DRN-3608765

The complaint

Mr M and Miss R complain about Royal & Sun Alliance Limited's decision to decline a claim made under their home insurance policy.

What happened

Mr M and Miss R have a home insurance policy underwritten by RSA which covers their contents and buildings, amongst other things. They bought the policy when they purchased their current home, in September 2020.

In May 2021, Mr M and Miss R noticed a problem with the skirting boards in their bedroom. They appointed surveyors, who found a problem with dry rot.

When work to rectify the problem began, it was found that the issue was more extensive, with the dry rot affecting the bathroom and dining room as well as the bedroom. And a leak in a lead main pipe was discovered when the bathroom was stripped.

Mr M and Miss R then raised a claim with RSA, who appointed their own surveyors to inspect the property.

RSA declined the claim, which led to Mr M and Miss R making a complaint to RSA. The complaint wasn't upheld, so Mr M and Miss R brought it to us.

RSA have declined the claim for several reasons. They say policy exclusions apply. These relate to dry rot specifically, gradually operating causes in general, non-occupancy and damage which occurred before the policy was in place.

Our investigator looked into it and thought RSA had unfairly declined the claim. She said the exclusions relied upon by RSA couldn't be fairly applied in this case. And she asked RSA to deal with the claim. She also asked them to pay 8% interest on any settlement given that Mr M and Miss R had already paid to get the repair work carried out.

RSA disagreed and asked for a final decision from an ombudsman.

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.

I think it's useful first of all to establish the facts relating to this complaint. There's no dispute about most of the facts – the dispute is more about how the terms of the policy apply in these circumstances. If there are any disputes about the facts, I think they're relatively easily resolved.

It's agreed that the property was affected by dry rot. And given the extent of the dry rot within the property, it's also reasonable to assume with some degree of certainty that the rot had manifested itself before Mr M and Miss R bought the property – and before they were on cover with RSA.

It's also reasonable to assume – although two surveyors appointed by RSA don't mention it specifically - that there was a water leak from the lead main pipe identified by Mr M and Miss R's surveyor / contractor. I don't think RSA dispute this in light of their recent comments to us.

I think it's more likely than not that the water leak created the conditions which allowed the dry rot to develop. Again, I don't think this is in dispute. Even if it is, I'm satisfied the evidence suggests the leak most likely caused the dry rot.

I don't think there's any dispute that the damage to the property has worsened since the purchase of the home and the inception of the policy.

It would defy scientific logic if that were the case. And Mr R and Miss R clearly only noticed the damage to the skirting board in May 2021, despite extensively re-decorating after they bought the property.

I'm satisfied, in other words, that some but likely not all of the damage has occurred whilst Mr M and Miss R were on cover with RSA.

Finally – in terms of the facts underpinning this case - I'm also satisfied that Mr M and Miss R weren't aware of the damage until May 2021. I say that for several reasons.

One, as I say above, they re-decorated their home – in the areas affected by the dry rot – and didn't at that point notice the issues which they later noticed in May 2021.

Two, they immediately took action, in May 2021, to investigate the issues - with the aim of carrying out any remedial work as soon as possible. That suggests they would have acted in the same way had they noticed the issues earlier.

RSA have said that the survey carried out before Mr M and Miss R bought the property suggested there may be a damp problem and recommended further investigation.

And if Mr M and Miss R had acted on that recommendation, the issues now apparent would have been discovered much earlier – before the property was purchased and before Mr M and Miss R were insured by RSA.

However, I can see that the survey mentioned a possible damp issue in a completely different part of the building (which contains more than one dwelling). And Mr M and Miss R had assurances from the previous owner that remedial action had already been taken.

So, I don't think it was unreasonable for them to decide not to have a damp survey carried out. And I don't think RSA can reasonably argue that Mr M and Miss R *should* have been aware of the dry rot, because they *should* have had the damp survey carried out.

I'll turn now to Mr M and Miss R's policy. Again, I don't think there's any real dispute about what that says.

In Section 2 – which sets out the buildings cover – it's clear that the policy will cover escapes of water from fixed water systems. So, the leak from the water pipe discovered when the bathroom was stripped is an insured event under the terms of the policy.

The exclusions are also set out very clearly. The policy doesn't cover damage which happens gradually or – very specifically - damage caused by dry rot.

There's also no cover for damage which happened *before* the policy was taken out. And

damage caused by escape of water isn't covered if the home has been unoccupied for 60 days in a row.

