DRN-3363946

The complaint

Mrs A complains that Royal & Sun Alliance Insurance Limited (RSA) has declined her home insurance claim for damage to her underground drains, has caused delays and provided poor customer service.

What happened

In March 2021, Mrs A contacted RSA to make a claim because her drains were backing up and blocked. RSA instructed its drainage experts (C) to visit the property to investigate. C attended two days later and was told by Mrs A that there appeared to be a blocked drain at the rear of the property. Mrs A showed C the septic tank and a disturbed area in the lawn where the soakaway was alleged to be located. C attempted to high pressure jet wash the drains but was unsuccessful. It left site and advised RSA that further investigations were required.

C attended again about a week later on 11 March. It noted the septic tank was above operating level and that all treated effluent from the tank discharged to a concrete distribution chamber before passing on to the soakaway approximately 7m downstream from the chamber. C drained the septic tank and was able to inspect it. It told RSA that the tank was in a fully operational and serviceable condition with no visual evidence of any structural deformation. Having inspected the tank, C used a CCTV monitor to inspect the drains downstream towards the soakaway. The monitor was only able to pass for about 1m before encountering mass root infestation blocking the pipe.

C recommended the removal of the mass root infestation and the installation of a resin impregnated structural liner to prevent further root intrusion. It also recommended a further CCTV inspection of the remainder of the pipework downstream to the soakaway to establish the condition of the remaining pipework and the soakaway.

In mid- September 2021, Mrs A complained to RSA about the way her claim had been handled and the delays she'd experienced. She said she had been left without use of essential facilities at the house as the drains were still backing up. Consequently she and her family had had to move into temporary accommodation. Mrs A said she'd been put to the inconvenience of having to make numerous calls to C to chase it up. And she said C had damaged the drainage field during its investigations.

C returned to site at the end of September 2021 and carried out the works it'd previously recommended. It then found a high-water level so it excavated the pipe at the 15m and 18m points downstream of the septic tank and found the pipe full of water. C reported to RSA that this proved the soakaway/drainage field was no longer working having failed gradually. C recommended the claim was declined. Mrs A also complained to RSA about its decision to decline her claim.

RSA looked into Mrs A's complaints but didn't recommend they were upheld. It said the various visits by C had all been necessary so that a full investigation could be completed and the correct decision about the liability for the claim reached. RSA said that having reviewed

the timeline it didn't think there had been any avoidable delays. And it said the cause of the damage was the gradual failure of the drainage field which wasn't covered by the policy.

Unhappy with the outcome of her complaint to RSA, Mrs A complained to this service. Our investigator looked into the complaint and recommended that it was upheld. He thought that RSA hadn't shown that all the roots had been cleared from the pipes and so hadn't been able to inspect them fully. So whilst he thought it was possible the drainage field had failed, he thought further investigation was needed to establish if this was the case. So he recommended RSA pay for Mrs A to appoint her own contractor to inspect, and report on, the drainage. He said RSA should then consider the report and if it was shown that the damage would be covered by the policy then it should arrange for repairs to be carried out.

Our investigator also thought there was evidence of delays, and poor service, in the way the claim was handled which had caused Mrs A and her family trouble and upset and meant she'd had to move out of her property temporarily. So, our investigator recommended that RSA pay Mrs A compensation of £500. He also said that if the new report showed the claim should be covered then RSA should reimburse Mrs A for any temporary accommodation costs she'd incurred along with the cost of the tankers she'd engaged to repeatedly drain the tanks.

Mrs A accepted our investigator's findings but RSA didn't. It said that the policy didn't cover the cost of proving a claim was valid but, if Mrs A could show it was, then it would look at making a contribution to any costs she'd incurred in doing so. RSA disagreed with the amount of compensation our investigator recommended because it said the complexity of the claim meant multiple visits were necessary, and various expert opinions were sought, in order to reach the correct decision on liability. RSA asked for the complaint to be reviewed again.

