

The complaint

Mr A complains that Royal & Sun Alliance Insurance Limited (RSA) have unfairly settled his claim on his buildings insurance policy following an escape of water. He wants the claim settled and compensation for the inconvenience.

What happened

In early 2018 Mr A says he noticed damp patches on the interior walls of his home. His builder carried out extensive works, replacing timber floors with concrete and stripping interior walls back to brick before boarding and plastering. But a few months later the damp patches returned. The builder applied a waterproof sealer before reboarding the walls but soon the damp patches returned. In August 2018 the utility company advised there was a leak from the water main under Mr A's house, which was his responsibility. Mr A called RSA on 4 October 2018.

RSA sent a contractor who rerouted the water main under Mr A's house. It said to resolve the damp problem a strip out was required. It installed humidifiers and heaters to dry the property. RSA agreed to provide alternative accommodation (AA) but says Mr A rejected a number of suitable properties, greatly delaying the strip out works. It says it eventually agreed to provide a more expensive property in order to progress the claim with AA not being in place until October 2019.

Much of what happened subsequently is disputed and with conflicting expert reports being relied on by RSA and Mr A.

In summary:

The main dispute relates to whether the property was sufficiently dry to enable repairs and what works were needed. RSA says the property was dry enough for work to start in February 2020. It said certain works that Mr A wanted were improvements, which the policy didn't cover. It said some initial plastering works completed by Mr A's own contractor then caused long delays. RSA says its contractor was ready to start in March 2021, but Mr A refused to sign the contract. RSA says this caused problems and costs for its contractor.

Mr A says he wanted to use RSA's contractor but not until the property was sufficiently dry for work to commence. In March 2021 RSA said it would stop the AA and cash settle the claim if Mr A didn't want the work to go ahead. Mr A says he didn't want the claim cash settled and complained to RSA. It rejected his complaint on 26 May 2021. It said it would cash settle the claim and end the AA on 22 July 2021, which allowed enough time for the necessary work to be completed.

Mr A referred his complaint to our service. He made a number of points, principally:

- RSA had cash settled the claim against his wishes, leaving him without contractors to complete the work and the settlement of £29,630 was inadequate and shouldn't be the final amount.

- RSA shouldn't have ended the AA when it did as works hadn't been undertaken.
- RSA's proposals to deal with damp rising through the floor were inadequate
- Prior to the leak and the damage caused he'd spent £40,000 refurbishing the property and that RSA should reimburse this wasted expenditure

Our investigator looked into it, but he didn't uphold the complaint.

He said RSA hadn't acted unreasonably in ending the AA around five months after its contractor had been ready to start repairs that were expected to take five to six weeks. He said the policy didn't provide for much of what Mr A wanted to be done. He said RSA had treated Mr A fairly as the purpose of his policy was to restore his home to the condition it was in before the leak, not to improve it. Our investigator said based on the scope of works required to reinstate the property he thought the settlement paid by RSA was fair.

Mr A disagreed. He provided expert reports and said various issues such as the electrical wiring, holes left in the paving and the refitting of his kitchen hadn't been considered. His most recent report, prepared by a surveyor, noted the dispute between experts as to what works were needed.

The report said the property was still excessively damp in some areas with damp trapped beneath waterproof flooring which should be lifted to facilitate drying. It said the moisture readings taken in March 2021 were too high to allow completion of repairs then. Mr A also said he was struggling to pay rent and bills whilst his home remained uninhabitable. He said no contractors were prepared to work on the electrics and his home had no gas or kitchen.

Our investigator considered the further evidence and points from Mr A. He said the complaint should be upheld in part.

He said RSA should take responsibility for the following works:

- Removal of the existing hallway floor
- Drying of areas affected by the original leak
- Installation of a new floor laid on a damp-proof membrane
- Provide AA during the works

RSA referred Mr A's reports to its own experts. It rejected Mr A's surveyor's conclusions and said the work recommended wasn't covered by the policy.

