

The complaint

R complain about Royal & Sun Alliance Insurance Limited's handling of a claim made under their property insurance policy.

What happened

R is a property management company for a block of flats. They have a "Blocks of Flats" insurance policy underwritten by RSA. This covers buildings and residents' contents, amongst other things.

The background to this complaint is well known to both parties, so I'll only provide a brief summary here.

In short, R made a claim in 2016 after discovering water leaking at the back of the property. RSA accepted the claim and appointed surveyors. They identified issues with the drainage pipework from two soil stacks leading into a manhole in the grounds behind the flats. And they specified the repair works that should be carried out.

RSA then appointed contractors to carry out the works. R say that the contractors appeared not to follow the surveyors' instructions at the time. However, the leak appeared to have been repaired.

R contacted RSA again in 2020, having discovered water leaking in the same area of the property.

RSA appointed a surveyor and, on their recommendation, a company to carry out a CCTV survey of the pipework and drains. This resulted in a set of repair proposals and RSA appointed contractors to carry them out.

R say that when the contractors arrived to carry out repairs, they dismissed the survey reports and the proposed repair schedule and suggested alternative measures to fix the problem.

R didn't agree and the contractors left without undertaking any of the repair work. R then commissioned their own survey. This recommended slightly different repairs to those proposed by RSA's surveyor. And, according to R, it also found that the repair work in 2016 hadn't been carried out in line with the surveyor's recommendations at that time.

R made a complaint to RSA about their handling of the matter. And when RSA didn't provide a final response, they brought their complaint to our service.

R want RSA to arrange proper repairs to all drains and pipework in the area affected by the leak. And they want RSA to commit to carrying out CCTV checks on completion to ensure all issues have been effectively addressed.

They want RSA to ensure the safety and security of the residents affected whilst the works are carried out. And they want RSA to accept that the issues in 2020 are a continuation of

those they experienced in 2016. At the moment, RSA have recorded the 2020 contact as a new and separate claim, which R believe has affected their premiums.

Our investigator looked into it and didn't uphold the complaint. He said RSA had agreed to cover R's surveyor costs (£216), which was fair and reasonable.

He thought it wasn't unreasonable for RSA to conclude that the damage in 2020 was in a different part of the pipework to that repaired in 2016, so it was fair to record two separate claims – one in 2016 and one in 2020.

He said RSA should assess the claim and now carry out repairs which were lasting and effective. And he said R's complaint about the price of their premiums might best be treated as a separate complaint, to be addressed after it's finally established whether there should be two claims recorded by RSA or one.

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

Because I didn't agree with the outcome proposed by our investigator, I issued a provisional decision. This gave R and RSA a chance to provide more information or evidence and/or to comment on my thinking before I make my final decision, which is this service's last word on the matter.

My provisional decision

In my provisional decision, I said:

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

Given the evidence currently available to us, it's not straightforward to determine exactly what repairs were specified in 2016, whether these were in fact carried out, and how the presumed damage to the drains in 2016 relates to the damage now identified by the various surveyors in 2020.

That's at least in part because the surveyors use different terminologies to describe the various parts of the drainage system. And none of the surveyors' reports we've seen actually includes a diagram to show how the drainage system as a whole is set up.

If RSA have further reports and/or a diagrammatic depiction of the drains and the areas identified as needing repair, then I suggest they provide that to us in response to this provisional decision.

There are four relevant surveys. One in 2016, provided by a company appointed by RSA that I'll refer to as A. Three in 2020. The first provided by a company appointed by RSA I'll refer to as B. This recommended a further CCTV investigation. This was carried out by a company I'll refer to as C, who specified the repairs they thought were necessary. And R later commissioned their own survey – provided by a company I'll refer to as D.

In 2016, A appear to have identified issues with two separate soil vent pipes at the rear of the property.

One soil vent pipe (SVP 1) carries wastewater from the bathroom of the upstairs flat and goes through the kitchen of the downstairs flat before exiting the property via a pipe which leads to a chamber underneath a manhole cover in the grounds.