The complaint was passed to me and I issued a provisional decision in February 2022. I made the following provisional findings:

"With regret for the disappointment this provisional decision will cause Mrs A, I'm afraid I'm unable to agree with our investigator's findings and recommendations; I'll explain why.

This is a complaint with two parts; the first being about RSA's decision to decline the claim and the second about the poor service and delays Mrs A said she experienced. I'll look at each separately.

The claim

I have to decide if RSA has treated Mrs A fairly and reasonably in the way it has dealt with her claim. Not all damage a home sustains will be covered by a home insurance policy. Only damage caused by one of the perils (insured events) – fire, theft, flood etc. – is covered. Providing it can be shown that the damage being claimed for has been caused by one of the perils listed in the policy then the insurer must settle the claim unless it can rely on one of the policy exclusions to defeat the claim. The burden of proving any exclusion can be successfully applied rests with the insurer.

It is clear to me that Mrs A's drainage system is damaged; there has been a 'loss of function'. But the starting point for any claim is whether the damage being claimed for is covered by the policy terms and conditions. Mrs A's policy contains the following relevant term:

"The buildings are insured against loss or physical damage by the following causes: …

…12. Accidental breakage of drains and pipes and accidental damage to cables and underground tanks which are used to provide services to or from your home for which you are legally responsible…

…What is not covered…
Damage by gradual deterioration which has caused an installation to reach the end of its useful life…"

The policy defines 'accidental damage' as: "sudden, unexpected and visible damage which has not been caused on purpose".

Having reviewed the policy terms and conditions I think that the above peril is the only possible one in the policy that the damage Mrs A has claimed for can be considered under. It's my role to decide if RSA, based on the evidence available, fairly and reasonably declined Mrs A's claim for accidental breakage to her underground drains. Despite the disappointment I know it will cause Mrs A, I have to say, I think it has. I'll explain why.

The only expert evidence available about the cause of damage to Mrs A's drains is that provided by C. I can't reasonably ignore that evidence when reaching my decision. I've set out in some detail above the investigations C undertook, and the conclusions it reached. C said that after clearing the tree roots it'd identified in the pipe it found a high level of water to be present. Having made that discovery, it reasonably decided to investigate further by excavating the drainage pipe 15m and 18m downstream of the septic tank. On doing so it discovered a pipe full of water.

If the pipe was full of water, it is reasonable to conclude that it wasn't draining away into the drainage field/soakaway. This is what C concluded; the water in the pipe indicated the drainage field wasn't working and had failed gradually.

A soakaway/drainage field only has a finite lifespan as, due to its nature, the water flowing through it will deposit debris over time. This will eventually clog the soakaway and it will cease to do its job effectively. As the expiry of a soakaway is something that happens gradually it can't reasonably be said to be 'sudden'. This means the damage to the soakaway/drainage field (loss of function) isn't accidental in nature and thus is not covered by the peril I've cited above or any other of the perils in the policy. It follows that I don't think that RSA unfairly declined Mrs A's claim for damage to her drains.

Poor service

In its final response letter to Mrs A, RSA said its investigation had found no evidence of any avoidable delays. From my review of the evidence, I'm unable to agree with RSA's view. I accept that it wasn't straightforward for C to ascertain the exact cause of damage to Mrs A's drains. I accept too that it took a number of visits to try different ways of working out what was going on. But despite appreciating that ascertaining the cause of damage (and thereby establishing if it was liable) wasn't straightforward, I can't see why it took C seven months to do so.

From RSA's system notes I can see that there were numerous delays. For example, C failed to tell RSA that it had been out to Mrs A's property on 11 March and it wasn't until RSA chased it on 23 March that C told RSA about the visit, that it'd called Mrs A and was waiting a 'start date'. Presumably, from C's report, the work it was waiting to start was the removal of the root infestation the installation of resin liner and the further CCTV inspection.

