

## **The complaint**

Mr R and Mrs R complain about Royal & Sun Alliance Insurance Limited ("RSA")'s handling of a subsidence claim made under a home insurance policy.

All references to RSA include its appointed agents.

## **What happened**

Both parties have provided me with a timeline of events. My summary below is in far less detail, but I'd like to reassure both sides that I've carefully read and considered everything that's been submitted.

I'm aware that Mr and Mrs R feel that aspects of this complaint should be directed to the seller of the policy, but as the underwriter, RSA is ultimately responsible for deciding and handling their claim, and are clearly defined as such in the policy documents. So, I'll be referring to RSA throughout my decision.

In July 2019, Mr and Mrs R reported some cracking in their property to RSA. They say that they were asking for advice, but the matter was referred to a subsidence loss adjuster straight away.

The loss adjuster arranged for investigations to the site and concluded the cracks were the result of nearby vegetation causing instability in the soil. It recommended the vegetation be removed.

Mr and Mrs R were unhappy with RSA's approach as they wanted to find out the cause and stability of the cracks. And further, the potential options and consequences of any mitigation works or repairs. So, they complained to RSA.

In summary Mr and Mrs R's concerns were:

- They were unhappy with the monitoring period suggested by the loss adjuster.
- There were risks associated with removing the vegetation such as heave which hadn't been sufficiently considered.
- The policy provided for garden cover which conflicted with the proposal to remove the vegetation.
- That the current repairs proposed didn't meet RSA's obligations as the insurer.
- The impact of removing the vegetation on the local environment.
- RSA's overall level of service in handling the claim.

In response, RSA said:

- It was satisfied with the monitoring period in the circumstances and it would be kept under review based on the results.
- It didn't think the vegetation removal would cause heave as it was likely younger than the property.
- It didn't think there was a conflict of interest within the policy as the implicated

- vegetation hadn't been damaged.
- That the final scope of repairs hadn't yet been drawn up, as it was still in the process of identifying and removing the cause of subsidence.
- It would offer to replant the area where the vegetation was removed if the new vegetation's roots were confined.
- It subsequently offered £100 compensation for the inconvenience and delay in responding to their concerns.

Mr and Mrs R didn't agree and referred the complaint to our service. To put things right, they asked that RSA:

- Obtained sufficient evidence on which to base its proposals for the claim.
- Met the costs of the surveys they commissioned and covered the costs of the proposed works if required.
- Indemnify them against any potential heave which might result from any proposed vegetation removal works.
- Entered a consumer redress scheme in order to respect the directive of the Financial Conduct Authority (FCA)

Our investigator looked at everything and recommended the complaint not be upheld. They concluded RSA had handled the claim fairly, up to the point it issued its final response letter on 18 January 2021. And they couldn't see that RSA had been given the opportunity to consider the surveys Mr and Mrs R commissioned. But they said that in any event, they would only expect RSA to refund these surveys if they materially affected the outcome of the claim.

Mr and Mrs R disagreed and asked for an ombudsman's decision. In addition to points previously raised they said:

- They couldn't understand why the loss adjuster declined their request for a minimum of 12 months monitoring – and this would take into account all seasonal changes.
- The arboriculturist didn't make any judgement on the damage or whether the property needed stabilising. Rather, their conclusions in relation to the vegetation were subject to other causes having been excluded.
- Based on their experience, the loss adjusters don't have sufficient expertise to deal with the claim or interpret the results of any monitoring data.
- They aren't persuaded the matter should be classed as a subsidence claim, nor that the evidence is sufficient to implicate the vegetation. They say the damage is classed as "slight" and the indication now is that the cracks are stable.
- They've received very poor service overall.