The other (SVP 2) carries waste from the toilet of the downstairs flat. It's not entirely clear to me whether – and, if so, at what point – SVP 2 joins either SVP 1 or the pipe under the grounds leading to the chamber beneath the manhole. Again, if either party has a diagram depicting the drainage system – or other information which might help – I'd suggest they provide it in response to this provisional decision.

In terms of the required repairs, A said the pipe at SVP 1 (the kitchen stack) should be replaced.

As for SVP 2 (the toilet stack) they said the junction should be replaced, along with 0.5 metres of the backdrop shaft (again, it's not entirely clear exactly where the junction or backdrop shaft is). They said roots should be removed and jetting carried out, to enable a liner to be fitted along a 3 metre section of the pipework of SVP 2 (again, it's not entirely clear what section of pipe this refers to).

A's report was very clear that in order to carry out this work (on SVP 2), the contractors would need to work inside the flat and remove the toilet and the boxing around it.

R say that when the contractors turned up, they said this wasn't necessary and worked exclusively outside - and certainly didn't remove the toilet and/or boxing.

R also say they asked RSA to provide a report / invoice for the work done by the contractors in 2016, to show how far they'd met A's specification.

RSA told them they didn't have any report or invoice – and RSA haven't provided us with any documentation to show what works were actually carried out in 2016. Again, if RSA have any evidence about the work carried out in 2016, they should provide it in response to this provisional decision.

The first report in 2020 – provided by B – identified the same symptoms as A had done in 2016. That is, water leaking into the wall at the rear of the property (below the internal floor level) and pooling in the alley at the side of the property. B said this was most likely due to a leak in a union or boss joint on the soil stack underneath the floor in the downstairs flat.

Unfortunately, B didn't specify whether this was a leak in SVP 1, SVP 2, or both. To be fair, that was probably because they couldn't tell – and almost undoubtedly why they suggested a CCTV survey be carried out.

RSA appointed C to carry out that CCTV survey. Again, C's report noted the same manifestation of the leak as in 2016 – damp on the back wall of the property at a low level, with water pooling in the alley.

C reported that the rest bend of SVP 1 (the kitchen stack) was broken. They recommended lining the rest bend and the SVP (after work to deal with roots and jetting). They also said the backdrop at the manhole needed to be replaced with new PVC pipework.

R commissioned D to carry out a survey after they'd rejected the work proposed by the contractors, which they said didn't tally with C's recommendations.

D said the gully to the manhole needed replacing. I'm assuming this is much the same work C specified when they referred to replacing the backdrop at the manhole. If either R or RSA disagree with that, they should say so – and explain why – in their response to this provisional decision.

D also said the rest bend was broken. I'm assuming this is the same rest bend C identified as broken (the one on SVP 1 – the kitchen stack). But D said this should be replaced with new PVC pipework, rather than lined as C suggested.

D aren't specific about which SVP they refer to in their report. But, assuming the logic set out above is correct – and that C and D are referring to the same broken rest bend – D also said they detected an existing liner on that SVP, which I take to be SVP 1, the kitchen stack.

This is significant because the work specified by A, in 2016, said the pipe at SVP 1 (the kitchen stack) should be replaced, not lined. And A said a liner should be put in place on SVP 2 (the toilet stack). And we know the contractors didn't remove the toilet or boxing, as A suggested they would have to do to carry out the repairs on SVP 2.

Where insurers accept a claim and agree to repair a property, we would expect those repairs to be lasting and effective.

As things stand, I'm minded to uphold R's complaint. That might change if I'm provided with new and better information about what's happened. But looking at the information I have now, it would appear most likely, on balance, that the work carried out in 2016 was not what was specified by A. And was therefore likely not an effective and lasting repair.

It appears SVP 1 – which A said should be replaced – was lined. It appears the rest bend on that stack – which I assume A intended should be replaced – is currently broken (which raises the question whether it was already broken in 2016).

And it appears SVP 2 – which should have been lined – may not have been repaired at all. Or, at the very least, not repaired in the way A suggested, given that the contractors didn't remove the toilet and boxing.

Even leaving aside the technicalities of the drainage system and the repairs specified and actually carried out, it seems to me that if you take a step back, what's broadly happened here is as follows.

