

The complaint

Mr and Mrs J complain that Royal & Sun Alliance Insurance Limited (“RSA”) declined to pay for alternative accommodation while their home was uninhabitable due to subsidence.

What happened

Mr and Mrs J had home insurance with RSA. In August 2019 they made a claim after noticing potential subsidence damage at the property. RSA initially declined the claim as it said the subsidence was due to defective foundations. Mr J complained about the decision and ultimately brought the complaint to this service. An ombudsman issued a decision in January 2021 directing RSA to cover the claim.

During this time Mr J made two other claims on the policy. One for his boiler and another for an escape of water under the kitchen floor.

In January 2021 Mr J informed RSA that he had moved out of the property in September 2020 due to the escape of water and had been living in alternative accommodation since that date. RSA declined to cover the cost of the alternative accommodation as it said this would only be provided under the policy where the property is uninhabitable and it didn’t consider it to be in this instance.

However Mr J said that the property was without heating and hot water as he was unable to get the boiler fixed due to the severity of the cracks on the wall where it was located. He said he’d called out a number of plumbers but they’d refused to do any work on it due to the cracks caused by the subsidence.

In November 2021 RSA sent a gas engineer to inspect the boiler and they agreed the wall it was located on had cracked to an extent that made the boiler unserviceable. It therefore agreed to pay Mr and Mrs J’s alternative accommodation from this date.

However Mr J wasn’t happy with this as he said his property had been uninhabitable for much longer than this and thought RSA should cover his costs from the date he moved out in September 2020. He made a complaint.

RSA didn’t uphold his complaint, so he brought it to this service. Our investigator considered the issues but didn’t recommend the complaint be upheld. He said he didn’t think there was enough evidence to say the property had been uninhabitable before November 2021 so thought RSA had acted fairly by only offering alternative accommodation from this date. Mr J didn’t agree and asked for the complaint to be reviewed by an ombudsman.

When the complaint came to me, I disagreed with our investigator’s outcome and I wrote to both sides to explain my provisional decision.

In this I said:

- RSA had relied on its report from February 2021 to say that Mr J’s property was not uninhabitable at this point. However having looked at the notes from this report I didn’t consider it to be very persuasive.

- The only comment on the cracks around the boiler were as follows: '...the cracking did not appear to be any worse than the cracking noted within the original technical report. Although cracking behind the boiler is noted which looks to be new.' The rest of the report focused on cracks in other areas of the property. So the report agrees the cracking has worsened in this area but makes no further comment or recommendation for further investigation. I therefore don't think RSA's report is enough to say that the cracks around the boiler weren't a hazard at that time.
- Further, RSA's visit in November 2021 was made by a gas safe engineer and it was at this time that they agreed the property wasn't habitable. RSA has provided no information about why a gas safe engineer was only sent in November, and the contractor who attended in February was referred to as 'our local repair manager'. It is difficult to understand why it was only at this time that a gas engineer was sent out and how RSA can be confident that the property only became unsafe at this time when it hadn't been checked by an engineer previously.
- Based on this, I can conclude that in November 2021 RSA agree that the property is unsafe. However I don't think it's provided enough evidence to show that it was safe before this date. As its contractor agreed cracks had worsened around the boiler in February, but did nothing else until November to follow up on this. Had the gas safe engineer attended earlier then I may take a different view.
- Mr J has provided comment from a number of experts that he says attended during the period between February and November 2021. While this evidence has been compiled after the event, so I wouldn't usually find it very persuasive, as RSA hasn't provided anything to show that it checked the gas safety of the boiler due to the subsidence damage, I feel this is the most compelling evidence in the circumstances.
- For these reasons I intend to uphold Mr J's complaint. It is difficult to calculate exactly when the property became uninhabitable. But I certainly think there's enough to say it was some time before RSA's visit in November 2021. As RSA visited in February and noted the cracks had worsened at this point, I think it could have done more to ensure the property was safe from this date.
- I therefore think this is a fair date to ask RSA to pay alternative accommodation costs from. So I intend to require RSA to pay costs from February 2021.
- In regards to compensation, I think RSA should have done more to address Mr J's concerns when they were raised. And if it had this would have alleviated the additional distress and inconvenience he and his wife have experienced. I therefore also intend to ask RSA to pay Mr and Mrs J £300 compensation.

Mr J responded to my provisional decision to accept my findings.

RSA responded and didn't accept. It provided comments from its expert explaining that the boiler wasn't working before the claim was made and it was only declared unusable in November 2021.

I've considered all representations when reaching my 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.

RSA has said that the boiler wasn't working before the claim and has provided an email that shows this to be the case. I don't dispute that Mr J's boiler was already experiencing issues, however this doesn't change my position on the outcome.

The matter I'm assessing here is whether RSA has acted fairly by only offering alternative accommodation from November 2021. It's said that the policy only covers this when the property is uninhabitable. And it considered the property uninhabitable from this date as it considered the cracking around the boiler to have been to such an extent that the boiler should be condemned.

In my provisional decision I explained why I wasn't persuaded that RSA had done enough to show that the property wasn't uninhabitable before this date. And the fact the boiler wasn't working before the claim has no bearing on this decision. As RSA agreed the property was uninhabitable because of the extent of the cracks on the wall the boiler was attached to that made it unsafe to repair. Not just because the boiler wasn't working.

As I said in my provisional findings, it is difficult to pin point the exact date the boiler became unsafe. But from RSA's report in February 2021 it seems the cracks had already significantly worsened at this point. And as I've seen no evidence from an engineer to show that the boiler was safe at this time, I maintain my position laid out in my provisional decision and direct RSA to pay Mr and Mrs J alternative accommodation costs from this date.

I also maintain my position that RSA should pay Mr and Mrs J £300 compensation to make up for the distress and inconvenience it's caused by not addressing their concerns sooner.

My final decision

For the reasons I've given, I uphold Mr and Mrs J's complaint and require Royal & Sun

Alliance Insurance Limited to:

- Reimburse Mr and Mrs J for the alternative accommodation paid from February 2021 until the property is habitable.
- Pay Mr and Mrs J £300 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs J and Mr J to accept or reject my decision before 5 December 2022.

Sophie Goodyear
Ombudsman