The complaint was passed to me and on 11 July 2022 I issued my provisional findings. I've repeated an extract below:

*“When making a decision on a complaint I usually consider matters as they stood at the time the financial business issued its final response to the complaint (in this case 18 January 2021). However, occasionally it’s impractical to do so – for instance because the situation has moved on or because further evidence has come to light. On these occasions I need to consider things as they currently stand. In this case I will be considering the original complaint and include the developments I find relevant in order to arrive at a fair and reasonable answer.*

*Mr and Mrs R have posed several questions relating to the actions of RSA during the claim. They’ve also asked for remedies relating to wider industry practice. Whilst I’ve read and acknowledge everything they’ve said, my decision will be focussed on the individual circumstances of this complaint. If I haven’t mentioned something it isn’t because I’ve ignored it. I haven’t. I’m satisfied I don’t need to comment on every argument made to be able to reach what I think is the fairest outcome.*

*This means I also won’t be commenting on the concerns raised by Mr and Mrs R about the wider regulatory framework and recommendations for consumer redress schemes. This isn’t intended as a discourtesy; I’ve focussed on what I think are the key issues of this complaint. My approach is in line with the informal nature of this service as a free alternative to the courts and the rules we operate under.*

*As I see it, the crux of the issue here is that Mr and Mrs R aren’t happy with either the scope of RSA’s investigations, or the proposed remedies put forward to mitigate any ground movement – more specifically relating to the vegetation removal.*

*I understand Mr and Mrs R’s concern that their priorities haven’t been considered by RSA during the claim. But in principle, RSA can deal with the claim as it sees fit under the terms of the policy. And this means it can take whichever approach it sees fit to stabilise the property, as long as that’s supported by the available evidence. And if it isn’t then RSA should do more investigations to establish the cause of the damage.*

*Therefore, I intend to consider:*

- *Whether RSA’s proposal for vegetation removal is fair and reasonable in the circumstances.*
- *Mr and Mrs R’s concerns about the scope of RSA’s investigations.*
- *If any compensation is due for distress and inconvenience caused to Mr and Mrs R.*

*Proposed method of stabilisation*

*RSA’s position following its final response letter is that the vegetation needs removing to stabilise the ground movement.*

*Mr and Mrs R’s position is that there isn’t enough evidence to show the vegetation removal is required. Mr and Mrs R have provided further information, including an independent expert (who I’ll refer to as “F”) report based upon a visual inspection to support their position.*

*RSA’s loss adjuster states, “The results of the site investigations confirm the cause of subsidence is root-induced clay shrinkage...the cause of the movement needs to be dealt with first. Due to the amount of vegetation surrounding the property we will now commission an arborists report to confirm the extent of vegetation management required to achieve stability.”*

*The arborist's report states, "We are instructed to provide opinion on whether moisture abstraction by vegetation is a causal factor in the damage to the property and give recommendations on what vegetation management, if any, may be carried out with a view to restoring stability to the property...recommendations are made with reference to the technical reports and information currently available..."*

*The arborist's report goes on to identify vegetation within influencing distance of the property, the vegetation considered to be the most significant in relation to the current damage and provides recommendations for either removing or managing each one.*

*I've next considered F's report. F concluded:*

- "The visit found some typical subsidence cracking confined to the front elevation of the extension and, by proximity, the collapsed boundary wall to the front of the property."*
- "There is no subsidence cracking to the right or rear of the extension. In this respect, the remit of the arboricultural report gained is too broad and should have recommendations focused to the front right corner of the extension".*

*F recommended:*

- "If the movement is slight, it will be possible to insert helibars [sic] within mortar joints and expanded metal lath work in the plaster around the window openings as a solution instead of tree felling. The existing tree management scheme would need to be retained...we recommend that following receipt of the monitoring data...the [arboriculturist] report is revised to give more accurate and considered recommendations."*

*I put F's findings to RSA and asked what the additional monitoring data showed to date. I asked RSA if the monitoring results still showed the vegetation needs to be removed, or whether it would be willing to consider alternative forms of stabilisation (such as pruning/vegetation management and inserting Heli-bars).*

