DRN-3593811

The complaint

Ms S complains that Royal & Sun Alliance Insurance Limited (RSA) failed to deal with her building insurance claim properly, following an escape of water at her home. She also complains RSA's contractors negligently caused further damage to her home and contents.

What happened

Ms S first had an escape of water at her home in 2017 and made a claim to RSA following this, and later a complaint regarding problems she'd experienced in her claim journey. She brought her complaint to us, with a Final Decision issued in February 2019 requiring RSA to pay Ms S various amounts.

Shortly before this, in January 2019, a further significant escape of water occurred at Ms S's home – a water pipe in the loft fractured. The house was empty at this time, and the leak appears to have continued for many hours until discovered and stopped. By then, water had damaged most rooms in Ms S's home, also causing significant further contents damage.

RSA's agents attended Ms S's home about one week after the leak to assess the damage and attended some days later to deliver some drying machines. However, about one week later, Ms S discovered the ceiling in one of the bedrooms had collapsed, causing further damage. It soon transpired the ceiling contained asbestos, and specialist surveys found that asbestos particles had been inadvertently spread to other areas of Ms S's home.

It was initially intended RSA would repair Ms S's home from the damage caused by the 'second' incident – she had already received settlement to cover the cost of repairs following the 'first' incident. However, for various reasons the relationship between Ms S and RSA broke down irretrievably towards the end of 2019 and all subsequent contact between the parties was through this service. No repairs had been undertaken, and Ms S's home remained uninhabitable. Also, the contents claim had not been resolved.

Ms S had in fact raised her complaints to RSA many months before this, in the weeks after the leak – which I very broadly summarise as follows:

- RSA didn't show enough urgency in the early weeks of the claim – there were missed appointments, and the loft area (where the leak occurred) wasn't properly inspected.
- And because the loft area wasn't properly inspected, opportunities to identify it was saturated were missed, meaning opportunities to prevent the ceiling collapse – and subsequent asbestos contamination - were missed.

RSA's response said it still needed to investigate the claim in order to determine liability. And it had attempted to book a site visit on many occasions without success, asking Ms S to be available for one otherwise her claim couldn't progress. Ms S was unhappy with this response, as it failed to address any of the complaints she had raised. So, she brought this 'second leak' complaint to us quite soon after the leak occurred.

One of our investigators attempted to broker a way forward, but with little success. Ms S became unhappy how RSA was dealing with her contents claim, believing their agents had

failed to list all the water-damaged items taken from her home for disposal and/or cleaning. She felt items had been lost, or even stolen, and the 'final' lists provided by RSA didn't provide a complete list of the items taken. And Ms S was also unhappy, believing RSA's contractors had negligently spread asbestos debris throughout her home, causing further damage to her contents, most likely meaning most of her contents would need destroying.

An investigator issued her view on this case in July 2020 upholding Ms S's complaint, although both RSA and Ms S disagreed with most elements of that view. And after a further period of exchange between the parties, the case was passed to me to review.

By this time, it was March 2021. However, I concluded the case wasn't ready for a meaningful decision to be compiled. The property had remained untouched, undried, with asbestos contaminated contents still inside it for over two years by this point. Any assessments undertaken by RSA on the condition of the house, and the contents inside, would by now be out of date. And given the potential, due to the passage of time, for further deterioration in the fabric of the house to have occurred, I decided that updated assessments were needed. And this included the need for a full whole-house asbestos survey – RSA's previous one only focussed on certain rooms.

Conscious of the breakdown in relationship, and that Ms S remained firm in wanting to avoid dealing with RSA, I set out what I felt was a pragmatic 'route-map' that would allow this complaint to be resolved. I felt any decision I issued needed to provide complete finality for both parties – no awards contingent on the provision of certain evidence or actions. And no need for the parties to interact if the decision was accepted by Ms S. And as both parties had by this time agreed a cash settlement was the preferred option, this meant being in a position to confidently state how much cash RSA needed to pay Ms S in relation to every element of her claim. So, I suggested that the following needed to happen – broadly accepted by both parties – to get to that position.

- There needed to be an updated building survey.
- Ms S should engage her own surveyor – paid for by RSA – to work with RSA's surveyor to agree on the scope of works (SOW) needed to repair the house. 'First' and 'Second' claim damage would need to be separated, where possible.
- Once the SOW was agreed, Ms S's surveyor would be engaged to manage a tendering process for the work – it being accepted the amount to be paid by RSA needed to cover the cost of local tradespeople, rather than be costed using RSA's approved 'book-rates'. RSA would then agree to meet the cost of one of the tenders.
- Ms S's chosen surveyor would also project manage the whole house repair program (so, damage caused by both claim events), again being paid by RSA for this work.
- That RSA would engage their own specialist asbestos contractor to revisit the house and undertake a full house survey. And further this contractor would be engaged to list and dispose of all contaminated items still within the home.

I asked Ms S to source three surveyors to work on her behalf, so RSA could agree which one they'd be willing to pay for. However, this task proved problematic for Ms S for various reasons. So, I asked RSA to provide details of three local surveyors for whose work they could vouch, for Ms S to choose from. Despite her efforts, Ms S was still unable to provide specific details of any surveyor she wished to engage – whether suggested by RSA or sourced by herself. So, no work was undertaken to re-assess her house, or compile an updated schedule of works.

Attempts were also made to progress the contents elements of this claim. When RSA's agents first removed damaged contents in 2019, they were split into 'beyond economical

repair' (BER), and those capable of restoration. No agreement had been reached on the respective valuations, and no settlement paid to Ms S. And it was clear the values initially attached to the BER items didn't reflect Ms S's policy provided new-for-old cover and undervalued her items.

Ms S was asked to re-value the BER lists, and the 'restoration' lists. She provided updated values, which were sent to RSA. They agreed with her valuations for most of the items, applying a wear and tear deduction against the clothing items of 50%, which Ms S didn't agree with. RSA has now made payments totalling £30,000 to Ms S as part-payment towards her total contents' settlement. And Ms S has also provided valuations for the clothing items that were to be restored, which RSA has validated. But no actions were taken to list, dispose and value the contents that remain in the house.

RSA has also now placed Ms S in a hotel, from October 2021 – initially for six months (with an option to extend to nine months) and paid a subsistence of £24.95 per day – and paid six months upfront for this.

However, despite the efforts of all parties involved, many of the fundamental aspects of this claim didn't progress as anticipated in the months after my involvement. I didn't think it was fair to either party to have to wait indefinitely to get to the position I'd originally envisaged, and decided it appeared in *all parties*' best interests to issue a provisional decision, based on the information I currently had to hand – and applying fair and reasonable judgement in reaching outcomes where there was no information. This second claim had been ongoing for approaching three years, and both claims for about five years – that's five years with Ms S being out of her home.

I issued this on 2 December 2021, and whilst RSA accepted some of things I'd said, Ms S rejected every element of the decision. Significant exchanges with both parties have since taken place, which I address in more detail below. But first, I repeat below the salient parts of my provisional decision.

My provisional decision:

> "*The nature of this claim, and the events and communications that have taken place, is such it's not possible to deal with the issues in a strictly chronological way. Instead, I've separated these and will address them individually – even though there is some overlap between them.*
>
> *<u>What happened shortly after the leak – and the collapsed ceiling</u>*
>
> *The sequence of events, in terms of notifying RSA of the leak, and their/their agents' subsequent actions in the following weeks – including visits to Ms S's home - are well known between the parties, so I won't repeat these here. But I will address whether, as is claimed by Ms S, RSA were negligent in what they did, or didn't do, in those initial weeks.*
> *It's not in dispute RSA's agents attended in the days after the leak was reported. It was known the leak came from a burst pipe in the loft area, and clear that significant water damage had occurred. However, from what I can see, no attempt was made to access the loft area at this time to check on the damage that had occurred there. And Ms S discovered the ceiling had collapsed in her bedroom just under two weeks later.*
>
> *Ms S thinks RSA were negligent by not checking the loft area when they first visited, and by not doing so, they missed an opportunity to identify the ceiling was saturated and at risk of collapse. RSA say there was no evidence of ceiling saturation when they visited. Clearly, I can't say what would have happened had the loft been*

accessed and checked when RSA's agents first visited the house. But I do think it's clear an opportunity was lost to identify the extent of the damage that existed in the loft.

It was clear the house had experienced a significant leak coming from the loft area. And given the extent of water damage in the property, I think it seems more likely than not the loft area would have been particularly saturated – after all, it would have taken the initial force of the leak, and significant amounts of water would most probably have settled there. That being the case, I'd have expected RSA's agents to have been alive to that fact and think it would have been reasonable for them to have checked the loft area as a priority.

But that doesn't mean I can safely conclude the collapse would have been prevented as I have no way of knowing that. But I do think given the size of the subsequent collapse – which most likely could only have been caused by a significant concentration of settled water in that area of the loft – it seems more likely than not it would have been identified as an area of risk/concern had it been inspected. And because it wasn't inspected, an opportunity to take precautionary measures – move items from the room or seal it off – was missed.

The next issue to address is the asbestos contamination. I've no way of knowing whether the existence of asbestos would have been identified had the loft been inspected. This only became apparent to all parties after the collapse – in other words it hadn't been identified as a risk after the leak, or indeed at any time in the many years previously whilst Ms S was living there or in previous claims. That being so, I can't fairly conclude RSA would most likely have identified the existence of asbestos had they undertaken the loft inspection.

So, at this point, I think RSA were responsible for not checking the loft, and not taking appropriate steps to limit the damage that could have been caused by the damaged loft/ceiling collapsing – and no more.

But after the asbestos was identified, following the collapse, I think RSA's agents then made a number of fundamental mistakes in how they then dealt with the after-effects of the collapse. I think the mistakes made here significantly contributed to the initial delays in the case – which I deal with later, and which played a part leading to the breakdown in the relationship between RSA and Ms S, and the claim delays that followed.

I'll deal with how this affected Ms S and her claim later in this decision, but now want to deal with the asbestos contamination issue.

<u>Asbestos cross-contamination</u>

The first mention of asbestos I can see on the file is in the first week of March 2019 - Ms S said that one of RSA's agents had told her asbestos might be in the ceiling. RSA instructed an asbestos contractor to assess the damage nearly two weeks later.

By this time, RSA were aware of the seriousness of Ms S' various health conditions – they'd been raised in the 'first' claim, and were clearly mentioned again, multiple times, by her in a formal complaint letter to RSA at the beginning of March 2019. So, I think RSA should have been fully aware of the significantly heightened risk that asbestos exposure would have on Ms S's health. And, having been made aware of the possible existence of asbestos, I think it should have taken reasonable steps to minimise that exposure or risk. But I don't think it did.

RSA had instructed the asbestos contractor by the end of the second week of March and advised Ms S that they're still waiting for the results a week later, following receipt of which Ms S was told "I will be able to arrange for the ceiling to be removed".

In the meantime, RSA's general contractor advised Ms S their staff will attend in April to remove the damaged contents. But three days before this, RSA emailed Ms S to confirm that asbestos debris have been found and that it would:

> *"instruct the specialist firm [who undertook the survey] to undertake the removal of the remainder of the ceiling, the debris and the contents that have been in contact"*
>
> *And*
>
> *"Prior to the removal, the rest of the contents will be attended to by [the general contractor]…This will allow [the asbestos contractor] clear and safe access and avoid any potential for cross contamination".*

I think this is an important statement, as it confirms RSA acknowledged the asbestos-damaged bedroom needed specialist attention. In other words, RSA's general contractor wasn't permitted or qualified to deal with asbestos-related materials – they were only to be instructed to deal with the remainder of the home.