I can see RSA's case handler chased C on 30 March and again on 14 April – and that nothing was happening. On 14 April C told RSA that it was planning on calling Mrs A the

next day to book the work in. It isn't clear to me why that hadn't been done 3 weeks previously. And RSA chased C again a week later to see if the works had been booked and was told: 'hopefully tomorrow'. I can see that through May 2021 RSA was waiting for a report from C and was repeatedly reassured that it was coming. And in June C told RSA that it needed to go out again to Mrs A's property – but there was no documented movement on the claim through June or July. C told RSA on 26 August that it was attending the following day but it wasn't until 2 September that it told RSA that further works were needed. RSA chased that a week later and C said it was hoping to book in the works that day. In the event, it doesn't look like C attended much before the end of September by which time Mrs A had complained about the delays.

Whilst I can see that RSA's case handler was proactively chasing C, the fact remains that C is RSA's agent. Consequently it is RSA that is responsible for C's actions (or lack of). And I think, as I've just set out above, it is evident that there was a reasonable amount of inaction on the part of C that caused avoidable to delay to Mrs A's claim.

I see no reason why the investigations undertaken by C couldn't have been completed much quicker than the 7 months they took. Realistically, I would expect investigations of this nature to have reasonably taken no more than 4-6 weeks. The delays appear to me to be due to the big gaps between each site visit rather than the complexity of the investigations needed.

So, whilst I think that Mrs A's claim isn't one that's covered by the policy terms, I do think that the delay in RSA conveying its decision on the claim to Mrs A caused her un-necessary distress and inconvenience. She has described the impact of that delay to us – the need to move into temporary accommodation because the drainage system wasn't working and the need to repeatedly have a tanker attend to clear out the system.

RSA accepted in its final response letter that Mrs A and her family has experienced distress throughout the period of the claim. And whilst all insurance claims attract a certain level of inconvenience, where an insurer, through its words or deeds, makes an already stressful situation worse, and causes avoidable trouble and upset, this service can require it to pay financial compensation to a consumer. I think the delays and poor customer service Mrs A experience did cause her avoidable trouble and upset and I think that our investigator's proposed compensation payment of £500 is a reasonable one in all the circumstances

Miscellaneous

Whilst I note that Mrs A has said that C broke a clay pipe and damaged her soakaway field she's not provided any documentary evidence of either. Without such evidence I can't reasonably uphold this aspect of her complaint.

My provisional decision

My provisional decision is that I intend to uphold this complaint in part and to make Royal & Sun Alliance Insurance Plc pay Mrs A compensation of £500 for the avoidable distress and inconvenience the delays in its handling of her claim caused her."

RSA replied to my provisional decision and said it thought compensation of £300-£400 was more along the lines of what it would look to offer. It admitted though that it had no further evidence to submit and that its thoughts about compensation were based on opinion and took into account the timescales for each individual visit. RSA said it agreed that the claim shouldn't have taken 7 months but each visit did require a thorough review and report so it didn't believe it was fair to include the time that all took within the overall delay period. It said it'd be happy with £400 compensation.

Mrs A, through her representative, replied to my provisional decision to say she wasn't pleased about the outcome. She made the following points:

