obligations under the Insurance: Conduct of Business Sourcebook (ICOBS), specifically ICOBS 8.1, which states an insurer must:

(1) handle claims promptly and fairly;
(2) provide reasonable guidance to help a policyholder make a claim and appropriate information on its progress;
(3) not unreasonably reject a claim (including by terminating or avoiding a policy); and
(4) settle claims promptly once settlement terms are agreed.

The present position is that RSA has accepted the claim should've been handled better – the loss adjuster's comments indicate they accept the issue of the separate claim should've been identified at an earlier stage. As such RSA has offered a total of £3,000 compensation for its handling of Mr and Mrs H's claim.

So what's left for me to determine is whether our investigator's recommendation for an additional £2,000 compensation (making a total of £5,000) is fair and reasonable.

I've first looked at whether RSA was put on notice that a second claim may be required at an earlier stage. The evidence I've seen shows that Mr and Mrs H raised concerns about the scope of repairs to the ground floor from around January 2018 which weren't acknowledged. Mr and Mrs H followed this up with a detailed submission to RSA in March 2018, including photos of the cracking which I've seen. And upon receipt of this evidence, I agree that this was most likely the point RSA should've realised that the ground floor damage needed to be investigated further.

I think some further uncertainty was introduced to the claim by the introduction of crack monitoring around May 2018 which lasted until December 2018. This type of investigation is generally associated with claims involving ground movement and should've been a further indicator to RSA that any resulting repairs would likely not fall under the escape of water claim. But the evidence suggests that the appointed loss adjuster's (S) weren't given the authority to investigate any potential ground movement. So, I don't think there was any way Mr and Mrs H could've known how things would likely play out, as they'd been given no guidance from RSA to indicate a separate claim was needed.

RSA encouraged Mr and Mrs H to get their own report to validate the claim which they did in July 2019. It's clear from the evidence at this stage that Mr and Mrs H were struggling to move the claim forward. They'd asked for a schedule of works to help furnish B's report which they didn't get. And they'd complained about the loss adjuster's handling of the claim but had been advised to continue working with them. I don't find that unreasonable in that the loss adjuster was afforded the opportunity to put things right. But I think this again should've put RSA on notice about the risks of any further delays.

It appears a key issue here was the discord between the actual damage Mr and Mrs H were claiming for and what RSA thought was needed to put things right. I've listened to a call that's been provided between Mrs H and the loss adjuster, and it reinforces this point. In the call, Mrs H raises concerns about the scope of repairs and some of her key concerns, but this wasn't picked up by the loss adjuster who instead referred her concerns to RSA as a formal complaint.

I think the overall lack of guidance exacerbated RSA's eventual decision to start a new claim and had a greater impact to Mr and Mrs H than perhaps RSA has recognised. I can certainly accept that being told this information over three years after the event happened would've been frustrating and upsetting for Mr and Mrs H after being given several reassurances by RSA that the damage would be covered, and with RSA having been aware of the ground floor cracking since early 2017.

The evidence shows the previous claim was closed abruptly and wasn't communicated by the loss adjuster. And when Mr and Mrs H chased this with the loss adjuster directly, they found out that they were no longer involved with the claim. I find this to be poor service and must have added to Mr and Mrs H's frustration.

Taking everything into account, I find there was a clear and avoidable delay in RSA raising a separate claim from around March 2018 when Mr and Mrs H made their submission, to the point the new claim was raised in December 2019. And I find little evidence to support why the separate claim wasn't raised earlier. It follows that I also find RSA should reimburse Mr and Mrs H for B's report, as I don't think this was required in order to validate the claim.

Ultimately RSA as the insurer is responsible for the actions of all its appointed agents, and I find the level of service provided on the claim to be lacking. I say this because there were several issues which I think Mr and Mrs H reasonably raised with RSA since the start of the claim. And I would've expected RSA as the expert to have provided better clarity about the direction of the claim here. Instead, I can see Mr and Mrs H chased RSA a number of times for a meaningful response without getting one.