As RSA doesn't agree it has come to me to decide.

My provisional decision

I issued my provisional decision on 25 May 2022. I said:

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

Having done so, I'm planning to uphold the complaint in part. To be clear to Mr A I don't think RSA treated him unfairly by ending the AA and cash settling the claim. But there are several areas where further clarification is required as to whether the settlement amount is fair

before I make my final decision.

This is a complex claim with disagreement between experts on the works required. I've considered all the points made by Mr A including those further to our investigators second view. Mr A has raised concerns about the financial difficulties he faces in continuing to rent accommodation whilst his home remains unrepaired and I appreciate this is a difficult situation for him.

RSA has provided a detailed history of the claim, the specialist reports obtained, and its experts have refuted Mr A's surveyor's recommendations. At this stage, I'm persuaded by RSA's arguments although I think some further clarification over the electrical work and repairs to the holes in the paving is required. But on the main points I think RSA has treated Mr A fairly. I'm aware that this will disappointment Mr A, so I'll explain why I think this.

A large insurance claim requiring significant repairs is always going to cause a great deal of inconvenience and stress. I've thought carefully about what the main issues are from which I think many of the other complaint points arise. These are the works necessary to deal with damp and the ending of the AA.

The scope of works

RSA says by April 2021 Mr A had appointed a loss assessor and surveyor to act on his behalf. And, at a site meeting attended by all parties, there was consensus among the experts about what works were required. With only Mr A disagreeing that work should start. It says it sent the loss assessor a detailed email covering all aspects on 28 April 2021. This confirmed that AA would not be provided after June 2021, although in the end it continued until 22 July 2021.

If that isn't the case and Mr A's loss assessor was also in disagreement about what works were required, I will of course consider any evidence he can provide about this.

At this stage I think RSA made reasonable attempts to settle the claim fairly and complete repairs. It took steps to reassure Mr A that works could be started by instructing additional experts. A drying certificate had been provided by its specialist damp contractor. I think RSA is entitled to rely on the opinion of its experts. Had its contractors completed repairs, these would have been guaranteed. RSA says any ongoing dampness is due to the failure to carry out works and because the property has been left unheated and unventilated.

Mr A appears to have instructed further experts after the site meeting in April 2021. They disagree that the property was dry and on what works were needed. Particularly in respect of the hallway floor, recommending this should be dug out and a damp proof course (DPC) and concrete slab laid. RSA says the liquid DPC it proposed would be appropriate, with relaying the floor both unnecessary and betterment.

This is a relevant consideration, because as noted by RSA, Mr A's policy doesn't provide for betterment. Like most policies it indemnifies Mr A. This means it should put him back in the position he was in before the incident claimed for happened rather than make any improvements to the property. That said, our service expects insurers to provide a lasting and effective repair, rather than a short-term fix.

I think some of the solutions proposed by Mr A's experts would be betterment. And, it wouldn't be reasonable for me to tell RSA to undertake such work when its experts have recommended alternatives, that RSA would have guaranteed.

If Mr A wanted work done that RSA didn't consider necessary or which wasn't covered by

the policy, his alternative would be to take a cash settlement and either supplement it or economise elsewhere on the works. Mr A's surveyor estimated the cost of laying a concrete slab in the hall at around £2,000, subject to asbestos tests on part of the existing flooring. And, if Mr A wanted this improved solution, I don't think the additional cost prevented him from starting any repairs at all. Particularly as he faced monthly rental costs of around £1,500 once the AA stopped.

Having considered everything, I think the proposals made by RSA's experts would put Mr A back into the situation he was in before the leak, particularly if its contractors had completed the works. This would have provided Mr A with a guarantee and if there were further problems, RSA would be responsible for putting them right.

Ending AA

There were many delays over some two and a half years before RSA said it couldn't continue the AA when Mr A said he didn't want repairs to continue. I don't think RSA was responsible for these delays and I think it was right to conclude the issue was deadlocked.