However, the general contractor did attend a few days later as originally instructed and proceeded to remove/list all the items from the contaminated bedroom. Items were also moved to other rooms. In other words, items that were heavily asbestos-contaminated were moved throughout Ms S's property without any apparent care given to minimise cross- contamination, and in doing so contaminating other areas of Ms S's property.

As I've said, RSA were aware of the potential existence of asbestos some weeks beforehand, were clearly aware of Ms S's health risks, knew that the property had tested positive for asbestos, and had admitted that the matter needed to be handled by their expert asbestos contractors. Notwithstanding this, RSA allowed their general contractor to undertake a full contents removal exercise – or at the very least failed to ensure this contractor only undertook limited defined tasks (as above). It soon became clear significant further contamination damage was caused to Ms S's contents. And a recent assessment confirmed asbestos traces in most rooms too. Because of Ms S's extreme health conditions, there now appears no option – accepted by RSA - but to dispose of most of these contents.
This issue has, I believe, contributed significantly to Ms S's extreme distress during the lifetime of this claim. It has meant many more of Ms S's contents have needed to be destroyed than should have been necessary (more below on that), and it significantly contributed to the subsequent delays in this claim (again, more on this below). This element of distress was avoidable had RSA taken better steps as I've indicated above.

<u>Contents Claims</u>

A significant proportion of Ms S's contents have been damaged beyond repair. There was the initial water leak, and further damage caused by the asbestos cross contamination. This has meant that I began by considering elements of the contents claim differently.

Ms S's policy provides 'new for old' cover, however "for clothing a deduction may be made for wear and tear". The policy doesn't define 'clothing' or what the levels of deduction are.

In the early weeks of the claim, RSA removed a large quantity of water-damaged items, the BER items and those for restoration. There were many exchanges between Ms S and RSA regarding these items. However, no contents-settlement payments had been made to Ms S by the time I got involved in this case, not least because the initial settlement suggested by RSA didn't include 'new for old' values, and significantly undervalued some of Ms S's items.

Since my involvement, the BER and restoration items – removed from the house at the beginning – have been revalued. Ms S was invited to propose values for every item on the various lists that RSA's agents had compiled. These were then passed to RSA for validation.

The 'BER' list

RSA accepted Ms S's suggested valuations for many of the items on this list, and provided alternative prices, with internet links to specific similar products for some others. And RSA applied a 50% wear and tear (W&T) deduction to all the clothing items on each list. They've also applied a 50% reduction on some hair care and make-up products and perfumes.

Ms S thinks the wear and tear deduction is too big and undervalues her clothing. She doesn't think the deduction should apply to shoes, or the other items mentioned above. And she thinks some of the retailers RSA have referred to, when reducing their valuation of some of her items, were of an inferior quality to the shops she purchased her items from.

I've already explained to Ms S that I think a 50% reduction is a fair one in principle in that it fairly recognises her clothing has built up over many years, and some items will have experienced greater W&T over time than others. And I've explained that I consider footwear to be an extension of 'clothing' – I consider clothing to generally refer to items 'worn', and shoes/boots are items that are clearly worn on the feet. As such, I think any W&T deduction for footwear is fair and in line with what Ms S's policy allows.

And I explained that the retailers RSA has used when valuing her items were established high-street names, and so seemed to provide fair comparison values. That said, I explained that it was open for Ms S to provide evidence to counter what RSA had said – evidence that a significant proportion of her clothing was new, or evidence to show she'd purchased some household items from more expensive retailers than what RSA had referred to for instance.

This request has only been made recently, and Ms S hasn't substantively responded yet. And by me now deciding to issue a provisional decision based on the information I have, it effectively limits Ms S's opportunity to undertake the necessary enquiries to enable her to provide evidence to support a higher valuation of her BER contents. And I can't discount the fact she may be able to do this – including after this provisional decision is issued.

So, in the absence of any such evidence, but conscious that I may be limiting Ms S's ability to provide this, I think the fair outcome here is to reduce the W&T deduction to

40%. I also think the W&T deduction applied to the hair, cosmetics and perfume items should be removed. The W&T deduction applies to clothing only – which these are clearly not.

Ms S initially valued the BER list at £38,435. RSA's validation exercise resulted in a valuation of £24,071. The amendments I've mentioned above increase the value of the BER items to £25,150. So this is the amount I think fairly represents the value of the items listed, and is the amount I think RSA must pay to Ms S.

The 'restoration' list

Similar to the above, Ms S was provided with a list of the items that had been removed for restoration. It's now been accepted by RSA that, due to asbestos contamination, these items should also now be classed as BER. Ms S valued the list at £23,060.

Ms S thinks these shouldn't be subject to a W&T deduction, because many of them are asbestos-damaged. I disagree. These items were removed at the same time as the BER list - at the time primarily because they'd been damaged by the leak and collapse. They had been damaged as a result of a 'claim event', and as such should be dealt with as such - meaning the W&T deduction can be fairly applied. This differs from the items in Ms S's home that subsequently became damaged beyond repair as a direct result of the actions of RSA's agents – which I deal with below.

RSA validated the items, and again sought to discount some of these, including clothing at 50% W&T. RSA has also applied a 50% clothing W&T deduction against various bags and a suitcase, and has again re-valued some household items based on retailer values. RSA's re- valued amount is £16,873. Ms S has only very recently had sight of this revaluation as it has only very recently been received, so has not yet had the opportunity to reply.

I don't agree that 'bags' or a suitcase should be classed as clothing – they are clearly not items of clothing, and so the 50% W&T deduction needs to be removed. The policy doesn't contain anything else that says accessories should be subject to a W&T deduction.

And, for the same reasons as I've mentioned for the BER items, I think a 40% W&T deduction is appropriate. Applying these changes increases the value of the items to £18,145 – an amount I think fairly represents the value of the items listed, and is the amount I think RSA must pay to Ms S.

Items removed and unaccounted for

Ms S has repeatedly stated, from the early days of this claim, that RSA's agents lost certain items, made listing mistakes, and even stole some items when they removed items from her home in 2019. She has provided many photographs of items (taken before the leak) that she believes haven't been accounted for. On the other hand, RSA have made enquiries with their agents who have confirmed that every item they removed from Ms S's house was included in either the BER or restoration lists.

I fully appreciate the strength of Ms S's feelings here. And I think, having read the various exchanges from the time, the contents removal exercise was chaotic in places. And I think it's entirely possible, in the confusion that existed at the time, some items were removed (and destroyed as BER) that weren't – unintentionally -

properly listed. I've seen no evidence of any theft – and I make no further comment on that allegation.

I had intended to address the issue of 'unaccounted for' items after the house had been reassessed and remaining asbestos/damaged items listed and disposed of. In other words, after an up-to-date inventory had effectively been undertaken – which had the potential to uncover items that Ms S believed had been lost. By issuing this provisional decision now, that opportunity has been lost. I'll deal with this matter further below.

Items remaining, unlisted, in the house

Ms S's house still contains a considerable amount of contents that haven't been listed, and which are damaged and BER. It's been accepted by RSA in exchanges that anything remaining in the house that is either clothing, or material based (soft furnishings, furniture items) should be disposed of. As most rooms are confirmed to be asbestos-contaminated, these items will be beyond repair.

The problem is that, by now issuing a provisional decision, this will prevent a listing exercise taking place. So, I need to make a fair and reasonable assessment of what I think the value of the remaining items is. Fortunately, I've seen photos of most rooms in the house, taken recently by RSA's asbestos contractor, and others from Ms S earlier in the claim. So, I can see there remains a considerable quantity of contents that will likely need to be disposed of. And to these 'material' items, I'd also add any remaining electrical items too – I think they are more likely than not to contain asbestos traces, and so are likely beyond repair too.

Taking into consideration the quality of many of the items already recorded on the '2019' lists, and the apparent quantity of remaining items from the photos – and including an allowance for any items that were mislaid (as mentioned above) during the 2019 exercise - I think a fair and reasonable estimate for these items in total is £25,000.

And as I wouldn't have applied any W&T deduction to any 'clothing/material' element of this part of the claim – the items remaining in the house have all been asbestos-contaminated through what I've already said were the actions of RSA's agents, so the policy-allowed deduction wouldn't apply – no deduction of this amount needs to be considered here.

Ms S's house also contains various 'hard-material' items – pictures and furniture that may be capable of cleaning and restoring. I appreciate Ms S believes, due to the passage of time and extent of asbestos contamination, nothing can now be 'saved' within her home. But if any items are capable of being safely cleaned – to the extent they could be tested and confirmed as being asbestos-free – this is all that RSA would have needed to do when settling this claim. And I can't discount this option would have been a possibility had the updated assessments taken place. So, I think it's fair to also make an award that covers the likely cost of an appropriate asbestos deep clean in relation to some of the furniture items remaining – and I think this amount should be £2,000.

So, to summarise, I think RSA should pay Ms S the further sum of £50,295 (£25,150 + £18,145 + £25,000 + £2,000 less the £20,000 contents part payment already paid) in full settlement of Ms S's contents claim. Interest at 8% simple must be added to all elements of this settlement (except the £2,000 cleaning allowance), calculated from the date of the claim to the date of payment.

Alternative Accommodation

Ms S was already living in alternative accommodation when this second leak occurred – she'd been there for close to two years by this point, following the first leak. However, Ms S hasn't provided any evidence of any rental agreement for her to reside there, any evidence of any regular payments to a landlord during this second claim period - aside from one £5,000 bank transfer - or any communications between the landlord and her regarding her living arrangements. As such, aside from initial hotel and a few isolated payments at the beginning of the first claim, Ms S hadn't been paid anything by RSA for her accommodation for over four years.

As part of this claim, Ms S said that she'd been verbally promised a daily subsistence fee in lieu of rent – which is something her policy doesn't provide for. And there is no evidence of this in any of the exchanges I've seen on the file. However, I'd made it clear to RSA that I felt it was unfair that Ms S had been left to source and pay for her own accommodation for over two years, with no discernible effort having been made by RSA to provide any financial assistance– despite her policy clearly allowing for her to receive accommodation assistance.

I've since had many exchanges with RSA and Ms S – relating to the type of accommodation she'd like, to the negative health impacts the issue was having on her. I don't need to repeat these here. It has now recently been agreed (Oct 21) RSA would pay for Ms S to move to a hotel of her choice, for the next six months, with a further three months to be considered, which RSA would pay for directly. And RSA have already paid six-months of daily subsistence to Ms S in advance, as mentioned above.

This was arranged and agreed on the basis the full 'reassessment' of Ms S's home would take place and was calculated based on it taking about three months for the reassessment and tendering process, and a further six months for the work to be carried out. By issuing this provisional decision now, that process won't happen. However, the work that would have taken place – clearing the house of asbestos contents, a new scope of works, obtaining quotes, and then the repairs – will still need to be undertaken. So, I think the timeframe for these actions is unlikely to differ greatly from the nine months I'd originally suggested.

And because paying for Ms S's accommodation whilst her home remains uninhabitable following the leak - and factoring in some of the damage was caused by RSA contractor negligence - is something her policy provides for, I think RSA should continue to pay Ms S's hotel accommodation, and daily subsistence, for the full nine-month period. This is at least the length of time it would likely have taken to get to the position of Ms S's home being fully repaired had the claim processed smoothly from the time of the claim event. So, I think it's fair and reasonable that accommodation expenses for this length of time is paid now. So I'll be asking RSA to pay Ms S's hotel accommodation costs, in full and in advance, up to 23 July 2022. RSA have already paid Ms S £4,574 as six-months advance subsistence, and so I think must now pay her the remaining three-month subsistence - £2,238.