Impact of the delays

Mr and Mrs H have both provided statements which detail the impact the delays of the claim have had on them. RSA has also been provided with a copy of these statements.

I've read both statements, and it's clear that whilst Mr and Mrs H were joint policyholders, they were both separately and severely impacted by the events of the claim and RSA's actions in not appointing the appropriate specialists sooner.

I've summarised the points I find relevant to my decision below for ease of reference only.

Mr H has said:

- RSA's actions have had a direct effect on his health by inducing a stress-related medical condition.
- The condition of the property with cracked walls and de-bonded render means he cannot enjoy the home due to concerns over the safety of the ceilings and the overall dilapidated appearance of the damaged spaces.
- He cannot proceed with repairs or redecoration until the claim is concluded.
- That significant upset was caused by having unnecessary arguments with the loss adjuster which have since turned out to be justified as the damage/claim was ultimately accepted.
- The damage has led to windows which cannot be opened and windows that cannot be closed, leading to concerns for security at the property over a prolonged period.
- The upset caused by having the original claim closed in December 2019 was crushing, along with the realisation he would need to start the same process again with a new loss adjuster.

Mrs H has said:

- She has lived with the uncertainty of the compromised lathe and plaster ceilings failing for an extended period.
- She has spent a significant amount of time dealing with the claim and on the correspondence required to try and move the claim forward, often without success.
- The emotional upset caused by having works confirmed in November 2019, followed by the events of December 2019 – closing the claim just before Christmas and telling them they'd need to start again was significant.
- The significant uncertainty caused over a prolonged period by the ground floor damage needing to remain untouched as it was their evidence.
- The frustration and upset caused by RSA's lack of action following their complaint in 2018.
- That there has been an impact to her family as a result of the delays to the planned redecoration works, which included disruption to her son's studies.

I find Mr and Mrs H's statements plausible and persuasive. I do accept there are certain aspects which don't fall into the scope of my decision and as such I've not referred to them above. For example, Mrs H has said she has incurred additional costs in renting a private room for her business and suffered delays in opening her business from home. But I can't see that RSA has had an opportunity to address this, so it will need to form a separate matter to this complaint. And I can't consider any potential additional costs linked to future home improvements and which haven't been evidenced.

In response to the statements, RSA said it hadn't been given the opportunity to investigate the impact to Mr and Mrs H. But I can see from the complaint correspondence that Mr and Mrs H did raise a number of concerns including the stress of the claim, the impact of RSA's timing in setting up a new claim, and the previous assurances that the repairs would be covered. I think that the onus here was on RSA to explore the issues as part of its own complaint investigation, so I don't accept that it's been prevented from doing so here.

Conclusion

Overall, I think the impact to Mr and Mrs H from the delays has been significant. They have been unable to move forward with the planned home improvements until the claim was concluded, and they've had to live with the damage for an avoidable extended period.

Since 2018, Mr and Mrs H didn't get any closer to resolving the issues with the ground floor damage, which has caused them a great deal of distress in the years since. And I think that Mr and Mrs H would expect the claim to be a lot further forward than it was by April 2020.

Considering all the above, I find our investigator's recommendation of £5,000 compensation total to be fair and reasonable. I think this award does fairly reflect the severity of the distress and inconvenience caused between the period the claim was made in November 2016, to the date of RSA's final response in April 2020.

Putting things right

In order to put things right for Mr and Mrs H, RSA must:

- Pay Mr and Mrs H £4,000 for the distress and inconvenience caused.
- Waive the £1,000 excess payment for the second claim, if it hasn't done so already.
- Reimburse Mr and Mrs H the cost of B's report, subject to evidence of the invoice being received. 8% simple interest should be applied to this amount, from the date the report was invoiced, to the date of settlement.

My final decision

My final decision is that I uphold this complaint. I require Royal & Sun Alliance Insurance Plc to put things right by doing what I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H and Mrs H to accept or reject my decision before 6 December 2021.

Dan Prevett
Ombudsman