

## **The complaint**

Mrs A complains that Royal & Sun Alliance Insurance Limited (“RSA”) has unfairly handled a subsidence claim under her buildings insurance policy.

Any reference to Mrs A or RSA includes any agents or representatives unless specified.

## **What happened**

The background of this complaint is well known to all parties. So, I’ve summarised events.

- Mrs A holds an RSA buildings insurance policy. She made a subsidence claim under her policy related to damage to her garage and kitchen extension which had been built in 2004 – replacing and extending the existing garage. RSA appointed its loss adjuster (C) to investigate the damage.
- C said the damage in question was as a result of defective workmanship related to inadequate foundations and declined the claim. It said the main property had foundations of 1000mm, and the extension had foundations of 600mm which weren’t sufficient and should’ve been a similar depth to the main property in line with guidelines applied by a certain builder of new homes (I will call them NB).
- Mrs A appointed a surveyor (R) who disagreed with C’s findings, saying the garage extension construction was of a very good standard. They said architect drawings from the time showed the previous garage foundations to be 800mm and that 2004 extension would replicate this depth. R said planning approval was granted, as was Building Regulation, and a certificate confirming this upon completion. And Building Control surveyor’s notes reflected a depth of 800mm into firm clay.
- R said C failed to substantiate its position that the foundations were 600mm. And the distinction between the main property and garage was correct as the former was built on made ground, where as the garage was built on clay of low shrinkage potential. R also said any water demand on trees did not appear to be a foreseeable risk to Building Control, nor Mrs A.
- So, Mrs A and R brought the complaint to this Service. One of our Investigators looked into what happened and upheld the complaint. He found R’s commentary persuasive and agreed RSA had failed to substantiate the foundation’s depth. Nor had it provided clarity on which specific 2004 standard wasn’t met. And it wasn’t fair for RSA to rely on NB guidelines where it had failed to show the property was constructed by an NB registered builder with the intention of providing an NB warranty.
- The Investigator also said there was evidence of low soil plasticity which disproved any suggestion put forward by RSA to the contrary. He said an excess would still be payable if the claim was valid. And that RSA should reconsider the claim, paying Mrs A £150 in compensation for the distress and inconvenience caused, and her surveyor costs to the date the complaint was referred to this Service.
- Mrs A accepted the view, but RSA didn’t. In summary, RSA said:

- Mistakes it accepted it made during its handling and within C's report hadn't impacted the progress of the claim.
- Roots were present to 1.3m in depth at the site of the garage borehole and 1.2m in the main property borehole.
- Mrs C's builder had failed to consider the main house's foundation depth, or the proximity of trees which means it was inevitable the garage foundation would fail.
- Even if it conceded that the depth of the foundations were 800mm, it was still lower than the main property.
- The minimum depth requirement at the time was 750mm but taking into account good practice, NB guidelines show the depth would've needed to be greater to account for vegetation, while acknowledging these guidelines do not specify a depth.
- The Regulations in place at the time required "*the building shall so be constructed that movement of the subsoil caused by swelling, shrinkage or freezing will not impair the stability of any part of the building.*" And so whether a certificate was granted or not only demonstrates the build was completed in line with the architects drawings, not that it had considered the appropriate regulations in place which it considered to be poor design.
- It agreed reference to high plasticity was incorrect.
- It said it could not guarantee that the foundations wouldn't have been affected at a greater depth than 600mm, but it felt it was unlikely to have occurred if they had been constructed using a greater depth.
- The Investigator looked again but didn't change his mind. He reiterated:
  - The certificate of completion showed plans had been submitted in line with building regulations and were inspected by the relevant authority.
  - RSA couldn't fairly rely on NB terms.
  - Even if defective workmanship had been found, we'd expect B to demonstrate the damage only occurred as a result of this, and here roots had been discovered between 1.3m and 1.2m deep across the property, lower than any of the depths RSA had sought to rely on.
- RSA still disagreed and asked for further time to reply. This was granted and the deadline has passed some time ago, but it's provided nothing further. So, the complaint has been passed to me for an Ombudsman's final decision.

