

The complaint

Ms F complains that Royal & Sun Alliance Insurance Limited (“RSA”) declined her claim for subsidence on her home insurance policy.

What happened

Ms F had home insurance that was underwritten by RSA. In 2021 she noticed water on the floor of an extension to the property and some cracks in the walls. She made a claim on the insurance.

RSA declined the claim as it said the foundations of the extension weren’t deep enough to account for the type of soil it was built on and to protect against nearby vegetation. It said that the exclusion for poor workmanship in the policy would therefore apply and the claim wouldn’t be covered.

Ms F made a complaint as she said the documents she received when she bought the property confirmed the extension had been signed off by building control, so she couldn’t have known that the foundations weren’t deep enough. She also said RSA had taken too long to come to a claim decision.

RSA upheld her complaint about the delays and offered £250 compensation. However it maintained its position on the declined claim. Unhappy with this, Ms F brought her complaint to this service.

Our investigator recommended the complaint be upheld. She said RSA hadn’t done enough to show the exclusion applied as she was satisfied it had met the required building regulations at the time. And she said as the extension had been built in 2007, it had stood for 14 years without issue, so it seemed unlikely that it was built poorly. She therefore thought RSA should accept the claim and settle it in line with the remaining policy terms.

Ms F accepted our investigator’s outcome. However RSA didn’t. It said that due to the vegetation in the area of the extension, the foundations should have been much deeper and if they had, the subsidence wouldn’t have happened. And it said there were signs of subsidence related repairs so it didn’t agree the structure had stood for 14 years without issue.

As agreement hasn’t been reached, the case has been passed to me to decide.

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.

When an insurance claim is made, it’s first for the insured to prove an insured peril – something covered under the policy. It’s then for the insurer to either accept the claim or prove that an exclusion applies in the circumstances. Here Ms F has shown that her property has suffered from subsidence. So I need to decide if RSA has done enough to show that the

exclusion for poor workmanship applies and consider if it has treated Ms F fairly and reasonably by applying it in the circumstances.

When applying an exclusion for faulty design and workmanship, we'd expect a business to firstly show that the structure hasn't been built in line with applicable regulations at the time.

The foundations of Ms F's extension were found to be built at a depth of 850mm. It was built in 2007 and the building regulations that applied at the time recommend a minimum of 450mm rising to 750mm in clay soils. So the foundations of the extension met the building regulations at the time, taking into account the type of ground.

However RSA has said that there is vegetation in the close vicinity of the extension, so this should have been taken into account when the extension was built. And its pointed to guidelines from a builder of new homes, who I'll refer to as "N", that provides guidance on foundation depths based on the type of tree and how close it is to the structure. It says based on this guidance, the foundations should have been 2100mm due to a Hawthorn within two metres of the structure.

I've looked at the guidelines issued by N and I don't agree these apply here. N provides guidance for new build houses. Ms F's claim relates to an extension to her property which wasn't a new build. So the builders of the extension weren't required to consider this guidance. And while they offer a good example of best practice in the building industry, I don't think it's fair to conclude that just because standards laid out in these guidelines weren't met, that the extension was built poorly.

Further, the extension was built in 2007 and Ms F discovered the cracks in 2021. This means the property stood without issue for 14 years. And had the foundations not been sufficient for the structure, I'd expect problems to have developed much sooner than this. But the fact it stood for many years before subsidence became an issue, persuades me that the foundations were built sufficiently deep.

RSA has disputed that the extension has stood for many years without issue. In response to our investigator's outcome it said that it has a report that shows there were signs of cracking that had been repaired, which indicated a previous problem of subsidence. However, despite ample opportunity, this report has not been provided to this service. And I've seen no evidence that subsidence had previously occurred in the extension.

In fact, RSA provided an email from its underwriters that confirmed the pre-purchase survey included no mention of subsidence, so they were satisfied Ms F hadn't been aware of a problem when she purchased the property. As Ms F purchased the property in October 2020, that means that RSA agree the structure stood for at least 13 years without displaying signs of subsidence. And even if problems had developed immediately after the purchase, this still means the foundations were suitable enough to hold the property for a significant time. I therefore don't agree that the exclusion for faulty workmanship has been fairly applied.

Based on this, I'm satisfied that the relevant building regulations at the time were met and the foundations have held the structure without issue for at least 13 years. I therefore don't think RSA has done enough to prove the exclusion for faulty workmanship applies and has acted unfairly by declining Ms F's claim on this basis. I therefore agree with our investigator that it should accept the claim and settle it in line with the remaining policy terms and conditions.

Ms F also complained about the service she received from RSA. It's offered £250 to make up for around a two month delay in dealing with her claim. I think this is fair in the

circumstances and in line with what I would have directed if it hadn't offered anything. I understand Ms F has accepted this amount and received payment, so I won't ask RSA to do anything further in this regard.

My final decision

For the reasons I've given, I uphold Ms F's complaint and direct Royal & Sun Alliance Insurance Limited to accept Ms F's claim for subsidence and settle it in line with the policy terms and conditions, without applying the exclusion for faulty workmanship.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms F to accept or reject my decision before 12 September 2022.

Sophie Goodyear
Ombudsman