Those are the exclusions RSA tell us they're relying up on to decline the claim. And I think it's important to say at the outset that RSA would be entitled to decline the claim if one were to accept a very strict and literal interpretation of the terms of the policy.

However, as RSA know, we take the view that a strict application of the type of gradual causes exclusion included in this policy may often mean that customers aren't treated fairly by their insurers.

We think it's unfair to decline a claim on the basis that the damage occurred gradually if the customer wasn't aware that the damage was occurring – and it couldn't reasonably be said that they *ought* to have been aware.

As I've already said above, I'm satisfied on balance that it's very likely that Mr M and Miss R weren't aware of the damage to their home until May 2021. Nor do I think it's reasonable to suggest they *should* have been aware of the damage before then. And on that basis, I'm satisfied it wouldn't be reasonable in this case to apply the exclusion for gradually operating causes.

A similar logic applies when I consider the dry rot exclusion. This is set out in the policy separately to the gradual causes exclusion. But that doesn't alter the fact dry rot is one example of a gradually operating cause.

That being the case, we would apply the same reasoning to this specific exclusion – and say that it would be unfair to apply the strict terms of the policy where the policyholder wasn't aware - and had no reason to suspect - that damage was occurring.

As I said above, we can be reasonably sure that not all of the damage to Mr M and Miss R's property occurred whilst they were covered by their policy with RSA. It's very likely, if not entirely certain, that the leak and the dry rot began during the period before they purchased the property when the previous owner had cover with a different insurer.

We can be equally sure that the damage, given the nature of it, has continued to occur between September 2022 – when Mr M and Miss R bought the home and the insurance policy – and May 2021, when the damage was discovered.

I acknowledge that the policy explicitly excludes cover for damage which occurred prior to the policy being taken out. But again, we have to consider what's fair and reasonable for the policyholder in these kinds of situations.

Our view is that, in these kinds of circumstances, whilst RSA may not strictly be liable for any of the damage which occurred before September 2020, it would be impractical - if not impossible – now to try to distinguish which insurer was responsible for repairs to which part or proportion of the damage.

That being the case - and bearing in mind the need to treat Mr M and Miss R fairly - we'd expect RSA to handle the claim. And that would remain the case whether or not RSA may be able to negotiate with the previous insurer about which of them should cover what proportion of the costs.

I might take a different view if Mr M and Miss R had been on cover with RSA for a much shorter period before the damage was discovered, but they had the policy for around eight months. Their property clearly suffered further - and very likely significant - damage over that

quite prolonged period of time.

RSA have also sought to rely on the exclusion for damage to property unoccupied for a period of time. I can't agree with this argument - which is based on the idea that Mr M and Miss R, the policyholders, weren't occupying the property when some of the damage occurred, before they bought their home.

I don't think the property was "unoccupied". It was occupied by someone else. At a time before the policy existed and before there were policyholders who might not or might not be in occupation.

In other words, whilst I can understand the argument RSA are making, I think it simply amounts to the same as saying RSA won't cover damage which occurred before the policy was incepted. And my arguments on that are set out above.

In summary, I don't think RSA can reasonably or fairly apply any of the exclusions they've argued they should be able to rely upon to decline the claim.

There was an insured event – the escape of water - which caused the damage. Applying the strict terms of the gradual causes or dry rot exclusions would be unfair. And to treat Mr M and Miss R fairly, RSA should handle the claim because a significant part of the damage occurred whilst Mr M and Miss R had cover with RSA.

Putting things right

Given that I'm satisfied none of the exclusions RSA have sought to rely on in declining the claim should apply in this case, RSA must handle the claim in line with the remaining terms and conditions of the policy.

And given that Mr M and Miss R have already paid for the necessary remedial work to be carried out, RSA should pay 8% simple interest on any settlement figure paid to Mr M and Miss R. That interest should be calculated from the date Mr M and Miss R paid their contractor(s) to the date they receive the settlement from RSA.

My final decision

For the reasons set out above, I uphold Mr M and Miss R's complaint.

Royal & Sun Alliance Insurance Limited must reconsider the claim in line with the remaining terms and conditions of the policy. And pay Mr M and Miss R 8% simple interest on any payment made in settlement of the claim.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M and Miss R to accept or reject my decision before 28 September 2022.

Neil Marshall
Ombudsman