So, I don't think it was unreasonable in setting a deadline to end the AA and to settle the claim, given its experts agreed repairs could be completed.

RSA advised Mr A he would need to arrange his own contractors if he didn't want RSA to do the work in February 2021. It urged Mr A to decide through March and April. It advised in March 2021 that the AA wouldn't be extended beyond May 2021, as its contractors were ready to start. In the end it continued AA until 22 July 2021, having given Mr A around four months' notice.

With works expected to take five to six weeks I think this was reasonable notice to allow Mr A to either make his own arrangements or to decide to proceed with RSA's contractors instead.

I don't think RSA acted unfairly in ending the AA when it did, and I don't think it should be responsible for Mr A's subsequent rental expenses after.

The settlement

RSA says it paid what it would have cost its contractor to do the work with Mr A refusing to allow work to start. Mr A says he wanted to use RSA's contractor and the cash settlement paid isn't adequate to complete the works. I've thought about what's fair here as it's likely that RSA can secure discounted rates from its contractors that most private individuals wouldn't be able to obtain.

If RSA wasn't prepared to undertake the works then paying a discounted rate wouldn't be fair. But RSA was prepared to carry out the works and guarantee them. So, it isn't reasonable to ask RSA to pay more than what its own contractor would have charged it to complete repairs, given it was Mr A didn't want the work to proceed.

Mr A had expert representation and I think RSA explained the situation to him clearly. And RSA agreed some works which weren't covered by the policy. So, I think it has acted reasonably in respect of the settlement amount, subject to clarification of the issues considered below.

The electrical works

The electrical wiring was stripped out and RSA says it has:

“confirmed to the customer we are meeting the cost of a full house re- wire”.

The initial (first fix) rewiring was done by RSA’s contractor. Mr A says issues with it mean he can’t find an electrician prepared to continue, preventing progress. However, Mr A has provided a quote from an electrician to complete the installation which does say the first fix “appears to be compliant”.

Mr A’s electrician and his surveyor say the wiring has been fixed on the walls below the ceiling, as though the intention is for it to be concealed by coving. The surveyor says this is irregular and it should be located in the ceiling void. It isn’t clear whether the electrician thinks this work should be redone as his quote to complete the installation doesn’t appear to reflect this. Mr A says the wiring wasn’t arranged like this previously.

I asked RSA about this. It said it didn’t have much information, but its contractor had carried out the first fix, which doesn’t come with any type of certification. As RSA has provided for a “full house re-wire” I think it should seek clarification from its contractor why the wiring was installed this way. If the previous wiring ran in the ceiling void, I think it’s reasonable that the rewiring be arranged in the same manner. If so, I think it’s fair that the work be either redone by RSA’s contractor or the settlement increased accordingly.

Other complaint points

Mr A has mentioned other outstanding matters. These are: holes in paving around the house following the rerouting of the mains water supply. Damage to items left in the kitchen. Damage to the kitchen floor. Whether his kitchen units can be refitted and that they may have deformed in storage.

Mr A says a display unit and fireplace surround were left in the kitchen rather than taken into storage and have been damaged. He hasn’t provided any evidence of this at this stage. RSA says its scope of works included steam cleaning of the kitchen floor tiles and a specialist repair to one damaged tile. It notes that prior repairs had already been made to the floor with something like “Polyfilla”. It said that Mr A’s own contractors may have damaged the tile, despite which it agreed to repair. So, I think this issue has been dealt with fairly.

I think it’s unlikely that the kitchen units will have deformed in storage. If they have Mr A would be able to take this up with RSA. He also says it will be:

“difficult to refit the old units in exactly the same position ... as the thickness of the walls has changed”.

It was Mr A rather than RSA that wanted walls plastered rather than reboarded and skimmed as they were before the claim. So, if minor adjustments are required to refit the units as a consequence, I don’t think this is an unreasonable outcome in the circumstances.