*RSA referred the matter to a subsidence consultant who said, "The level monitoring between 01/03/2021 and 17/06/2022 shows very minimal seasonal movement of less than 2mm. The vegetation has been well maintained at its current height...The Level Monitoring results would not be sufficient to defend the need to remove the vegetation. Recommend that we move to robust superstructure repairs incorporating Heli-bars and place the Policy Holder on notice of possible future risk. There should be a Joint Site Visit with the contractor as the extent of subsidence repairs is not detailed enough...for a contractor to price."*

*So, taking everything into account, it now seems that upon review, RSA's proposed method of dealing with the claim is similar to F's findings. And I'm satisfied that based on all the evidence this approach seems reasonable and proportionate and will mitigate Mr and Mrs R's concerns about removing the vegetation.*

*Scope of investigations*

*RSA has confirmed it recently extended the monitoring to June 2022. RSA says this was both for the avoidance of doubt, and to continue gathering evidence until it received the findings from our service.*

*So, as it appears that the property has now been monitored for over 12 months in line with Mr and Mrs R's original request, I find this part of their complaint has been satisfied in any event. I don't think the initial delay to monitoring has impacted on the progression of the claim, because until recently, the results of the monitoring weren't sufficient to cause RSA to depart from its initial approach to stabilising the movement.*

*Mr and Mrs R say they commissioned a drainage survey which has identified surface water drainage issues which need addressing. In response, RSA said that the soil composition didn't indicate a drainage issue which could be linked to the cause of the damage, as the bore holes showed a very low moisture content.*

*Having carefully considered the evidence, I'm more persuaded that the implicated vegetation has been shown as the main intervening cause of the ground movement. So, I'm not persuaded RSA should be required to carry out further investigations as things stand. It seems its surveyor has now proposed repairs in line with F's recommendations, so I would hope RSA now reengages with Mr and Mrs R to draw up the appropriate scope of works.*

*In regard to RSA reimbursing Mr and Mrs R for their independent reports – I've considered them, and whilst F's recommendations are similar to what RSA has now proposed, I don't think F's report has materially affected the direction of the claim. I say this because RSA's conclusions have been drawn from its own site investigations and current monitoring data, supported by its own subsidence consultant. Therefore, I won't be requiring RSA to reimburse these costs.*

#### *Compensation*

*I've considered if compensation is due for any avoidable delays RSA was responsible for. I would consider an avoidable delay to be one which is outside of the process by which both parties determine the best way to proceed with the claim. And I've also considered the impact of RSA's request for Mr and Mrs R to remove the implicated vegetation.*

*The £100 already offered by RSA is in relation to its delay in responding to Mr and Mrs R's concerns. And I think that's fair and reasonable in the circumstances.*

*I don't think RSA can be held wholly accountable for the any delays to date. I think part of the delays can be fairly attributed to Mr and Mrs R's level of engagement with the claim, and RSA's efforts to respond to their ongoing queries.*

*Mr and Mrs R say they were pressured into removing the vegetation. I've looked at the relevant letters from RSA here. And whilst I don't agree that this amounts to exerting pressure, RSA does make it clear that the onus on removing the vegetation falls onto Mr and Mrs R as it says there's no cover under the policy for it.*

*I don't agree that RSA's approach was fair or reasonable here. In line with our service's general approach, should a consumer agree to the vegetation removal, then RSA should cover the cost of these works as part of the claim. This is because we say that an insurer should pay for any works required to stabilise the property and ensure the repairs are effective and lasting. So, I don't think Mr and Mrs R were treated fairly.*

*As such, I think RSA should compensate them for the upset that its instruction caused. And I think £300 fairly reflects the upset caused here, in line with our service's approach.*

*Ultimately, everything that's happened hasn't changed the fact that the vegetation has been implicated as the cause of the ground movement. And both RSA and F agree that that Mr and Mrs R's property has been affected by subsidence to some degree. So, now that RSA has revised its approach in line with the current monitoring evidence, both parties should work together to progress the claim to a resolution.*

I therefore said I intended to direct RSA to deal with the claim in line with the proposals put forward by its subsidence consultant, and pay a total £400 compensation to Mr and Mrs R.