### **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'm upholding this complaint. I'll explain why.

- In this case there's no dispute that Mrs A's home has been damaged by subsidence. Her policy covers subsidence damage, but specifically excludes damage that has arisen from poor design or faulty workmanship like many policies of this nature do.
- RSA said Mrs A's extension has been damaged by nearby trees, and the foundation depth for this extension wasn't deep enough so it was poorly designed.
- As RSA has said this claim falls under an exclusion, the onus is on it to demonstrate

this is the case. As outlined above, RSA has relied on NB standards. I will not repeat these in full as they're known to both parties. But RSA says these show a minimum foundation depth of 750mm was required for an extension. And, taking into account the nearby trees, NB guidelines would've recommended a greater depth.

- I want to be clear that NB standards and guidelines were not Building Regulations or equivalent to them when the extension was built in 2004. Instead they are standards set out by NB within its role of overseeing and supporting improvement of building practices in new homes.
- I've read the NB guidelines RSA mentioned, but I can't see Mrs A's extension was subject to them. I say this as the extension was built on an existing property (not a new build), and I've seen nothing to suggest the builder was required to take into account these standards.
- So, I don't think it's fair for RSA to rely on these guidelines when determining whether or not the extensions' foundations were adequate. I've gone on to consider the relevant building regulations in place at the time which RSA has quoted.
- RSA has said the fact the subsidence has occurred shows that the building wasn't correctly constructed.
- When this extension was built, I'd agree the builder had a responsibility to ensure it was constructed to an appropriate standard – the Building Regulations from the time. I'd expect this to include ensuring the foundation is capable of supporting the structure for a reasonable period of time, taking into account the circumstances. Evidently the architect drawings from the time do show the foundation depth to be 800mm, and this seems supported by the other evidence from 2004, including the Building Control surveyor's notes.
- RSA has since said the actual depth used was 600mm based on its own investigation. But that the evidence from 2004 would only show the works carried out met the design – which appears to me to be 800mm depth. So while I take into account the evidence RSA has provided, I think in light of the conflicting evidence on both sides it would have been reasonable for it to provide further evidence should it want to rely on the depths of the foundations in question.
- However, even if I were to agree that the depth in question was 600mm and did not meet the Regulations in place at the time, I would go on to consider if this would've changed anything in regards to the subsidence claim itself.
- RSA has been clear that there are roots found at depths of 1.3m and 1.2m across the property. These depths are beyond even what it said RSA has said should've been in place at the time. So, it strikes me that even if the depth had met the NB guidelines that RSA has sought to rely on – which I've already explained simply don't apply – it seems most likely that the subsidence would've still occurred.
- RSA has provided some very limited comments saying it doesn't believe this subsidence would've still occurred, but no reasoning or technical opinion why. For these reasons, I'm satisfied RSA has unfairly applied this exclusion in the circumstances of this case. And I'm directing it to reconsider the claim in line with the remaining policy terms, without use of this particular exclusion.
- Evidently the back and forth in this case would've been distressing for Mrs A. Thankfully it appears to me that R has carried much of the back and forth for her which appears to have reduced the impact on her directly. So, I'm in agreement a payment of £150 in compensation would be fair in these circumstances.
- In this particular case – it appears to me R's role has been significant to Mrs A in putting her case across and obtaining evidence. And in light of her age and position, I

think it's fair in this instance for RSA to cover reasonable costs incurred up until the date this complaint came to this Service.

### **My final decision**

I'm upholding this complaint. Royal & Sun Alliance Insurance Limited must do the following:

- Reconsider Mrs A's claim against the remaining terms and conditions of the policy.
- Pay Mrs A £150 in compensation for the distress and inconvenience it has caused.
- Pay R's reasonable costs incurred up until the date of this complaint coming to this Service on 2 March 2022 upon receipt of supporting invoices/documentation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs A to accept or reject my decision before 21 October 2022.

Jack Baldry  
**Ombudsman**