R reported an issue and made a claim in 2016, because they had water leaking into the wall at the rear of the property and pooling in the alleyway.

RSA accepted the claim and say they carried out the necessary repairs (which should be lasting and effective). But around four years later, R have what appears to be exactly the same issue – a damp back wall and water pooling in the alleyway.

RSA are asking R – and our service – to accept that the 2016 repairs were effective and lasting and that the issues in 2020 are entirely new and related to a different part of the pipework. They're also asking us to believe that those new issues weren't – and could not have been – apparent in 2016.

In light of the fact that the contractors who carried out the work in 2016 seem – on the basis of the evidence currently available at least – to have ignored the work specification set out by A, I'm not persuaded by RSA's argument, as things stand.

RSA have also said that the repairs in 2016 did stop the leak – with no issues until the leak in 2020 was spotted. I'm not convinced that means the repairs in 2016 were lasting and effective.

My position might change if I receive new information or evidence – that's the point of issuing a provisional decision now. But, I'm minded as things stand to uphold the complaint.

I'm also minded to require RSA to agree with R a new scope of works, to be carried out as soon as practically possible, to ensure lasting and effective repairs are carried out to all of the pipework and drains at the rear of the property.

At a minimum, that scope of works should include all the repairs specified by A in 2016, plus the work recommended by C and D in 2020.

Where C and D agree on the problem but disagree on the remedy, I'm inclined to require RSA to go with D's recommendations – which on the face of it appear to give the most likely route to an effective and lasting solution and which R indicate are acceptable to them.

I also note that A said in 2016 that SVP 1 needed replacing, rather than lining – which tallies with what D are saying now. And that the lining of that pipe in 2016 appears to have failed now – which leads me to question whether trying to do the same thing again would be a likely route to providing a lasting and effective repair.

It goes without saying that RSA should ensure the safety and security of the residents whilst the work is being carried out. And that they should ensure that the works are inspected on completion to check that the pipework and drains and pipes are sound following repair.

R have said they'd like a CCTV survey at that stage. That sounds like one reasonable means to check the repairs have been completed successfully, but I'm minded not to be so specific and to require RSA either to carry out a CCTV survey or otherwise satisfy themselves - and R – that lasting and effective repairs have been carried out.

I'm also minded to require RSA to record the 2020 contact as an extension of the 2016 claim, rather than a new claim. And to recalculate R's premiums on that basis, providing a refund if appropriate.

Finally, I'm minded to require RSA to pay R £250 in compensation. R is a corporate body, which can't suffer distress or upset, but can suffer inconvenience.

R has been significantly inconvenienced by the need to commission their own surveyor's report and by the need to make their representations and arguments to RSA. I note also that RSA have been unable to explain to R what repairs were actually carried out in 2016, which has unnecessarily prolonged and complicated the debate.

I'm assuming RSA have paid R the £216 it cost to commission D's report, as they said they would. But if they haven't yet done so, they should do so now."

And on that basis, I said I was minded to uphold the complaint and to require RSA to take the actions specified above.

The responses to my provisional decision

RSA responded to my provisional decision to say they had nothing further to add.

R provided some further comments and another CCTV survey report. They asked another company, which I'll refer to as E, to inspect the drains and pipes and make recommendations about any necessary remedial work. E's inspection was carried out in late July, at around the same time that I issued my provisional decision.

Much of what R said in response to my provisional decision was further information or argument to support the upholding of the complaint. R will understand if I don't repeat that here, given that RSA haven't given me any reason to re-consider my provisional decision in any case.

I'm grateful to R for providing clarification about the layout of the pipes and drains at the property. That was very helpful for my understanding and confirmed much of what I'd assumed.

R also said they wouldn't be happy if the contractors and surveyors previously used by RSA – in 2016 and 2020 – played any part now in either setting out the scheme of work required to settle the claim or carrying out the work itself.

They want to choose the contractor(s) themselves. And they want RSA to formally confirm in writing that they will pay for all of the works specified in the previous reports (presumably including the work specified in the latest report, provided by E).