## **Developments**

Both parties responded to my provisional decision. RSA asked me to reconsider the compensation I awarded to Mr and Mrs R. It said that as Mr and Mrs R didn't agree to remove the vegetation, regardless of who pays, it therefore wasn't relevant to the claim or complaint.

Mr and Mrs R said in summary:

- The substance of their complaint was the wholesale breach of their trust by the insurers in the handling of the claim.
- That monitoring was only initiated as a result of the complaint being referred to our service. And that I should give an opinion on whether RSA had the right to refuse their initial reasonable request for monitoring.
- That RSA had attempted to pressure them into complying with the vegetation removal because it caused the least short-term inconvenience, rather than supporting them in protecting the best interests of their home.
- The insurer hadn't demonstrated the necessary expertise through its appointed agents to deal with the claim.

## **What I've decided – and why**

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

Having done so, I haven't seen anything on review which leads me to a different conclusion than I reached in my provisional decision. I'll explain why below.

In response to RSA, I set out in my provisional decision that I was considering all relevant events in order to reach a fair and reasonable outcome on this complaint. And in the circumstances of this claim, it's clear from the evidence that the impact of potentially removing the vegetation caused Mr and Mrs R distress and upset.

This was linked to the potential loss of privacy they currently enjoy, and the wider impact to the local wildlife which was clearly important to them. RSA maintained the position of removing the vegetation from early in the claim until recently – around the time I issued my provisional findings. I think in the circumstances, there was likely an opportunity for RSA to mitigate Mr and Mrs R's concerns sooner – using its own evidence – rather than await my findings on the complaint. So, it's reasonable to conclude that its position of instructing Mr and Mrs R to remove the vegetation had consequences in causing them upset whilst the claim and associated complaint has been ongoing.

For this reason, I maintain that RSA should compensate Mr and Mrs R for the upset caused.

Mr and Mrs R have provided further information relating to the actions of the seller of the policy and highlighted their issues with the claim. I've carefully read their submission, but as I set out in my provisional decision, I'm not going to comment on every point raised and I don't think there's any material new evidence here which wasn't available to me when I set out my provisional findings. And I'm satisfied that I've already explained why I've considered what I have. However, I'll comment briefly on some of Mr and Mrs R's points below.

From what I've seen, it appears an initial 6-month monitoring period was instructed in early 2020 and before the complaint was referred to our service – most likely in response to Mr and Mrs R's concerns. And whilst it's clear Mr and Mrs R have been highly engaged with the claim, the test I set out originally stated:

*“...in principle, RSA can deal with the claim as it sees fit under the terms of the policy. And this means it can take whichever approach it sees fit to stabilise the property, as long as that's supported by the available evidence. And if it isn't then RSA should do more investigations to establish the cause of the damage.”*

Therefore, whilst I acknowledge Mr and Mrs R's strength of feeling regarding the monitoring, it wasn't something that RSA was required to do under the terms of the policy. I've previously concluded that RSA's approach was based on the relevant expert reports and information available at the time, and ultimately it retains the right to deal with the claim as it sees fit under the terms of the policy.

In any event, the property has now been subject to an extended period of monitoring which has presented an alternative solution to the claim, and one which I suspect will be more in line with Mr and Mrs R's desire to keep the vegetation intact.

So, having carefully reconsidered everything, I've reached the same conclusions I reached in my provisional decision, for the same reasons.

### **My final decision**

My final decision is that this complaint is upheld. In order to put things right for Mr and Mrs R, Royal & Sun Alliance Insurance Limited must:

- Deal with the claim in line with the proposals put forward by its subsidence consultant.
- Pay a total of £400 compensation to Mr and Mrs R.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R and Mrs R to accept or reject my decision before 23 August 2022.

Dan Prevett  
**Ombudsman**