I'm also asking RSA to reimburse Ms S the £5,000 mentioned above. Whilst there is no evidence this was in lieu of rent, I'm prepared to accept it's likely connected to a payment for Ms S's right to live at the property – it's the only payment I've seen covering this claim period. But, because Ms S has been unable or unwilling to provide any other evidence covering this period, I won't be asking RSA to pay Ms S any other rent expense.

Other day to day bills/items Utility bills

Ms S has provided some copy utility bills to evidence the amounts she's been paying in her temporary accommodation. But, these aren't complete up to the time she left for her hotel accommodation. This means I'm unable to calculate precisely what extra costs she incurred in her 'rental' period that RSA needs to reimburse her for.

So, what I intend to do here is use the figures that formed the basis of the award in the first claim. In this, the ombudsman saw evidence (as have I, having reviewed the file) and calculated that Ms S has incurred the following extra amounts – Gas £10 per month (pm), Electricity £136pm, and Water £39pm (£185pm in total). So, whilst utility prices have changed during this time, the difference between what Ms S originally paid in her property compared to what she paid in her rented accommodation would more likely than not be similar to before.

In the first claim, Ms S was paid these amounts up until the end of July 2019, which means I only need to consider the period between August 2019 and 23 October 2021, the date she moved into the hotel. This is a period of 27 months. So, I'll be asking RSA to pay Ms S £4,995 (£185 x 27) for the excess utilities she has incurred.

Service charge

Evidence was provided in the first claim Ms S paid this on a monthly basis, and Ms S was awarded this sum. In this case, I haven't seen any evidence that Ms S has continued to pay this sum, although she has confirmed in exchanges with me that she did pay it. So, I intend to award Ms S a sum to cover this expense, but this is dependent on her providing evidence of her continuing to have made the payments up to the time she left the property. But if Ms S doesn't provide any such evidence, I won't be awarding this sum.

Council Tax

I understand council tax (CT) remains payable at Ms S's property – at an enhanced rate due to it having been empty for so long, in addition to Ms S being liable for CT at her rented property. The amount Ms S has paid, above the 'usual' CT liability that she would have paid at her home, is an additional cost covered by her policy. But I need Ms S to provide evidence of how much she has been paying for both properties, and I will then calculate and award that sum in my final decision. This will include an amount covering the 'excess' over what she would have paid during the next nine months too.

Fuel

Ms S's rental property, and now the hotel she is staying at, is some miles from her own property. So, it's likely there'll be/have been some extra fuel costs incurred above what Ms S would have incurred had she been living in her property. I think £30pm is a fair award to cover this extra expense, which I'll award up to the end of the nine-month 'repair' period. So, I intend to award Ms S £1,080 for extra fuel costs (£30 x 36(27+9) months).

Laundry

A sum of £10 per week (pw) was awarded in the first claim to cover laundry expenses (Ms S had advised there was no washing machine at the rental property).

In this claim, she's asked to be paid more – closer to £30pw given the need to use separate washes and extra dry cleaning. I think £30pw (or nearly £125 pm) is too much for laundry, but will instead award £10pw as before, which I think fairly covers the likely laundry costs Ms S would have incurred. Dry cleaning of items would likely have been paid regardless of whether Ms S was living at her property or in rented accommodation. So that means I'll be asking RSA to pay Ms S £1,550 for laundry costs - £155 at £10pw.

Damage to Ms S's garden

Ms S was awarded £800 for repairs to the fence and garden in the first claim. Ms S says the garden has continued to deteriorate, and she's concerned that her neighbours' gardens may now be affected – as her garden now may encourage infestations, and the structural damage to her fences may impact on their properties. No work has been done on the garden since the first claim settlement, not least because of access restrictions caused by damaged (and likely asbestos-contaminated) contents blocking entry. So I've no doubt the condition of the garden has likely deteriorated during this second claim period.

But Ms S has already been paid to repair her garden and fences – and this is essentially all that still remains to be done here, notwithstanding the condition of the garden may have worsened. Accordingly, I won't be awarding Ms S any further garden repair costs.

The buildings claim

This is the most difficult part of this claim to deal with here. The facts available haven't moved on since RSA's assessment of the property in 2019 that informed their settlement offer. This offer, and the rationale behind it, was rejected by Ms S. It was initially intended, by both parties, that RSA would carry out the repairs caused by this second leak, and discussions eventually proceeded on this basis. But RSA concluded it was impossible to separate, in many cases, damage caused by the first leak from damage caused by the second one – in many cases the second leak had 're-damaged' already affected areas of the property. And the cost of the repairs for this initial damage - £56,466 - had already been paid to Ms S as part of the first claim settlement.

RSA concluded the only way to proceed was to cost the complete repair and undertake the work on that basis. RSA say they used established rates to cost the (total) work, and that initially resulted in a smaller total cost than had already been paid to Ms S in the first claim – where the scope of works was obviously less. However, after altering certain costs (plumbing and electrics) to include what Ms S's chosen contractor had quoted in the first claim, and including amounts for drying and asbestos removal costs, and surveyor fees to manage the repairs, the total cost was increased to £69,279 – an increase of £12,813 over what Ms S had been paid in the first claim. This included the amounts necessary to replace the damaged ceilings and deal with the remaining asbestos issues.

RSA said they'd undertake the whole repairs, but asked Ms S to repay the £56k she'd already been paid. Ms S refused, as she believed the first payment was paid – under a legally binding ombudsman decision - specifically for first-claim damage, and so RSA had no right to ask for its return. It was at this point Ms S immediately broke off all contact with RSA.

I can understand why RSA thought this was a pragmatic way to proceed, especially as it was offering to undertake all of the repair work from that point on. Having read the exchanges at the time, I think it was a genuine attempt to find a way forward that was in Ms S's best interests – albeit one Ms S was entitled to refuse as she'd been paid the first-claim sum as a final settlement in that claim. But I think it does reinforce how unlikely it was that the second claim damage could somehow be separated from the first – both in terms of separating the work, and the separate cost of it.

Which brings me to now. In the absence of substantive progress in Ms S's attempts to source a surveyor, to kick-start the 're-assessment' process, I must start my calculations of what RSA must pay now by referring to parts of the 2019 settlement number – the only meaningful numbers available. But they are just a start.

I want to first make clear the sum Ms S was paid in the first settlement was after a full tender process using Ms S's own suggested contractors. And the ombudsman explained why he thought the amounts quoted were reasonable and ordered payment of that sum. So, that sum is notionally 'ring-fenced' for the 'first-claim' work.

As I've already said, it's impossible to separate second from first claim damage (ceiling damage aside), so the best I can reasonably do here is estimate what I feel is a fair sum that will cover the increase in damage caused by the second leak. In attempting this, I can be guided by some of the figures in RSA's 2019 assessment.

It's clear the property hadn't been completely dried out at the time, and further professional drying was needed. Whilst it may have dried naturally by now, I still think a professional drying process will be needed. Drying was costed at £1,000 in the 2019 assessment. Given the passage of time, I'm inclined to increase this sum to £1,250 here.

The property will also need professional asbestos removal, which RSA allowed £1,675 for. However, given the involvement of an asbestos expert is likely going to be much greater now than anticipated in 2019, this amount will need to increase.

Firstly, the property will now need to be securely cleared of all the asbestos-contaminated contents, which given the quantity of items still in the house will take time. And these will need securely destroying too. Finally, the property will need to be subject to a full asbestos deep clean or decontamination process. This is a lot of specialist work, and so I'm inclined to increase this element of the award to £5,000.

I now need to consider the cost of the extra building repair costs. This includes the cost of a full ceiling removal/disposal and replacement – likely using asbestos expert contractors. I haven't seen the breakdown of RSA's ceiling replacement costs, so I've checked trade websites to find out average costs for this type of job. I think an asbestos removal survey will be needed and based on internet research I'll award £250 for this. For the actual removal, I've seen it should cost an average of £50 per m2 in the UK. I'll increase this to £65 per m2 here given the location of the property. I don't know how big Ms S's home is but am aware it's an average sized 3-bedroom property, so I will calculate the cost based on the upstairs floor area being 50 m2. This being the case, I intend to award £3,250 (50 x £65) to cover the cost of the ceiling replacement.

This leaves the remaining water-related damage to be costed. Here, in the absence of an updated schedule of works, I can only provide what I think is a fair and reasonable estimate. So, taking into consideration the likelihood that the fabric of the property has suffered due to the passage of time, I'm going to award £18,000 here

for the remainder of the work needed. I appreciate Ms S may think this won't be sufficient. However, I must factor in that a significant proportion of the second claim damage wasn't 'new' damage – the leak 're- damaged' many areas that had been damaged previously, and for which repair costs had been included and paid in the first settlement.

However, I also accept that some areas suffered greater damage in the second claim than had been experienced in the first claim, and so there would be a notional 'extra' cost attached to any new repair undertaken for these. And in these specific circumstances, it would have been correct to deduct what had been paid in the first claim for these repairs from the cost of the new repairs. And there will be some new areas of water damage too that would need to be paid for in full in this settlement.

So, taking all the above into consideration, I think £18,000 provides a fair estimate of the likely extra repair cost. This means Ms S will have been paid a total of £74,466 to cover the cost of repairing the internal damage to her home (with the ceiling cost in addition to this). And as agreed in exchanges with RSA, I'm also going to award a sum to cover the cost of Ms S employing her own surveyor to manage the whole repair process. The total repair cost is £77,966 (£56,466 from the first claim, plus £18,000, £3,250 and £250 as above). A surveyor would usually cost 12.5% of a contract, so I'll award £9,746 (12.5% of £77,966).

Distress and Inconvenience

I know Ms S has experienced severe emotional and mental distress throughout this claim period, and I'm truly sorry that she's experienced this. She strongly believes this is all attributable to the way RSA have dealt with her – the delays they've caused, the negligence of their agents, their refusal to answer her questions, and refusal to accept responsibility for the claim. She remains adamant that every delay in the process is essentially RSA's fault.

I agree with some of the things she's said. As I've already discussed, I think RSA's agents acted negligently in how they dealt with the contents listing/disposal. I think this fractured an already strained relationship between RSA and Ms S, as she lost trust in the ability of RSA and its' agents to act safely and appropriately. The 'asbestos issue' created extra avoidable delays in the claim process, and I don't think these were of Ms S's making. And more of her possessions were destroyed than should have happened.

And I don't agree with some of the suggestions RSA said at the beginning of the claim that Ms S wasn't making herself available for meetings, and by doing so was frustrating the progress of her claim. Whilst exchanges between RSA and Ms S were challenging, even in the weeks immediately after the leak, I've seen enough of them to satisfy myself that Ms S was making sufficient efforts to make herself available.

I've also seen some exchanges concerning the return of drying equipment that caused Ms S considerable upset. The issue went on for many months, admittedly not helped by a degree of intransigence on both sides – Ms S demanding answers relating to the quantity of dryers on her property before agreeing to allow access for their collection, and RSA's agent appearing to simply ignore the request. It culminated in RSA's agents submitting an invoice and demanding Ms S pay them £75,000 for the units in her possession. Aggressive legal threat letters – suggesting theft charges would be laid - followed.