- That the nature of the complaint had been lost over months of correspondence as the initial reason for complaining had been C's inactivity;
- Her primary concern was that works had not been completed despite fraudulent reports being issued by C;
- my decision is based on evidence containing inaccurate facts which she could reveal to be the case by obtaining her own independent drainage survey;
- That no additional further works were completed after the initial CCTV survey of 11 March 2021 and that included no installation of a structural lining or removal of root infestation;
- That there was no documentary evidence to prove C undertook such works (in the form or delivery notices, invoices etc.);
- There can be no CCTV beyond the first 3/4m of the 25-30 metre drainage run so an accurate survey hasn't been done;
- It would be standard procedure to carry out a further CCTV survey after putting in the new structural lining so as there isn't one, it can't be proved such work was completed. A similar situation exists in relation to the clearance of the mass root infestation – (which Mrs A believes was never cleared);
- The inspection holes dug at the 15m and 18m points were to confirm the system drained to a soakaway field rather than to identify a 'non-compliant' soakaway which would allow the claim to be repudiated;
- How could C confirm the pipe was full of water at the 15m and 18m points without damaging the pipe to see inside;
- That Mrs A's representative stood over the engineer when he broke into the pipe to find no standing water;
- Mrs A wants to instruct her own survey to dig inspection holes at the exact same point to confirm that the pipe beneath was damaged by C and she will film the process;
- Whilst she accepts a soakaway has a finite life she doesn't feel the investigations have established that this is the case in respect of her drainage system;
- That she had two horse chestnut trees felled 18 months previously and either they, or the machinery used to do so, could've caused sudden an and accidental damage to the underground pipes;
- The soakaway is located at the rear boundary of the property the other side of which is an agricultural field where heavy agricultural vehicles pass which again could've caused accidental damage to the underground pipe;
- The agricultural field has seen heavy rainfall so this could've impacted the drainage field;
- It is therefore clear that there are alternative reasons for the field's failure.
- That the expert findings are misleading, false and unsubstantiated;
- That it was unclear how the compensation figure of £500 was reached – she is still without a fully functioning drainage system and has been whilst pregnant and with a newborn baby. She was caused unacceptable stress and inconvenience;
- That the hours Mrs A spent on the phone dealing with the claim have been overlooked;
- Other inconveniences and damage should also be taken into consideration by me. Mrs A mentions that raw sewage sat in underground drains may have eroded mortar joints between pipes and the fabric of clay pipes themselves thereby significantly reducing the lifespan of the underground drainage system. She also mentions there may be impaired functionality to the septic tank as a result of the drainage field not working;
- Her policy excess of £250 was collected by C at the start of the claim and not returned when the claim was repudiated;

- That it is not the policyholder's responsibility to incur the cost of countering C's findings but if it is necessary to do so Mrs A would like this service to instruct her that it is necessary in the hope that any costs incurred would be recovered from RSA.

The complaint was returned to me for a final 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.

Whilst a compensation payment of £300-£400 may well be more along the lines of what RSA would look to offer, unfortunately it made no such offer when it had the opportunity to do so despite the evidence existing that there'd been poor claims handling (in the form of delays). I explained provisionally why I thought that compensation of £500 should fairly and reasonably be paid and nothing RSA has said in response to my provisional decision causes me to depart from the findings I made therein.

The evidence RSA provided doesn't support its comment that each visit required a thorough review and a report. I set out the chronology of visits in my provisional decision. And there is only one report in existence that I've seen (albeit one that was revised by C after a later visit) which itself isn't particularly lengthy. The comments it contains are to the point and, it's reasonable to assume, cannot have taken too long to provide. So whilst I've thought about RSA's comments that I shouldn't factor in the time taken to review and report after each visit I'm afraid I've seen no evidence that any such actions took place or, if they did, significantly contributed to the length of the claim such that I should be discounting the overall 7 month timeframe when thinking about the amount of compensation it should be required to pay. To do so, in the absence of specific evidence illustrating where the time was taken, would not be reasonable.

So whilst I've thought about RSA's comments in response to my provisional decision, they have not persuaded me to change my mind.

Turning now to Mrs A's response to my provisional decision, I set out in some detail provisionally what the nature of her complaint was – namely that she initially complained about the way her claim had been handled and then subsequently, later on, about its decision to decline the claim. So I'm unable to agree with her that the nature of her complaint became lost.

I appreciate that Mrs A's primary concern must be that the works are not yet completed but, unless her claim for damage is covered by the policy, it is not the responsibility of RSA to undertake them.

I know that Mrs A thinks that the report from C is fraudulent. I've seen the email exchange between them where Mr A, on behalf of Mrs A, states that references in C's updated report to the installation of the resin impregnated structural liner and the further CCTV inspection to report on the remainder of the pipework were fraudulent statements. Mr A comments that the report is silent on the dates and times engineers completed works and on the damage caused to the existing pipework at the 18m point on the run. I can see he invited C to provide evidence of when the works referred to were supposedly carried out.