It isn’t clear whether repair of the paving was included in RSA’s settlement, if it wasn’t, I think it should be to put Mr A back in the position he was in before the claim.

Putting things right

I think RSA should consider the issues relating to the rewiring and the holes in the paving if it hasn’t already done so and either arrange repairs or increase the settlement accordingly. If it has addressed these issues or is not responsible for the wiring it should provide evidence of this.

I asked both parties to let me have any further information or comments they wanted me to consider.

Response to my provisional decision

Mr A said he was very disappointed by my provisional decision and provided a detailed response including comments from two experts acting for him. I've summarised his main points and my findings on them below.

RSA said it agreed with my provisional decision and it was happy to consider the issues relating to the wiring and the holes in the paving. It said it was happy to instruct a specialist contractor to repair the hole in the kitchen tile.

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.

Having done so, I've decided to uphold the complaint in part, largely along the lines of my provisional decision. I know the financial consequences for Mr A are significant and that he will be greatly disappointed by this, but I need to act fairly to both sides.

I still consider the main issue to be whether the next stage of repairs could commence in the February – April 2021 period. The ending of the AA payment and Mr A's other complaints arise from that and on the whole, I don't think RSA has treated Mr A unfairly. But there are some outstanding issues that I think RSA should address, which I will outline below.

I've taken account of everything Mr A has said including the additional evidence he's provided. So, the key issue is whether work could continue. Mr A hasn't provided any evidence to counter the recommendations made by RSA that it could. And new evidence from Mr A confirms that his original expert also agreed following the site meeting in April 2021, that RSA's proposals would "*rectify*" the remaining damp issues and that works could commence "*without delay*".

Mr A retained two further experts some months later, who proposed the alternative solution of a new DPC and concrete floor. But neither have said the proposals from RSAs experts were inappropriate. The policy requires that Mr A be put back in the position he was in before the claim and provide a lasting and effective repair. There's no evidence that this wouldn't have been achieved had RSAs contractor undertaken the work it was ready to start.

As Mr A refused to allow work to commence, I think RSA took the fair and logical step of cash settling this long running claim instead. It gave advance notice of this and time for Mr A to change his mind and I'm mindful that Mr A did have his own expert representation during this period. I think what has happened subsequently is a consequence of Mr A's decision not to undertake repairs. So, I don't think RSA can be fairly held responsible for any ongoing deterioration of the property or increased labour and material costs since then.

I think having advised it would cash settle the claim, RSA continued to pay for AA for a reasonable period to allow Mr A to complete the works to make his home habitable. However, I think Mr A's surveyor has made a relevant point about the loss of a Minton tiled floor in the hall and RSA should consider this as part of the claim. I'll expand on this below.

Mr A's response points

Mr A reiterated many of the points he had already made. I've considered everything he's said and summarised what I consider to be the main points below with my comments following in italics:

- He disputed that he had caused delays in arranging AA or completing works, except that he didn't want repairs to start until his home was suitably dry. *To a large extent the undoubted delays before February 2021 when RSA advised final works could start are now academic. Mr A was in AA for much of that period, works were undertaken that RSA didn't consider necessary or that weren't covered by the policy. But after the February- April 2021 period all experts then involved, including Mr A's, agreed that works could commence. Mr A didn't agree and wouldn't allow work to start. He'd already complained to RSA about its decision but doesn't appear to have appointed other experts to offer alternative advice until around four months after the April 2021 site meeting.*
- He said he hadn't been able to arrange works whilst RSA was considering his complaint, made on 5 March 2021, to which it didn't provide a final response until 26 May 2021, with the payments for AA ending on 22 July 2021. *But during this period RSA did engage, I think constructively, about his claim. A site meeting was held with his own expert where RSA proposed solutions to the damp issue as detailed below. All the experts agreed work could commence, with these expected to take 5-6 weeks. And AA wasn't ended until over twelve weeks after this meeting and around eight weeks after RSA's final response to his complaint. I think Mr A was given a reasonable period to complete works to make his home habitable before RSA stopped payment of the AA.*
- He provided photographs of a sideboard and fireplace surround which had been left in the house rather than stored. *These do appear to be damaged. I asked RSA about this and it said the items should have been taken into storage along with some light fittings which had been broken. It said it was happy to consider the replacement cost of these items and that it had advised Mr A this was the case previously. It isn't clear why it hasn't, but to progress this, Mr A should obtain estimates for the replacement of these items and forward them to RSA.*
- He said RSA had never provided him with a drying certificate. *I asked RSA about this and it provided a copy of the drying certificate which has been forwarded to Mr A. RSA said this had originally been provided to its contractor who was ready to start the work as it would require a sight of it. It said as Mr A had never provided it with an estimate from his own contractor it hadn't sent it to him.*
- He asked for copies of RSAs expert reports and comments. *These have been provided to him.*
- Mr A confirmed that he had used an expert to act for him before RSA cash settled his claim. Initially it said the property was too damp for repairs to commence in February/March 2021. Mr A later shared its report about this with his other experts and our service. But, *Mr A's expert changed its opinion at the site meeting in April 2021. Mr A says it was clear his expert and RSA's claims handler knew each other, and that RSA had unfairly influenced his expert to change its opinion.*

The expert advised by email on 26 April 2021 that the remedial works proposed by RSA including the laying of a liquid DPC would "rectify" the issues and that:

"I believe the works that ... have recommended will put the property back to a pre-loss condition and that the rectification works can commence without delay."

I think it's unlikely that a qualified professional would change its opinion without it being appropriate to do so. And, I think this is strong evidence that RSAs proposals were fair and reasonable.

- *Mr A questioned why the opinions of experts appointed by him were being dismissed but RSAs experts were being accepted. I've considered the input of all the experts carefully and impartially, including the new information from Mr A's original expert.*

After Mr A appointed further experts there was a difference of opinion about how repairs could be undertaken. But I haven't seen any evidence that says the further proposals made by RSA (in respect of the liquid DPC) would not be effective. Or wouldn't achieve a lasting and effective repair of the type our service expects an insurer to provide under this type of policy. And that's a key consideration here.

RSA needs to act reasonably, and I think it has done so by appointing specialist experts to advise on appropriate repairs. Repairs it would have guaranteed had its contractors completed them.

- *He asked that I appoint a totally independent expert to assess the damp floor. I don't think further expert reports are necessary given the further comments from Mr A's experts considered below. And the majority of the experts involved have already concluded that work could commence in April 2021.*
- *Mr A provided further comments from two experts who I'll refer to as B and R. R attempted to reopen the claim with RSA in August 2021, but I don't think its further comments add anything new. B is a surveyor who'd questioned the original approach to repairs. B had said removing the floor at outset to repair the leaking pipe would also have expediated drying, providing a quicker and more cost-effective solution overall. B acknowledged it was not fully conversant with the history of the claim but said removal of the floor in the hallway and replacement with a new concrete floor was a "pragmatic" solution to the damp.*

But B hasn't said that RSA's proposal in respect of the liquid DPC were inadequate or that repairs couldn't have been undertaken if this had been applied. B also accepts that a new concrete floor and DPC would be betterment, which the policy doesn't provide for.

However, B noted that a period Minton tiled floor in the hallway would be covered by the liquid DPC (it would also be lost if replaced by concrete). And the cost of replacing these tiles - to put Mr A back in the position he was in before the claim - would probably be higher than the installation of the new concrete floor B had suggested and which Mr A was happy to accept as an alternative.