It was known Ms S's emotional and mental health was suffering by this point, and conscious of that the way RSA's agent communicated with Ms S on this subject was unnecessarily aggressive and threatening. I fully accept it caused her great and avoidable distress.

I also think it unfair Ms S received no payment whatsoever from RSA in relation to this claim until my involvement over two years later (the £20,000 contents payment), or even made any meaningful effort to engage with her on this subject. RSA was aware of the terms of the 'first' ombudsman award and what payments it covered, and also that Ms S's living arrangements (and financial obligations) remained the same in this second claim – and so should have known what expenses she was incurring that her policy allowed her to be repaid for. Instead, Ms S was left to fund these expenses without assistance, which I accept caused her some distress and hardship.

But I do think some of the delays that hampered this claim were caused by Ms S as well. In particular, I think her decision to cut all ties with RSA, after they'd suggested she consider repaying the first claim settlement funds as part of their offer to undertake all of the repairs, was counter-productive. I understand she thought RSA were trying to by-pass the first ombudsman's decision, but it meant any possibility the repairs could continue at that time disappeared. So, I don't hold RSA responsible for all of the subsequent claim delays that occurred after this point.

So, in summary, I think there were many instances, particularly in the first 12 months of the claim – and given what RSA knew about Ms S's conditions - where RSA's treatment of Ms S fell below a standard I'd expect. And Ms S experienced significant and avoidable distress as a result. Placing a monetary figure on distress is not an exact science, and this service doesn't 'punish' businesses where we think they've caused distress.

However, taking all of the above into consideration, I think the sum of £3,000 fairly reflects the level of distress and inconvenience Ms S has experienced, and I think RSA should pay that to Ms S"

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.

Both parties provided detailed comments for me to consider following receipt of my provisional decision, with Ms S' response spanning many hundreds of pages. And she has since provided significant quantities of further information, with photos, for me to consider. RSA have also provided comments. I'll reference these below as necessary. I'll address the key issues in the same order as in the provisional decision.

I'd like to thank both parties for the time taken in providing their responses. I can assure both parties I've read and carefully considered everything I've been provided with, but I won't be responding here to *every* point raised – that would be impractical in the circumstances. No discourtesy to either party is intended by this. Instead, I will be concentrating on what I believe are the key points that require my consideration so I can reach a fair and reasonable outcome here where RSA – within the scope of what Ms S' policy covers – pays Ms S sufficient to allow the damage caused by her 'second' leak to be repaired, her damaged contents replaced or repaired, and other expenses paid as necessary.

When reaching my provisional conclusions, and similarly now in this final decision, I've wanted to bring finality for both parties – so they can walk away from each other, once and for all. But I need to be satisfied the amounts I'm awarding – particularly for building repairs and contents valuation – are correctly valued. In respect of the building repairs, that means enough for Ms S to engage her own contractors to repair her home and return it to the condition it was in prior to the leak. And, conscious Ms S's policy provides 'new for old' contents cover, to provide a sufficient payment – policy limits and conditions permitting – to allow her contents to be replaced (or repaired if their condition allows).

Ms S was particularly aggrieved I'd departed from my intended 'route map' and I'm sorry this caused her such distress. She initially remained adamant I should reinstate this and restart the two key tasks she believed are "claim critical" – the instruction of independent surveyors to prepare an updated and fully costed schedule of works, and a full contents disposal and revaluation exercise. Ms S was very concerned that, without these, it would be impossible to accurately identify what works were now needed to her home, and value her contents.

She strongly believed I'd significantly undervalued her contents and building repair costs. Whilst it was known bedrooms two and three in her home contained many items of clothing, and other contents, the potential value of these was only mentioned in post-provisional decision correspondence - Ms S advising these bedrooms contained many hundreds of items of higher-value clothing, including designer and bespoke items. She said the remaining value of her wardrobe contents was close to £50,000 alone, and there was further mention of total remaining contents in the home (discounting the items removed in 2019 and mentioned in the provisional decision) possibly being worth more than £100,000.

Of course, these statements were made without a detailed listing exercise having taken place and were based on Ms S' recollection of the remaining items in her home. And I must recognise they were variously made at a time of significant distress for Ms S, particularly in terms of her mental, physical and emotional health.

But, if true, they created a potential for Ms S to have under-insured her contents, or put another way, to have failed to alert RSA that the value of her contents were greater than what she'd declared on her policy. RSA wanted a better understanding of the contents value, which as the insurer is something they are entitled to insist on - prompting a review of the contents settlement sum, and the level of cover Ms S' policy provided. Both issues resulted in multiple exchanges with both Ms S and RSA given their importance, and the potential effect they could have on how this complaint (and claim) is progressed. So, I'll comment on those issues now before addressing the complaint in detail.

Ms S' policy limits her contents cover to £100,000. She said this figure is irrelevant in the context of this claim. She said this was the default maximum level of cover available when she took out, and then renewed the policy (this is correct). And a distinction should be drawn between the value of her contents damaged as a result of the leak event, and those contents damaged by the actions of RSA's agents – and the £100,000 limit applied only to the former.

RSA referred to the Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA). They commented Ms S may have been 'under-insured', which depending on the circumstances of what she'd said to RSA when taking out (and renewing) her policy, could mean RSA had a legal right to cancel the policy, or settle her claim on a pro-rata basis.

So, Ms S was asked to clarify her comments on the value of her contents. She advised that, in December 2016 when she took out the policy, she believed the total value would have been no more than £100,000 – possibly close to, but not more than that sum. She is unable to provide evidence to prove that, which I think is understandable given the passage of time. Ms S' contents weren't made up of high-value single items, such as jewellery or artworks

(where receipts and prior valuations may be expected), but instead multiple items purchased over time where receipts are unlikely to have survived a six year period.

On that basis, coupled with the fact it would be difficult to prove the value of her contents *weren't* less than or equal to £100,000 in 2016, I'm persuaded by Ms S' testimony – her contents were probably worth no more than £100,000 in 2016. So, as at that date, I believe she'd most likely insured her contents for at least the correct sum and wasn't under-insured then. RSA have now implied they accept this too.

After the first leak/claim in 2017, some of these contents were destroyed. Ms S received about £24,000 in settlement. Accordingly, her 'remaining' contents would have been worth no more than £76,000 immediately after the first claim.

Ms S was asked if she'd replaced any of these items, conscious she didn't receive settlement until the beginning of 2019, some two years after the leak, and hadn't been residing in her home throughout the whole period. She advised she had, between both claims, been using her own funds to purchase various new items – clothes, ornaments, and some replacement small electricals. She'd stored some in her home, in anticipation of being able to undertake the first-claim repairs and move back in – the place she'd been renting was smaller than her home, and she wanted to keep as many items in her home as possible. The items purchased weren't individually of excessive value, and receipts weren't kept. Also, she'd rotate clothes between her home and the rented address. Ms S was keen to stress that, up until the second claim (when she became aware of the asbestos issue), she had no reason to avoid visiting her home, even though she couldn't live there. And no reason to think storing some newly purchased items, in anticipation of returning, was a risky idea.

I asked Ms S how much she'd spent on new items in the period between both claims. She wasn't sure exactly but thought she'd have spent quite a few thousand pounds - she explained she was accustomed to regularly spending on clothes and contents. I've no reason to doubt the honesty or accuracy of that statement. I'm persuaded that Ms S had likely spent thousands of pounds on various new contents items.

Which brings me to the issue of contents value at the time of the second leak. Because of what Ms S had said about potential current values, RSA now wished to list and value the items remaining in Ms S's home and considered reserving their rights in relation to her claim.

They also expressed concerns about the condition of the remaining contents, and in particular the clothes remaining in bedrooms two and three. RSA questioned if these *were* asbestos damaged, suggesting they'd remained secure in 'closed' wardrobes and drawers. RSA initially said they wanted to test these for asbestos, but realised this was impractical. And I told RSA it remained my view, for the reasons stated in my provisional decision, that all 'material' items in the house were more likely than not asbestos contaminated. Exchanges then took place to identify practical arrangements for listing and valuation of the remaining contents. RSA suggested instructing asbestos experts to attend, but they weren't *valuation* experts. And RSA had concerns about asking a valuation expert to attend a contaminated site. I asked RSA to explain how they'd overcome these conflicting considerations, but they've been unable to suggest any workable solution. So, the potential issue of valuation and under-insurance remained.

To try and address this, I asked Ms S to clarify some of the statements she'd made regarding valuations. She confirmed that some of her recent statements mentioned what she felt current '2022' valuations were, rather than the values when she renewed her policy in 2018. Ms S referred to recent world events having caused significant increases in the costs of various items, and given her policy provided 'new for old' cover, was referencing what she

felt were the current costs. She said, echoing points she'd made regularly, she felt many of her contents items now cost two or three times what they'd have cost in 2018.

Whilst I don't agree clothing/furniture/small electricals have increased by those levels in the past four years, and Ms S hasn't provided any detailed evidenced comparisons to support her statement, I'm satisfied her honestly-held opinion would have helped form those enhanced contents valuations. And Ms S has since reconsidered and confirmed that, taking into account the above, her total contents would have been worth no more than £100,000 – either before the first claim in 2017 or the second (this) one in January 2019.

So, considering all of the above, I'm satisfied Ms S was unlikely to have been under-insured when she renewed her policy, and accordingly that the value of her contents were most likely worth no more than £100,000 at that time of the second claim.

But that doesn't mean I can reasonably conclude her contents *were valued* at £100,000 as at the date of the second claim. And having considered recent exchanges on this subject, I think they were most likely worth slightly less than that. I'll explain.

Ms S accepted her contents were valued at about £100,000 in December 2016, and she lost £24,000-worth of these. As I said above, it follows her remaining contents were worth about £76,000. This is a new for old policy, so by the time of the second claim (or more precisely the renewal immediately prior to the second claim in December 2018) the replacement value of these remaining items would have likely increased. Allowing for inflation between the two claims of approximately 2.5% per year, this would result in the value of those remaining contents being about £80,000 when her policy renewed in December 2018.

I think Ms S would have moved some of her personal items, and a reasonable quantity of clothing, into her rental property shortly after the first claim – after all this is where she lived for approaching two years before this second claim. Notionally, this would have reduced the quantity and value of contents still in her house when the second leak occurred. But I also accept some new items were purchased and stored in the property. This includes new clothes purchased, and clothing generally being rotated to account for different seasons.

Ms S said she purchased items that would have increased the value to £100,000, but she hasn't been able to evidence these purchases. And whilst I believe she made these purchases I can't fairly conclude she made as much as £20,000 worth of contents purchases in the two-year period without some evidence to support this.

But for the purposes of this decision, I do need to settle on a figure of what I think Ms S' contents were worth at the date of the second claim – to help frame how I approach the calculation of the value of her contents losses in this complaint. I accept this isn't an ideal approach, and the calculation of the value of items purchased between both claims is arbitrary. However, it's one that is necessary to allow this claim/complaint to be brought to a conclusion in a timely manner.

So, it's my conclusion Ms S increased the value of her contents *as at the date of the second claim* to £90,000 (so, an increase of £10,000, equating to an average monthly spend on new contents of about £400).

So, to be clear, I think Ms S was most likely appropriately insured as at the date of the second claim. And that, notwithstanding RSA's wish that they list and value the remaining contents in Ms S' home, I haven't been presented with a practical solution that would allow that to happen. And I think a reasonable conclusion is that Ms S' contents were valued at £90,000 when the second leak occurred. That all being so, I'll now proceed with addressing the merits of Ms S's complaint, and both parties' response to my provisional decision.