C's report contains costings however - £730.83 for further investigation for example and £541.28 for repairs and sets out the works needed and undertaken. I can't ignore this report and its contents, that wouldn't be reasonable. Not without production of some evidence to counter what the report states or which supports Mr A's statements that the works reported

were never undertaken. I've also seen RSA's system notes so I can see the times and dates when C has told it that visits/works have been undertaken; namely 4 March 2021, 11 March 2021, 22 April 2021, 27 August 2021 and 30 September 2021. I appreciate too that Mrs A thinks it's suspicious that there's no documentary evidence from C (in the form of delivery notes etc.) to prove it did the works it claimed but as it was C that was carrying out the works, it's reasonable to assume it did so with its own equipment and supplies. So I wouldn't expect there to be any documentary evidence (aside from the report).

So whilst I note Mrs A's comments about the report containing fraudulent statements I can't reasonably make a finding that that was the case without seeing some evidence in support. And unfortunately, I've seen no such evidence that would allow me to reasonably agree with her view on this issue.

It is up to Mrs A if she wants to instruct her own expert to survey and report on her drains and the works C has reported it undertook. I can't advise her what to do as that isn't my role. I can only look at the evidence I'm provided with and reach a fair and reasonable decision based on what I see. But should Mrs A obtain her own survey and report and it supports her view that C made an untruthful report to RSA then I would expect RSA to consider it. But the decision on whether to do so rests with Mrs A.

C said it in its report that it undertook a further CCTV inspection of the remainder of the pipework serving the soakaway. Mrs A said it didn't. For the same reasons I set out above, I'd have to see some evidence that C was being untruthful about its statements to this effect in order to be able to fairly agree with Mrs A. It is reasonable to assume that the CCTV survey C said it returned and did was able to identify the pipe was full of water at the 15m and 18m points. The report makes no mention of C breaking the pipe open to establish that and Mrs A has provided no evidence to show that that's what happened. I know that Mr A says he stood over the engineer when he broke the pipe but no evidence – such as photographs – has been provided in support.

I know that Mrs A thinks that not enough investigation was carried out to confirm the soakaway had failed but C is a drainage expert and I can't, in the absence of any evidence to the contrary, reasonably ignore the content of its report.

The felling of the horse chestnut trees and the use of heavy agricultural machinery could arguably cause accidental damage to the underground pipes. However, there is no reported damage (aside from gradual tree root infestation which C removed and repaired) to any of the underground pipes at Mrs A's property. The damage identified is to the soakaway. It is the soakaway that has ceased to function not the drainage run. And whilst I note that Mrs A is of the view that heavy rainfall could've impacted the soakaway, there's no evidence that it did. Similarly I can only look at what has happened (and what has been complained about) and not what might have happened. So I'm not going to consider Mrs A's comment about raw sewage potentially corroding mortar joints or shortening the lifespan of the drains themselves. Any suggestion that this is what is happening seems to be purely speculative.

I appreciate that RSA's poor customer service caused Mrs A avoidable trouble and upset. The compensation figure of £500 was reached by having regard to this service's approach to compensation awards in general. Our awards are not intended to be punitive but to recognise levels of avoidable distress and inconvenience caused to customers by financial businesses. I'm satisfied, for the reasons I gave provisionally, that a compensation award of £500 is in line with awards made by this service in complaints of a similar nature and, taking all the circumstances of her complaint into account, fully recognises the impact RSA's poor customer service has had on Mrs A.

As the claim has been repudiated, RSA should indeed return Mrs A's policy excess. I understand from RSA that it instructed C to do so but if that has yet to happen, I would expect RSA to make sure it does without further delay.

Putting things right

RSA should pay Mrs A compensation of £500 for the avoidable distress and inconvenience the delays in its handling of her claim caused her. If it hasn't done so already, it should return her policy excess.

My final decision

My final decision is that I uphold this complaint in part and I require Royal & Sun Alliance Insurance UK Plc to take the steps set by me above in the *'putting things right'* section of this decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs A to accept or reject my decision before 20 April 2022.

Claire Woollerson
Ombudsman