I asked RSA about this. It agreed the Minton tiles would be covered by the liquid DPC. It said at the time of the incident these tiles had been covered by laminate flooring. The replacement of which was included in the settlement, as it said Mr A hadn't previously expressed concern about the tiles. I note Mr A agreed to the tiles being drilled to check the moisture levels beneath, suggesting he wasn't overly concerned about them at that time. RSA said if Mr A wanted to claim for the uplifting and replacement of the tiles and provided an acceptable estimate it would be happy to settle this on receipt of an invoice for supply and fitting.

I thought about what's a fair approach here. The Minton tiles were covered at the time of the water leak, but not permanently as the laminate could have been easily removed at any time. And in the opinion of RSA the tiles act as a DPC that required augmentation by a liquid DPC that would effectively permanently cover them to enable the repairs to be completed. So, I think it's fair that their loss be reflected in the claim. As RSA decided to cash settle the claim, I think it's reasonable that it also pays the estimated cost of replacement with comparable quality tiles including standard installation.

This means RSA won't be responsible for any additional ground works which might be betterment beneath the tiles, but that Mr A is put back in the position he was in before the leak. If RSA has included the cost of replacement laminate flooring in the settlement already paid, I think it's fair that it offsets this against the cost of the replacement tiles.

Mr A had expressed concerns about the adequacy of the RSA's proposals rather than the loss of the Minton tiles. So, I don't think this prevented any works being undertaken. Including the replacement cost in the settlement fairly resolves the issue as whatever solution was undertaken to augment the DPC, so repairs could continue, appears to sacrifice the existing tiles.

- *Mr A said because of the issues with the wiring and the damp floor his home wasn't habitable and that the AA should have been continued until it was, as provided for by his policy. The experts considered the liquid DPC and some other minor remedial works to the new plastering would enable repairs to be started and completed within five to six weeks. And, had the Minton floor tiles been lifted and replaced as RSA has now confirmed it is happy to consider, I don't think works would have taken much longer to complete.*

AA was continued for around twelve weeks after Mr A's expert agreed repairs could commence. I think this gave adequate time for any arising issues or snagging on the first fix electrics to be rectified.

RSA will consider the wiring, and this should include any remedial works to walls and ceilings necessary. I wouldn't normally expect this type of rewiring work to be so disruptive that AA would be required even if completed after the other works. I certainly don't think it is fair and reasonable that RSA should be required to pay AA from July 2021 to date because of issues with the wiring which Mr A's own electrician described as "compliant".

Putting things right

RSA has agreed to consider the wiring, the holes in the paving, the replacement cost of the items not taken into storage and to send a specialist to repair the hole in the kitchen floor tile. I think these actions fairly resolve these issues.

I think it's fair that RSA covers the cost of the uplift and replacement of the Minton floor tiles including standard installation and Mr A should obtain two estimates for this and provide these to RSA for it to settle this aspect.

But I don't think any of these issues have prevented Mr A from undertaking any work at all on the property. There is no evidence that RSA's proposals regarding the liquid DPC were inadequate and wouldn't have achieved a lasting and effective repair. And, subject to the

loss of the Minton floor tiles being fairly reflected in the settlement I think the works would have put Mr A back in the position he was in before the leak.

I don't think RSA has treated Mr A unfairly or unreasonably in concluding that the claim was deadlocked and deciding to cash settle it. I think it continued funding AA for a sufficiently long period for him to have been able to complete repairs to make his home habitable before AA ended.

My final decision

For the reasons I've given above and in my provisional decision, my final decision is that I uphold this complaint in part against Royal & Sun Alliance Insurance Limited.

I direct Royal & Sun Alliance Insurance Limited to:

- Arrange for its contractor to inspect and complete remedial works to the first fix wiring to reflect the previous installation and make good plasterwork and decor as necessary.
- Arrange for the specialist repair to the damaged kitchen floor tile.
- Settle Mr A's estimates for the replacement of the damaged items not taken into storage.
- Settle Mr A's estimate for the uplift and replacement of the Minton floors tiles with tiles of equivalent quality.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 4 August 2022.

Nigel Bracken
Ombudsman