The events after the leak, and subsequent collapsed ceiling/asbestos contamination

RSA have raised a number of matters relating to the chronology of events they feel are material to my consideration of this complaint. These focus on the exchanges between Ms S and RSA's agents in the weeks after the leak. In particular RSA says the main bedroom ceiling was checked and showed excessive moisture levels (along with the walls). But it didn't show any evidence of movement or cracking that indicated it was at risk of collapse.

RSA confirmed the loft area wasn't checked until after the ceiling had collapsed, but also say the loft area, upon inspection (after the collapse), showed the beams and insulation were dry. Photos have been provided that appear to confirm this. I note what RSA appears to be implying (although not expressly stating) here – that even had the loft been inspected (pre-collapse), there was nothing to suggest the collapse was imminent.

However, by its' own admission RSA noted the ceiling contained excessive moisture, and I still think – in these circumstances where the severity of the leak was evident from the outset – RSA should have checked the loft area. I appreciate there's no way of knowing whether such an inspection would have alerted RSA to the risk of ceiling collapse, especially given the dry insulation. But the lack of inspection meant RSA's experienced contractors didn't conduct an immediate assessment of the area where the leak occurred.

I remain persuaded *it's more likely than not* RSA's contracting experts would have identified at the very least a heightened risk of collapse had they done so. But I still can't safely conclude the collapse would have been prevented.

The next issue to address is the asbestos contamination. I've no way of knowing whether the existence of asbestos would have been identified had the loft been inspected. This only became apparent to all parties after the collapse – in other words it hadn't been identified as a risk after the leak. That being so, I can't fairly conclude RSA would most likely have identified the existence of asbestos had they undertaken the loft inspection.

So, at this point, I still think RSA were responsible for not checking the loft, and not taking appropriate steps to limit the damage that could have been caused by the damaged loft/ceiling collapsing – and no more.

Delays in the initial progress of this claim

I now want to address a key theme that has existed throughout the claim – who is responsible for the delays that have occurred in its progress. Both parties hold each other responsible – Ms S doesn't believe she's responsible for any delays, whereas RSA do accept some things could have been done differently, particularly regarding early communications and the asbestos contamination matter.

The issue is important because of the length of time this claim has taken, and the financial ramifications it has in terms of what I think RSA must pay Ms S. I've considered what both parties have said, both before and after my provisional decision, and I remain of the view that both parties have contributed to the delays.

I've already said that RSA's agents' actions in causing asbestos cross contamination caused significant delays. I think it's highly likely, were it not for their actions, this claim/complaint would have concluded significantly earlier. Relations between RSA and Ms S were already strained before that point following the first claim. This, together with how the content and removal exercise was conducted by RSA's agents only made matters much worse, and played a key role in Ms S' unilaterally choosing to cease contact with RSA in October 2019,

and insisting that all communications moving forward were via this office. But that decision, too, had a significant effect on the delays.

It's important to recognise Ms S (or any policyholder) is required to provide whatever reasonable assistance RSA deemed necessary to assist in the progress of her claim. This is one of the terms and conditions of Ms S' policy – it's a fundamental part of any insurance policy. Whist I appreciate Ms S had lost faith in RSA, that doesn't mean she became entitled to ignore this policy requirement. Instead, Ms S insisted all further communications were through our investigator. This created extra delays that weren't the fault of RSA.

And I should add here the ombudsman service is set up to informally and impartially resolve disputes. It's not to act as a claims handler or claims representative for a consumer, which is what Ms S was in essence asking our investigator – and later myself, to do. I have no doubt that Ms S's actions in ceasing contact with RSA, however justified she felt them to be, had a material impact on the length of this claim.

The difficult question is in apportioning how much of the delays are a result of each party's actions. This is an important exercise because RSA are required to reimburse Ms S for certain expenses she's incurred over the life of the claim. But I don't think it's fair RSA pay expenses for periods where I conclude Ms S was responsible for the delays. However, the claim journey is convoluted to say the least, and there are no clearly defined periods. But I must still arrive at a reasonable conclusion here.

So, I'm going to focus on the period between Ms S first raising her complaints with RSA (February/March 2019) and our investigator issued her view (July 2020), a period spanning 17 months. Having looked at the evidence, I think a fair conclusion is that Ms S helped cause six months' worth of delay here, and RSA aren't responsible for meeting any of Ms S' expenses for that six-month period ("the six-month period").

But I think the following period, from July 2020 to the present date, should be viewed differently. Where a complaint has been brought to us, it's generally because a business hasn't been able to satisfactorily settle a consumer's claim/complaint. That consumer's right to complain is set out in the DISP Rules. Where this happens – where a consumer remains unhappy with how a business has dealt with them – our approach is to expect a business to continue to reimburse a consumer any reasonable expenses they are incurring until their complaint has been finalised. That often takes a long time, especially where the matter is complicated, but that isn't the consumer's fault. And this is what happened here.

What this means, in practical terms, will become clearer below when I address what I think RSA should pay Ms S for the expenses she's incurred during the lifetime of this claim.

Contents – BER, Rest lists, items missing and unaccounted, and items remaining

This element can be broken down into two distinct parts – the items that have already been removed, listed and valued (the BER and Restoration lists), and those items that remain un-assessed in Ms S's home.

RSA agreed with the £50,295 total further settlement amount I provisionally awarded. Ms S did not. RSA reiterated that a W&T deduction is permitted for clothing items, as per the terms of Ms S's policy. But still Ms S believes any W&T deduction is unfair – the second leak was caused as a direct result of delays in processing the 'first-leak' claim, and had the claim been processed properly she'd have started repairs to her home before the second leak occurred. She also says it's unfair because many of her clothes that have been destroyed were hardly ever worn. And, as she holds RSA responsible for the ceiling collapse, she

doesn't feel there should be any W&T deduction to the 'Restoration' list – which she says almost exclusively contains items from her main bedroom damaged by the ceiling collapse.

To begin with, Ms S' policy permits RSA to apply a W&T deduction to clothing items, notwithstanding the deduction amount being undefined. So, a W&T deduction is in line with what Ms S' policy says. I hear what Ms S says about some of her items not having been worn often, but in the absence of any evidence that supports that statement (which I accept is very difficult to provide, especially as most clothing items destroyed in this claim were likely purchased before 2017), I still think it's fair to proceed on the basis that a 40% reduction strikes a reasonable balance between items worn regularly and those barely worn. So, this is the W&T deduction I'll continue to apply in this decision.

And regarding the 'Restoration' list, it's still my view these items should also be covered by the W&T deduction. As I've said previously, I can't conclude RSA were responsible for the ceiling collapse, so any damage caused to Ms S' contents as a direct result of the collapse (and not the subsequent cross contamination in her home which RSA was responsible for) must be viewed as a claim event, and assessed accordingly.

Ms S has re-valued many of the items on the BER and Restoration lists, to reflect what she says are updated costs of replacement. RSA were sent these for comment, but despite requests failed to respond with any comment. Notwithstanding, I'm still going to use the list values which stemmed from values Ms S initially provided, as the basis of this claim. Ms S provided the amended values only after I'd confirmed a W&T deduction would remain.

Regarding the remaining items in Ms S' home, it hasn't been possible to identify, list and value these. Not all of these will have been damaged 'beyond economical repair'. Some items will almost certainly be capable of cleaning. I know Ms S will disagree with this comment. And she has provided medical evidence which suggests the risk to her health is so great that every item in her home will now need to be destroyed.

Whilst I appreciate this, and understand Ms S' fears, I must also look at the limits of what RSA need to do under the terms of the policy. This doesn't stretch to paying to replace everything in the property where a professional restoration remains an option. And I can't discount this is the case here. I've already said all 'material' items should be deemed BER. To that I'd notionally agree to add kitchen utensils and crockery, and other everyday use items. But I can't reasonably conclude hard-material furniture or ornaments should be.

This may be an academic distinction without a detailed list, but it allows me to separate 'types' of contents and allocate values to each. I've already concluded Ms S' contents were valued at £90,000 at the date of the second claim. And I've already concluded the BER and Restoration items are valued at £43,295 (£25,150 + £18,145). So that leaves a notional remaining contents value of £46,705 at the date of the second claim.
Based on what I've seen from pictures in Ms S' house, and from her testimony, I think there's unlikely to be many remaining contents that can be restored. So, for the purposes of this decision, I need to make another estimation – what percentage of these contents are BER, and what percentage are capable of being saved. And, having considered the photos and testimony, I think a fair estimation would be 85% being BER, and 15% being saved.

Applying this to the remaining notional contents value of £46,705, it means I think RSA should pay a further £39,700 (£46,705 x 85%) for the remaining BER contents, increasing the total awarded for contents here to £82,995. RSA have already paid £30,000 as part-settlement against this amount, meaning they should pay Ms S a further £52,995.

This allows me to also address Ms S' repeated comment that some items taken from her home by Rainbow's agents weren't on the lists they created, and duplicate lists they

provided have never been fully explained – which I agree with. But the above calculations and conclusions means this issue is now academic – I've assessed the likely remaining value (at 2019 values) of *all of Ms S' remaining contents*, which by definition 'captures' any items that may have gone missing or been listed incorrectly.

I now need to address what happens to Ms S's contents if she accepts this decision. When a policyholder accepts and is paid a settlement from an insurer in full and final settlement of any damage/loss claim, the damaged items in question become the legal property of the insurer. Put simply, the insurer is paying the policyholder for those items. And notwithstanding the fraught and unique nature of this claim, this is what would happen here.

RSA have advised they'd still be willing to securely remove and dispose of the contents and could undertake this at very short notice. However, I'm aware Ms S would refuse to accept that offer. And it had been agreed between the parties in 2019 that a clean-break cash settlement was the best way forward, and I think that remains so and I've told RSA that. Which means Ms S' settlement will need to include a sum to undertake this work.

But RSA are still entitled to the BER contents in Ms S' home when and if she accepts this decision. So, I think the fairest way to resolve this is to require Ms S to ensure *all* of the BER contents removed from her home are delivered to RSA's 'asbestos-agents'. And payment of this part of the settlement is paid to Ms S *only after* the contents have been delivered. This arrangement also has the benefit of allowing Ms S to identify items that are capable of being retained and cleaned and ensuring only items to be disposed of are delivered up.

I now turn to the issue of interest. Our power to tell businesses to pay interest comes from the Financial Services and Markets Act 2000, set out in DISP 3.7 in the FCA Handbook. RSA have disagreed that 8% interest should be added to the contents award. They've said they didn't cause the delays, and in any event the items, both furniture and clothes, couldn't have been replaced because Ms S wasn't able to be in her home.

Where this Service upholds a complaint, we look to put the consumer back in the position they would have been in if things had happened as they should, which here is essentially a much earlier settlement (and no asbestos cross-contamination). This claim was in 2019, and I've said the *fundamental* event preventing a reasonably prompt settlement was the mistake by RSA's agents when they caused cross-contamination in the property. Although as I've recognised, I think Ms S was also responsible for delays during the six-month period.