They also want RSA to pay for E's report, which cost £300. And to provide a nominated contact for R at RSA whilst the further work is carried out.

R also want me to specify that RSA must include in the scheduled works both: drying out of the areas of the building which have been affected by the water leaks; and decontamination of those areas of the building.

R have clarified what they meant by their previous assertion that RSA should ensure the safety and security of the residents whilst the work is being carried out. They want RSA to provide alternative accommodation for the residents and their pets whilst the work is on-going.

R have also reiterated that they want the 2020 contact to be recorded on RSA's systems and a continuation of the 2016 claim - and not as a new and separate claim in itself. And that they think their premiums are unjustifiably high. R have asked us to carry out a review of the premiums.

And they want me to require RSA to given them a breakdown of the work actually carried out in 2016.

Finally, R asked that any instructions given to RSA in my final decision should be "*watertight and legally enforceable*".

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.

In my provisional decision, I said I would be making certain assumptions if there was no further evidence or information provided by either party. Most of those assumptions – based on the evidence and information we had at the time – went essentially in favour of R.

RSA have been given the opportunity to provide more information and/or to comment on my thinking and to point out where they think I may have been mistaken.

In fact, they've provided no further information or comment. It shouldn't therefore be a surprise to RSA that I'm upholding R's complaint and maintaining my position about what RSA need to do now to put things right.

Turning to R's comments, this decision – assuming they (R) accept it – is binding on RSA and is legally enforceable.

I'll have to ask R to understand that it's not the role of our service to act as an alternative claims handler or loss adjuster for RSA. Our role is to look at what has already happened, consider whether RSA have made errors or omissions and, if so, determine what they need to do to put those right.

We can't direct RSA about how to run their operations in detail. And it's not for us to predict all possible future issues or problems and head those off in advance, just in case. For example, it's not for me to require RSA to sign a formal written agreement about the repair works. As I say, RSA will be bound by this decision (assuming R accept it).

I can understand R's reservations and concerns about how things progress from here, given their experience so far. But I'll have to ask them to understand that I'm not empowered to do everything they've asked in their response to my provisional decision.

That said, I agree with R that RSA shouldn't use the agents and/or contractors previously involved - in 2016 and 2020 - to resolve the claim now. I'm not going to go so far as to require RSA to pay for any contractor(s) R chooses. That would be unfair to RSA because they'd be committed to a cost they had no control over.

What I'd suggest is that where RSA intend to use a loss adjustor, surveyor or builder / drainage company (or any other agent or contractor), they provide a list of at least three options and allow R to choose one from that list. This is in line with our usual approach in these kinds of circumstances.

I'd also agree with R that RSA need to provide a contact for R who will deal with the claim from here on in. I understand that contact may not always be available to answer R's queries and questions immediately, but it seems sensible - and a matter of good customer service – to have a nominated RSA employee who is leading on the management of the claim.

My provisional decision said that I was minded to require RSA to agree a schedule of works with R, to include, at the very least, all of the repairs specified in the reports from A, C and D (see also my comments above about which recommendation to go with where they are conflicting). And I'm standing by that now, given RSA's lack of comment.

As part of that, I'm going to require RSA to consider whether drying out and decontamination works are necessary as part of the settlement of the claim. I have no reason to believe they

wouldn't be required - and R's request that they are carried out seems entirely reasonable.

But it's not for me to direct the detail of the claim handling from now on. And I note these issues weren't specifically raised as part of R's complaint to RSA, or to us. If R are unhappy with the proposed schedule of works, they would be entitled to make a further complaint to RSA – and then to us if they're not satisfied with RSA's response.

The same principles apply to R's request for alternative accommodation (AA). I can require RSA to consider whether AA should be provided under the terms of the policy, once it's absolutely clear what works are to be carried out and how long they might take. But I'm not going to pre-empt any decision they have to make on that issue now – again, especially since this has not been raised previously in the complaints to RSA and to us.

And the same applies to the findings of E's report. It seems to me that some parts of this report simply confirm that repairs need to be carried out on areas of the soil vent pipes and/or the pipes leading from them to the manhole. In other words, E confirm some of the issues identified by A, C and D – and confirm what needs to be done now in terms of repairs.

Where different repairs entirely are suggested (if at all), RSA will be entitled to consider whether the damage identified is covered under the policy and, if so, what remedial works need to be undertaken.

At the same time, RSA will be entitled to make a judgement about whether they should pay for E's report. On the face of it, it wasn't entirely necessary for R to commission a further report, given that A, C and D's reports all suggested that there were issues with the drains and pipes and that these needed repairs.

But if E have in fact identified other issues which are accepted to be a legitimate part of the claim (and require repairs covered under the policy), then I think RSA should pay R the cost of obtaining E's report.

In terms of R's request for a breakdown of the work carried out in 2016, RSA have been fairly clear already that they have no such document. That's very unfortunate, but R will appreciate that I can't require RSA to produce something that doesn't exist.

I hope R are consoled by the fact that if it did exist, that document – if accurate – could only confirm what I've assumed to be true in any case, that the works carried out in 2016 were not what A had specified.

I note the comments made by R about the cost of their premiums. As set out in my provisional decision, I'm going to require RSA to recalculate any premiums paid since the contact from R in 2020 about the on-going issues.

Those re-calculations must assume that the contact in 2020 is essentially a re-visiting of the same claim made in 2016 – that they are, in essence, one claim, not two. And I'm going to require RSA to pay a refund to R if the re-calculated premiums are cheaper.

If R are still unhappy with the price of their insurance policy after that, they would be entitled to make a complaint to RSA and then bring it to us if they aren't satisfied with RSA's response.

Putting things right

RSA have given me no reason to reconsider my provisional decision and the actions I was minded to require them to take. So, they must now carry out those actions in full (as set out

above and in my provisional decision).

For the sake of complete clarity, they must not use any of the contractors previously involved in the claim in 2016 or more recently. And they should agree in advance with R any contractors they do use (be they surveyors, loss adjusters or builders / drainage companies).

RSA must also provide a primary contact for R during the on-going handling of the claim and the period when the works are carried out.

I'm also going to require RSA to *consider*, at the appropriate time: whether drying out and/or decontamination is necessary to settle the claim effectively; whether any or all of the affected residents should be moved into alternative accommodation during the works; whether E's report identifies further issues with the pipes and drains that need to be addressed in the schedule of works; and whether they should pay R the cost of obtaining E's report.

I should say at this point that none of this should be taken to preclude the cash settlement of the claim, if that's something that both parties can agree on.

My final decision

For the reasons set out above and in my provisional decision, I uphold R's complaint.

Royal & Sun Alliance Insurance Limited must:

- As soon as practically possible, prepare and agree with R a schedule of works to address the on-going issues with their drains and pipes and provide lasting and effective repairs. That schedule should be based on the existing surveyors' reports (as set out in my provisional decision) and any further damage identified by E which is covered by the policy.
- As soon as practically possible after that, carry out all necessary repairs to rectify any damage covered under the policy. Those works are to include as a minimum the repairs recommended by A, C and D (as set out in my provisional decision).
- Consider, in line with the terms and conditions of the policy, whether some or all of the residents should be provided with alternative accommodation for any period when the works are being carried out.
- Consider, in line with the terms and conditions of the policy, whether drying out and decontamination work should be included in the schedule of works.
- Consider whether they should pay R the cost (£300) of obtaining E's report in July 2022.
- Use contractors - to prepare the schedule of works and carry it out - agreed with R in advance (as per my directions above).
- Nominate a primary contact for R for the duration of the claim.
- When the works are completed, carry out appropriate checks to satisfy themselves that the repairs are lasting and effective.
- Amend their records to show that the claim made by R in 2020 is a continuation of the 2016 claim, rather than a separate claim.

- Re-calculate any premiums paid by R since the contact in 2020, on the basis that R have made one claim, not two. And refund R the difference, if there is any.
- Pay R £250 in compensation for the inconvenience they've been caused.
- Pay R £216 to cover the cost of obtaining D's report, if they haven't already done so.

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

Neil Marshall
Ombudsman