But the fact remains Ms S has been unable to replace her damaged items and will now need to replace these at 2022 prices. So, to compensate Ms S for not being paid the settlement much earlier - and being unable to replace her items some years back when she should have - I think an interest award on her contents settlement is fair and appropriate. So, I still think RSA must pay Ms S 8% simple interest on this element of the settlement.
But because of what I've said above, interest on the £82,995 settlement needs to be calculated differently – and broken down into three parts for interest payment purposes. The first two relate to the assessed BER and Restoration lists. I've collectively assessed these to be worth £43,295. And £30,000 of this has already been paid, leaving £13,295. In relation to these parts, RSA need to calculate and pay interest as follows:

- In relation to the £30,000 already paid, pay 8% simple interest on this sum, calculated from the date of claim to the date the amounts were paid (deducting the six-month period referred to above)
- In relation to the remaining £13,295, pay this to Ms S within 14 days of her accepting this decision, and pay 8% simple on this sum calculated from the date of claim to the date of payment, again less six-months

Regarding the remaining contents, which I've assessed to be worth £39,700, RSA must pay this to Ms S within two weeks of their agents taking final delivery of the contents removed from Ms S' home. I have no way of estimating how long that process will take - Ms S may choose not to deal with this for some time – so I think it's fair to limit the time any interest award is applied to this part of the settlement. I think a fair award here would be for RSA to pay interest calculated from the date of claim until *six weeks* after Ms S accepts the decision, less six-months – regardless of how long it actually takes for that process to conclude.

Finally, in respect of the notional 15% remaining items that may be cleaned, I repeat the award I made in the provisional decision for the cost of professionally cleaning these - £2,000. And, on the basis I'm saying these notional items are capable of cleaning and retention, I'll also need to factor in the cost of their storage whilst the property is repaired. I'll allow £1,000 for this. These amounts are not subject to an interest award.

Alternative accommodation

RSA had agreed to pay nine months hotel and subsistence costs, although have commented that, since moving into the hotel, Ms S hasn't co-operated with them to progress the contents claim, or further attendance at her home. I don't think this is a fair comment. Ms S has engaged with our Service continuously since being placed in the hotel, both in providing comments to the provisional decision, and seeking information and assurances relating to how her contents claim will be assessed and other matters. I've already said RSA haven't provided all of the information I'd asked for regarding the contents issue. And I'm conscious that Ms S' health has significantly deteriorated since the provisional decision was issued, causing understandable delays.

RSA also believe all repairs should only take six months. They also disagree with the £5,000 payment I'd suggested for previous accommodation. They say they'd be willing to consider such payment if, and only if, Ms S was able to provide evidence she was financially liable for the property rent in question.

Ms S has said the repairs may take in excess of 18 months, and she'd like to be paid for that period so she isn't left at risk of having nowhere to live. She also repeated her belief that she had been promised a subsistence fee in the early days of the claim, although now understands that this isn't something that her policy provides.

I've considered what both parties have said here, and it's clear my provisional AA award will not provide enough time for Ms S to arrange the works necessary to repair her home. Accepting a point Ms S recently made, the first claim settlement notionally allowed a five-month period for the first claim damage to be repaired. To that, I need to add time to undertake the extra works that I think are necessary (see the 'buildings' section below). And furthermore, before any works can be undertaken, the property will need to be securely emptied, the asbestos contents safely removed, and the property subject to a deep clean and pest de-infestation to make it safe for contractors to work there. Together this is likely to add many months. And, the need to engage a surveyor, and re-tender the work needed, will also add to this. I think a fair estimate for the above to take place is 12 months.

I acknowledge Ms S thinks it will take longer, because of a scarcity of readily available contractors, and the fact her current health predicament means she needs to prioritise certain health issues in the coming months. However, I've included an amount below to cover the appointment of a surveyor to professionally manage the project, and the time savings this would generate should mean that 12 months is a fair and realistic timeframe.

Because of what I've said about this decision providing a 'clean-break' cash award, I also need to fairly calculate the period the 12 months further accommodation payment should

cover. I'm conscious both parties seek this claim/complaint to be resolved, and so I'm only going to allow a two-week deadline for responses to this decision. And with it being sent on 13 July 2022, that means responses are needed by 27 July 2022. And I'll be asking RSA to make full payment (cleared funds) to Ms S within 14 days of her acceptance of the decision (assuming she does accept). That takes us to 10 August 2022. I think RSA will therefore need to extend Ms S' stay at her current hotel until this date (and pay the daily subsistence fee). The 12-month period I've referred to above will then start from this date. This arrangement broadly mirrors what I've told the parties in recent communications.

Ms S' policy provides for 'like for like' alternative accommodation. What this means, in practical terms, is that RSA must seek to either place Ms S in a property similar to her own or provide sufficient funds to allow her to source her own property. Her property was a 3-bedroomed terrace house.

During both claims, Ms S resided in a property sourced from an acquaintance (as previously mentioned). This was a two bedroomed flat. Ms S has previously said she'd be willing to consider a similar property, which may be a cheaper option. However, whilst I note this, I need to remain mindful of what her policy provides. There is no guarantee that she'd be able to source a suitable two bedroomed flat in the short period here. And she may need to move into a larger property which will cost more. Awarding an amount that only covers the cost of a smaller property may leave her out of pocket. For that reason, I'll be awarding a cost equivalent to a like for like property.

Having looked at current available properties (using well-known property search engines), I could find no direct comparison to Ms S' home within a one-mile radius. So, I've taken values from close matches (three-bedroomed flats, and larger houses), to arrive at what I think is a fair amount - £1,900 per calendar month. And it's this sum that I think RSA should pay to Ms S for the 12-month period.

So, to be clear, RSA will need to pay to extend Ms S's hotel accommodation until 10 August 2022, continue to pay her the daily subsistence fee of £24.95 until that date, and pay her £22,800 to cover her further 12 months of accommodation costs. RSA have paid Ms S a subsistence fee up until 23 July 2022, meaning she's due a further £449 (£24.95 x 18 days).

I now address Ms S' accommodation costs for the period before she went into the hotel. I've spoken to Ms S to try and understand why she's been unable to provide any evidence to support her financial obligation in respect of her previous rented flat. She's explained that her landlord – an acquaintance – was unwilling to commit anything to writing, as it was an informal arrangement. She's aware this presents an obstacle to me awarding any amount for the costs she says she's incurred. I've seen extracts from her bank statements which show significant payments to an account appearing to be in the landlord's name during the period of this second claim. But, crucially, there's no evidence to show these were in lieu of rent, which I'd need to see to be able to consider asking RSA to pay for these sums. I also accept RSA's point that this prevents me awarding the £5,000 payment I'd previously suggested.

I appreciate this means it's likely Ms S has incurred significant accommodation costs that she's not going to recover because of her lack of evidence (across both claims). But the onus in any claim such as this is for the policyholder to provide evidence of any expense they're asking to be reimbursed. Ms S has known this for some time, and yet hasn't been able to provide this, knowing the likely consequences of being unable to do so. It isn't RSA's fault she's been unable to do this, so I can't fairly ask RSA to make any payment to Ms S in relation to her previous rental costs.

I should also comment on the AA expense limits on Ms S's policy. The above £22,800 awards, when coupled with the allowances paid at the beginning of the claim and the recent

hotel costs, will likely total more than £50,000 – significantly in excess of Ms S' policy limit of £30,000. However, because I've already said RSA (via their agents' negligence) were responsible for the fundamental reason for the claim delays, I think RSA should pay more than the policy limit. A significant part of the claim journey has been caused by a 'non-claim' event, and so I'm satisfied it's fair the policy limit can be exceeded following my award.

Utility

RSA asked for sight of utility bills before agreeing to the suggested payments of £185 per month. Ms S said that I should follow the same approach that our ombudsman used in the first claim. This was based on her being reimbursed her rental property bills, less the amount equivalent to what she was paying in her home.

I agree this is the correct way to measure the increase in utility expenditure RSA would be liable for under the terms of Ms S' policy. And Ms S has provided me with copy utility bills for the second claim period. But I also need to understand what Ms S *would have paid* at her home between 2019 and 2021 in order to accurately calculate the excess Ms S *did* pay. Using her payment figures from 2016 (which were used to calculate the first claim award) were too out of date. This is especially so as there have been utility price rises in the period.

Ms S has been unable to tell me how much she *would have paid* had she remained in her home between 2019 and 2021. I'm satisfied, in 2016, she had the benefit of a favourable contract with her energy suppliers, but I can't be satisfied that she'd have continued to pay the *same amount* after 2019. It's my understanding that her 2016 utility bills were based on the previous year's usage. But usage would still, I presume, be calculated using energy unit rates each year – which have increased. So, I can't safely conclude Ms S would have been paying the same amount for her utility bills in 2019 onwards that she was paying in 2016.

Which means the best and fairest way for me to approach this element of the award is to apply a comparison – as I did in the provisional decision. The extra utility costs Ms S paid in the first claim were £185 per month. On the *reasonable* assumption that unit rates increased proportionally over time – so the difference would have remained broadly constant - this is the amount I will use here.

I provisionally awarded £4,995 (£185 x 27 months). However, I've recalculated the period I think RSA should be responsible for – the six-month period of delay needs to be taken into account. So, I now think RSA should pay Ms S £3,885 (£185 x 21 months) in relation to the extra gas/electric/water costs she incurred when in her rented flat.

Service Charge

RSA asked for sight of any service charges Ms S paid. I asked Ms S if she could provide this information, as she was able to in the first claim, but this hasn't been possible here. She had been paying this by direct debit in the first claim but has been unable to do so in this second claim. But, in the absence of a tenancy agreement that stipulates whose responsibility this expense would be – the landlord or Ms S – and the absence of any proof Ms S *has* paid it in the second claim period, I can't fairly ask RSA to make any payment for this.

Council Tax

RSA asked for sight of Ms S' council tax payments. Whilst she's now been able to provide some evidence relating to the obligations she continued to have for her home, Ms S wasn't able to provide anything to show she'd been paying, or was responsible for paying, the council tax on her rental property. And because RSA's obligation was to pay the amount

above what Ms S would have paid had she remained in her home, it means I haven't seen the necessary evidence to fairly ask RSA to make any payment to Ms S in this regard.

Fuel

RSA has asked for more information regarding why Ms S would have needed to incur extra fuel costs, including for the period when she was in a rental apartment after the leak occurred. In the absence of this, they've proposed a settlement figure of £20 per month for the nine-month 'hotel period'.

Ms S has said that the amount I've awarded is insufficient. It doesn't take account of rising fuel prices, nor the number of journeys she'd have taken to keep an eye on the property. Her rental property was ten miles away (in busy city traffic, not smooth motorway driving). And, her various medical appointments had increased in frequency in the period, and her rental flat was further away from the various locations she needed to travel to than her home.

I provisionally awarded £30 per month. Petrol prices between 2019 and 2021 hovered around £6 per gallon (just over £1.30 per litre), so £30 would provide on average 5 gallons of fuel. At approximate city driving speeds, that should generate about 30 miles per gallon – which equates to enough petrol to drive 150 miles. That equates to seven round trips to her home from her rental property per month.

Factoring in the extra medical appointments (I've seen evidence of multiple medical appointments, and have no reason to doubt these increased in volume over time), I agree with Ms S that £30 doesn't provide a fair repayment of the extra costs she incurred. So, I'm going to increase the amount awarded to provide enough petrol for a notional 250 *extra miles* per month. Using the above numbers, that means I'm going to award Ms S £50 per month for extra fuel costs incurred for the period she was in her rental property. Allowing a deduction for the "six-month period", this leaves 21 months to reimburse, equalling £1,050.

Regarding the period in the hotel, I accept what RSA have said - the hotel is significantly closer to Ms S' home, and the extra petrol cost would have been much smaller. So, I'll only award £15 per month for the period between Ms S moving into the hotel and the date of this decision - or £135.

In total, this means I'm asking RSA to pay Ms S £1,185 for extra fuel costs for the period up to 23 July 2022 (the period covered in the provisional decision).

Laundry

RSA have asked for evidence of the laundry costs incurred. They've also said, in the meantime, they're in agreement to a payment of £10 per week covering the nine-month hotel period. I don't think this is a fair offer.

I've reconsidered the costs Ms S is likely to have incurred on extra laundry costs. She's explained that she'd have to pay for three regular washes (lights, darks, delicates), and separate drying cycles for each. This would be the same at her rental apartment and the hotel. She had no washing machine facilities in each. I've no reason to doubt this.

I'm prepared to accept she undertook the above washing routine and averaged six wash and six dry cycles per month. This seems reasonable for a single person. I think an amount of £5 per wash or dry is a fair allowance (having checked local launderette costs), so I'll be asking RSA to pay Ms S £60 per month for laundry costs. This would run from August 2019 (when her first claim awards finished) to the date of this decision, less the "six-month period". That's a total period of 30 months – so £1,800.

Internet dongle

I overlooked including this in my provisional decision. Because Ms S didn't know how long she'd have to stay in the rental property (for both claims), she didn't enter into any long-term phone or internet commitments. Instead, she purchased an internet dongle, which she claimed for in claim one. I should have included this cost in this claim. Using the same 30-month calculation as above, at a cost of £20 per month, that means I'll be asking RSA to pay Ms S £600 for this.

Future extra expenses

As well as reimbursing Ms S' expenses for the period up to the date of this decision, I need to consider what she'll continue to pay during the 12-month period I've allowed for the repair of her property. The problem is I have no idea where Ms S will choose to live, what bills she'll be liable for (service charge or utilities included or not), how close it will be to her home (the petrol impact). The usual approach would be to include an obligation on RSA to meet these 'extra' amounts, subject to suitable evidence being provided.

But here, Ms S has remained adamant that she wants no further contact with RSA after this decision (if accepted), in order to protect her mental health. I do appreciate what sits behind this sentiment. However, I can't reasonably estimate an amount that I can fairly say RSA must pay Ms S in this 12-month period. There are simply too many unknowns. So, for this element of the decision only, I need to set out what RSA will need to pay Ms S at the end of the 12 month accommodation period, but strictly on receipt of the evidence specified below:

- Any council tax amounts paid, or payable, in relation to any property Ms S rents during the period of her home repairs – limited to 12 months. A copy of the council tax *demand* for that period will be required to be provided to RSA.
- RSA will also need to pay Ms S for any service charge payments she's liable for in relation to any property she rents, limited to 12 months. In this case, evidence of *payment* will be required for RSA to reimburse this sum.
- Calculating extra utilities is more difficult given what I've already said above. So here, I need to use an estimation. I'll assume the total gas electric and water costs Ms S *would* now incur in her home would be £100 per month. So, RSA will need to pay Ms S any amount *above* this figure for the duration of any property she rents, limited to 12 months.
- RSA will need to pay internet dongle costs at £20 per month, limited to 12 months.
- These amounts must be paid to Ms S at the end of any rental period, and within 14 days of being provided with all of the required documentary evidence.
- But I won't be asking RSA to pay any extra petrol costs – it will be Ms S' choice where she wishes to reside during this rental period, and so RSA can't be responsible for petrol costs if that property is a distance from her home.

Garden

Ms S was unhappy that I hadn't included any amount to repair damage done to her gardens and fences. She's since provided many photos of the current condition of her front and back gardens, and the fences. These show her gardens completely overgrown. She's also provided quotes from two local gardening contractors to repair the damage, and professionally clear the overgrown weeds and brambles, and repair/prepare the soil. RSA have been provided with these photos and quotes.

Here, I need to consider if the condition of the gardens has been caused by the actions of RSA. If I think it has, I can consider asking RSA to pay towards the cost of the repairs.

Ms S says she's been unable to access her gardens since the second claim, which is why they've become so overgrown. Access to her back garden is via a door from her home, which is blocked by multiple asbestos-contaminated items that were left there when RSA's agents ceased attending the property. It's remained unsafe for her to enter the property, or certainly to enter and remove all the damaged items (and in doing so disturb the asbestos fibres) to allow access to this external door. I accept this.

But access to the back garden is also available through a side gate. This was damaged during the first claim, and a payment of £800 was included in the first claim award to cover the repair costs. I've seen photos of the damaged gate at the time, and I accept it was likely unsafe for Ms S to have opened. At this point, Ms S garden wasn't overgrown.

However, Ms S was in funds to pay to have it repaired, which had she chosen to do so would have allowed her continued access to the garden over the past three years. I'm unaware of any asbestos risks that existed in the back garden. And following the second leak event, I haven't seen anything that justifies why the gate/fence wasn't fixed.

A fundamental expectation in all insurance policies is that the insured should take all reasonable steps to help mitigate against any loss. Here, I think that means Ms S paying to fix her damaged side gate – with the money she'd been paid for that purpose in 2019 – so that she could get access to the back garden. She was aware it was starting to become overgrown, and yet took no mitigating action – fixing the gate – to help deal with that issue. I know that she was busy dealing with the second claim in the months before ceasing contact with RSA in 2019. But I don't think that provides a reasonable justification for not attending to the gate, and by association the garden. Or put another way, I can't fairly say that RSA were responsible for preventing access to Ms S' back garden – yes, the route through the house was unusable, but not the side gate if it had been repaired with the funds Ms S was paid.

Regarding the front garden, there were no access restrictions to this. It was easily accessible via a front gate. So I also can't say RSA caused the deterioration in the condition of the front garden either. So, given the above, I won't be asking RSA to make any payments in relation to the garden repairs.

Buildings

RSA said that £18,000 for the second-claim building repairs is too much, referring to their previous assessment which costed the extra works at £2,000 (although they'd agreed to double that to £4,000 here). And they also believe that my ceiling replacement estimation of £3,250 is too high, and instead propose £1,300 to cover ceiling removal, with replacement cost covered within the general building costs.

RSA agreed in principle to pay the costs of a surveyor, covering both claims, but think this should be limited to 10% of the repair costs, which they calculate as now being £75,000 across both claims (so £7,500 for the surveyor). But they agree with the extra £1,250 for drying costs, and £5,000 asbestos removal costs.

Ms S has provided very detailed comments in relation to many buildings-related issues. But before addressing these, I want to begin by responding to Ms S' comment that the settlement figure paid in the first claim will now be insufficient to cover the repair costs of the 'first claim' building works – the effect of recent world events, coupled with the inflationary pressures they've helped cause, means that costs are likely to have increased significantly.

On this point, I agree that the quotes provided in the first claim – and settled following my colleague's final decision in that complaint - will inevitably be out of date, especially as the quotes were sourced in 2017. The question for me to consider is whether I should include an

extra amount in *this decision*, to increase an accepted final decision award in a previous separate complaint.

Ordinarily, this isn't something that I'd consider. When an Ombudsman issues a final decision, accepted by a consumer, this brings an end to our involvement in that particular complaint. An accepted decision is binding on a business, and the merits and outcome won't be revisited by this office again. Here, however, the circumstances are fairly unique, and I think some sort of reconsideration of the quantum awarded is necessary. I'll explain.

In the first claim, Ms S didn't receive the final decision until after the second leak had occurred, receiving the final amounts awarded some weeks after that. It's not in dispute she had no opportunity to undertake any of the required 'first claim' repair works before the second leak occurred. And it's now been a further three years since the second claim.

I've already concluded I can't fairly say RSA's actions (in not inspecting the loft area) helped cause the ceiling collapse – this was a second leak that was unforeseen, albeit one with very unfortunate timing. However, there were then delays caused by the way RSA's agents dealt with Ms S' contents in the early months of the claim. And I've already concluded Ms S helped contribute to some of the subsequent delays in this claim.

But I think it's highly likely this claim (and complaint) would have concluded significantly earlier had the asbestos cross-contamination not occurred. This wasn't the fault of Ms S and so I don't think, as a matter of principle, Ms S should be financially disadvantaged in her efforts to return her home to the condition it was in before *both* leak events.

This was something I'd have expected my 'route-map' to have factored in – I'd suggested (and believed it to have been agreed by RSA in communications) that an updated whole-house survey was needed. And furthermore, updated quotes would have been needed too, leading to an updated repair schedule and costing across both claims (with the amount paid to Ms S in the first claim for building works subtracted accordingly). This approach, by its very nature, would entail a re-costing of the work quoted for in 2017. Furthermore, in a recent conversation with RSA, they acknowledged that an extra payment may be a fair thing to make, albeit they mentioned a few thousand pounds only as being acceptable.

Taking all the above into consideration, I'm going to include an extra amount in this decision to reflect the extra costs Ms S will now incur in repairing the 'claim one' damage. However, calculating this sum is not straightforward.
To begin with, I think the fairest thing I can do is apply a simple percentage increase to the claim one 'building' repair cost. Ms S has suggested that building-related expenses have increased significantly following recent world events. I agree, although calculating exact increases isn't possible. However, I need to reach a fair and supportable conclusion here - and to do this will be guided by data sourced from the Royal Institute of Chartered Surveyors (RICS) website, and in particular seasonally adjusted building industry cost indices [1].

But I must be clear I'm only considering an 'uplift' in relation to the second claim period. This is because Ms S accepted the sums awarded in the first claim, and by doing so accepted that the sums awarded (and paid) were sufficient to undertake the works required following the first leak at that time. I appreciate the quotes the award was based on were provided in 2017, but the fact remains Ms S accepted them. If I were to consider an increase in material costs for any period before the date the 'first-claim' decision was accepted, I'd effectively be changing the accepted and legally binding award that was made then. I cannot do that.

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[1] https://www.rics.org/uk/news-insight/latest-news/news-opinion/construction-materials-cost-increases-reach-40-year-high/

Which means I can only fairly consider any price increases from March 2019 onward. Looking at the RICS data, it shows general building costs have increased by approximately 13% from January 2019 (which is close enough to March 2019 for this calculation), materials by approximately 22% and labour by approximately 6%. The repair quotes for claim one contain all the above cost types, but I'm unable to perform a detailed breakdown. Instead, I'm going to use an approximate average figure, which when factoring in 'six-month delay period' mentioned earlier, I think should be 10% - and apply this uplift to the building costs awarded in the first claim. These (which included an amount for plumbing and some electrics) were £56,000, so I think RSA will need to pay an extra £5,600 here.

I now want to address the cost of repairs for the 'new' damage caused by the second leak and want to begin by considering what RSA have said about what they feel the extra costs should be - £4,000. I disagree with this. RSA's suggested figure is based on re-costing the 'first-claim' as part of an exercise to cost *all* the repairs necessary and using what they feel are reasonable rates. It's based on an updated schedule of works compiled by RSA in 2019, some months after the second leak. But it completely ignores the legally binding outcome of the first decision, and the basis of the calculations in that decision. I think this is an inappropriate method for various reasons.

It appears to use contractor and material rates that I think Ms S will find impossible to achieve. Both claims are being cash settled by agreement between both parties. And whilst Ms S' policy allows RSA to cash settle at a cost no higher than what it would cost them if they undertook the work themselves, they still need to effectively indemnify Ms S for the insured losses she's experienced. That means the sum they pay must allow her to source contractors to quote for and complete the work. This is what happened in the first claim, where the repairs were independently quoted (at £56,000) and awarded in a final decision.

In principle, this money is 'ring-fenced' for those repairs. New 'second-claim' damage should, in theory, be separately costed and paid. And having considered further the extra work that will be needed (more on that below), it's inconceivable that this will only cost Ms S an extra £4,000, even allowing for the likely economies of scale that will be achieved by undertaking both sets of repairs at the same time.

So, I'll now address the building works Ms S says need to be included in the second claim. For the purposes of clarity for both parties', I'll deal with this matter in more detail than in my provisional decision. Ms S has provided significant commentary on this matter. RSA has said there is relatively little 'new' damage caused by the second leak.
I agree the second leak effectively 're-damaged' some areas already identified for repair. However, having considered RSA's second-claim schedule of condition (July 2019) and their unpriced schedule of works (January 2020) against Ms S' first claim contractor quote – I think it's clear there are notable areas of *extra* damage/repair that need addressing. For the purpose of clarity, I summarise these as follows:

- Front Bedroom
    - Remove/replace ceiling, coving, renew boards – to include plastering/skimming
    - Remove and renew skirting (painting accounted for in claim one)
- Bathroom
    - Remove/replace ceiling, coving, renew boards – to include plastering/skimming
    - Remove, dispose and replace ceramic wall and floor tiles, make good,
    - Includes replacing plywood floor base, and underlay as necessary
    - Associated prep work to all areas, including remove and replace various fittings
    - Replacement of vanity unit (existing basin to be re-used)
    - Replacement of failed sealed unit to double glazed window
    - painting of areas not included in claim one quote
- Rear Left-Hand Bedroom

    - Remove/replace ceiling, coving, renew boards – to include plastering/skimming
    - Renew skirting (take-off and refit costs already in claim one)
- Rear Right-Hand Bedroom
    - Remove/replace ceiling, coving, renew boards – to include plastering/skimming
    - Works to internal door, various varnishing (skirting, architraves, wardrobe doors)
    - Renew skirting (refit costs included in claim one)
- Landing
    - Remove/replace ceiling, coving, renew boards – to include plastering/skimming
    - Plaster crack re-filling, and redecoration
    - Re-plaster walls that back on to front and back left-hand bedroom (where trapped moisture is present)
    - Renew skirting (refit costs included in claim one)
- Hallway
    - Remove/replace ceiling, renew boards – to include plastering/skimming (including under-stair area)
    - Renew skirting (refit costs included in claim one)
    - Replace under-stair door, remove/replace frame, architraves, finishing
    - Remove and re-fix radiator
- Shower Room
    - Remove, dispose and replace ceramic wall and floor tiles, make good
    - Includes replacing underlay and screed as necessary
    - Associated prep work to all areas, including remove and replace various fittings
    - Remove, store and refit bathroom suite, and non-electric shower unit
    - Renew shower tray and cubicle, install
    - Remove, make good, re-hang door
- Kitchen
    - Remove, dispose and replace ceramic floor tiles, make good
    - Includes replacing underlay and screed as necessary
    - Renew skirting, plinths, cornices, laminated worktop, make good
    - Renew and install built in gas-hob
- Living Room
    - Remove/replace ceiling, coving, renew boards – to include plastering/skimming
- Dining Room
    - Remove/replace ceiling, coving, renew boards – to include plastering/skimming
    - Renew skirting (refit costs included in claim one)
    - Remove and refix radiators
- Miscellaneous
    - Potential for extra general electrical and plumbing (over and above claim one), extra debris removal, welfare facilities
    - Allowance for further wall skimming once drying of all areas complete
    - Likely significant extra general building operative costs

To the above, will need to be added the costs associated with extra drying – RSA's agents commented that there was notable moisture trapped behind the tiles in the various 'wet' rooms. The condition of these walls won't be known until work starts, and tiles stripped as mentioned above. There will be costs of hiring extra drying machines.

Ms S also thinks I need to include the replacement costs of all built-in white goods in her kitchen, due to likely water contamination making them unsafe, coupled with potential for them having been asbestos exposed – in which case effective cleaning will be impossible.

I can't conclude white goods have been asbestos contaminated – the 2021 asbestos re-test didn't find any asbestos trace in the kitchen (although I acknowledge Ms S disagrees as she believes items from other contaminated rooms have been placed in there). But this is the most recent professional report I can base my conclusions on. And I'm persuaded these

items were potentially water damaged, notwithstanding they haven't been tested for this as far as I am aware. So, on balance, I think an allowance should be included to replace white goods as well.

My provisional decision suggested a sum of £5.000 for asbestos/contents removal and deep clean, and £1,250 drying costs (which I'd intended to cover machine hire and an amount for extra electricity costs associated with the drying process). It also suggested £3,500 for ceiling replacement works and £18,000 for remaining 'building' items – so £27,250 in total. On reviewing the above 'new claim' list, I'm not convinced this sum will be sufficient. The works to the bathrooms alone, given these include full re-flooring and re-tiling exercises, will likely eat up a significant proportion of the previously awarded sum.

It's not possible for me to accurately calculate what all of the above 'new' works will cost, all I can do is estimate what I think is a reasonable amount that it will cost Ms S. So, taking all the above into account, I'm going to increase this element of my award to £45,000. This amount is intended to cover all new building work, drying machine hire, extra electrical costs associated with the repairs (including drying), and all ceiling replacement works.

It doesn't include the cost of asbestos/contents removal and deep clean, and pest de-infestation which I allowed £5,000 for in my provisional decision. RSA agreed to this amount, and I remain of the view this is a fair award for this work and will award this again here.
I also included a cost for the engagement of a surveyor, calculated at 12.5% of the total 'building' cost across both claims. RSA agreed in principle to this but said it should be costed at 10% of the total costs.

Based on my above conclusions, the *total amount* awarded to Ms S for building related matters across both claims now amounts to £111,600 (£56,000, plus £5,600, plus £45,000 plus £5,000). I disagree with RSA when they say 10% is a reasonable fee uplift for an experienced quantity surveyor to manage the repairs and oversee (as necessary) any tendering process. I think my original suggestion of 12.5% provides a better reflection of the likely cost Ms S will incur. That being so, I'll be awarding £13,950 for this.

Ms S said that I'd also need to factor in separate hourly costs for certain initial surveyor tasks. Having considered this, I'm not persuaded this should be necessary – I'd expect Ms S to negotiate with whichever surveyors she engages to achieve a competitive rate. And I'd expect this to include all aspects of that surveyor's engagement. But I do agree with Ms S that the extra cost of a full building/structural survey will likely be needed. It's been over five years since her property suffered a significant leak, and over three years since suffering a further one. The property experienced a collapsed ceiling as well, which could only add to any structural compromise. If RSA were undertaking the work, in the circumstances I'd expect them to undertake this extra step, and so it's only fair that Ms S is provided with a sum to instruct one herself. I'll be awarding an extra £1,250 for this.

Distress and Inconvenience

RSA agree to the £3,000 D&I figure, but on the basis the matter concludes on the financial basis they've set out in their response. I continue to think this is a fair amount in the circumstances.

I know Ms S thinks we should pay more. And that we investigate RSA's agents, and their actions. But our role isn't to punish businesses, or to investigate them. That is the role of their regulator. Our statutory role is to resolve disputes, which is what I've sought to do here.

Putting things right

Summary of awards in this final decision:

As outlined above, I think RSA should pay Ms S the following amounts within 14 days of her notifying this office of her acceptance of the decision:

- £13,295 in relation to her contents settlement
- £3,000 for remaining contents cleaning and storage
- Continue to pay Ms S' current hotel costs until 10 August 2022
- Pay continued current hotel daily subsistence of £449
- £22,800 for future accommodation/rental costs
- £3,885 for utility costs incurred
- £1,185 for fuel costs incurred
- £1,800 for laundry costs incurred
- £600 for internet dongle costs incurred
- £5,600 to reflect the increase in costs of repairs following the first claim
- £45,000 for all further building repair costs following the second claim
- £5,000 asbestos/contents removal, deep clean and pest de-infestation
- £13,950 for surveyor/project manager engagement costs
- £1,250 for a structural survey
- £3,000 for distress and inconvenience

And within 14 days of RSA's agents taking delivery of the damaged contents in Ms S' property, to pay Ms S:

- A further £39,700 in relation to her remaining contents settlement

The above amounts total £160,514, to which hotel costs for the period up to 10 August 2022 must be added. Also, interest[2] to be applied at 8% simple per annum on the contents settlement, and paid to Ms S, calculated as follows:

- On £13,295, from the date of claim to the date of payment, less six months
- On £30,000, from the date of claim until the date each separate payment was made, less six months in respect of each – both awards paid together with above settlement
- On £39,700, from the date of claim until six weeks after Ms S accepts the decision, less six months, again paid together with that element of the above settlement

In relation to future accommodation-related expenses, and upon receipt of the documentary evidence as detailed above:

- Any council tax liabilities incurred on any rental property, limited to 12 months
- Any service charge liabilities paid on any rental property, limited to 12 months
- Any gas, electric or water costs, above £100 per month, limited to 12 months
- Internet dongle costs incurred of £20 per month, limited to 12 months

These amounts must be paid to Ms S at the end of any rental period, and within 14 days of being provided with all of the required documentary evidence.

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[2] *If Royal and Sun Alliance Insurance Ltd considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Ms S how much it's taken off. It should also give Ms S a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.*

Our awards limit.

An ombudsman's power to make awards comes from the Financial Services and Markets Act 2000. Section 228 of that Act allows an ombudsman to determine a complaint by reference to what is, in the opinion of the ombudsman, fair and reasonable in all the circumstances of the case, And Section 229 sets out that an ombudsman's decision can include a money award that can't exceed a set monetary limit. These limits will depend on when the complaint was brought to us, and the date of the act or omission being complained about. These limits are set out in DISP rule 3.7.4R.

Here, the events Ms S has complained about started in the weeks and months after the second leak. I don't need to repeat these here. But I'm satisfied that the acts initially complained about happened before 1 April 2019. This is important in the context of the amounts I am able to award here.

Where a complaint is referred to this service on or after 1 April 2019, and where the date of the act complained about is before that date (as here), my award limit under the above rules is £160,000 (this doesn't include interest or costs). That is the maximum I can tell RSA to pay. If my proposed award is above that, I can only *recommend* that RSA pay that sum.

Based on the above calculations, the defined amounts I've said RSA must pay *is* slightly above £160,000 – it's £160,514. The undefined amounts – extra hotel and future accommodation expenses, will further increase that sum beyond the £160,000 limit.

My final decision

I uphold Ms S's complaint against Royal and Sun Alliance Insurance Ltd. I think that fair compensation is £160,514, plus RSA to pay continued hotel accommodation costs until 10 August 2022 and future accommodation expenses as detailed.

My decision is that Royal and Sun Alliance Insurance Ltd should pay Ms S £160,000, as detailed above. And they should also pay Ms S the interest on her contents settlement as detailed above.

I think fair compensation is more than £160,000, so I recommend that Royal and Sun Alliance Insurance Ltd pays Ms S the balance. This recommendation is not part of my determination or award. Royal and Sun Alliance Insurance Ltd doesn't have to do what I recommend. It's unlikely that Ms S can accept my decision and go to court to ask for the balance. Ms S may want to get independent legal advice before deciding whether to accept this decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms S to accept or reject my decision before 27 July 2022.

Mark Evans
Ombudsman