DRN-3965374

The complaint

Mrs T and Mr T complain about Royal & Sun Alliance Insurance Limited's handling of a claim under their home insurance policy.

What happened

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

Mrs T and Mr T have a home insurance policy underwritten by RSA which covers their home and its contents, amongst other things.

They made a claim in January 2020 after a water leak from an Xmas tree damaged their conservatory floor.

RSA sent a contractor to assess the damage and scope the required repair work. In attempting to lift part of the flooring, the contractor damaged Mrs T and Mr T's electric underfloor heating.

The contractor accepted responsibility for that damage and RSA asked Mrs T and Mr T to obtain quotes for repairs to the heating system.

Mrs T and Mr T obtained a quote for around £5,800, to cover repairs to both heating system and the flooring. However, they say RSA delayed agreeing to the quote.

And they say RSA wouldn't at first pay the VAT element in advance. They say RSA then suggested the supplier submit an invoice – including VAT – before the work was actually done.

Mrs T and Mr T say their supplier didn't want to carry on with the work on that basis. And they say they couldn't then find another supplier willing to carry out repairs on the heating system.

Mrs T and Mr T say RSA were then responsible for further delays in coming to any agreement about how the repairs would be carried out.

They made a complaint to RSA. And when RSA didn't provide any substantive response within the permitted eight weeks, they brought their complaint to us.

Our investigator looked into it and thought RSA should ensure that the underfloor heating was repaired, and the flooring replaced. He also thought RSA should pay Mrs T and Mr T £400 in compensation for the trouble and upset they'd experienced as a result of the delays and indecision.

Mrs T and Mr T didn't agree and asked for a final decision from an ombudsman.

They think the suggested £400 compensation is too low given the distress and inconvenience they've been caused and the loss of full use of their conservatory over a

prolonged period.

They also thought our investigator's view didn't impose any time limits on RSA carrying out the repairs or settling the claim - and that RSA might therefore continue to prevaricate and delay without any imperative to get the claim resolved. And they felt it had been unfair for RSA to offer a cash settlement without the VAT element up front.

Because I disagreed with our investigator's view about what RSA needed to do to put things right for Mrs T and Mr T, I issued a provisional decision in this case.

That gave both RSA and Mrs T and Mr T the 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.
>
> In essence, this is a very simple complaint. Mrs T and Mr T made a claim for damage to their flooring – which RSA accepted. They then asked RSA to repair the damage to their underfloor heating caused by RSA's contractor.
>
> There is no dispute here about what RSA need to do. They need to properly indemnify Mrs T and Mr T by putting them back in the position they were in before the water leak in late 2019 / early 2020. They need to repair the flooring. And they need to repair or replace the underfloor heating.
>
> That was clear by the end of January 2020. By mid-January 2021, when Mrs T and Mr T brought their complaint to us, they still had a hole in their conservatory floor – where the leak occurred and where the contractor pulled up the flooring. And they still had underfloor heating which was semi-functioning, because of the damage caused by RSA's contractor.
>
> In January 2020, RSA asked Mrs T and Mr T to obtain quotes for the repairs. The situation was made slightly more complicated by the fact that the company which installed the electric underfloor heating was no longer trading. The system was, in RSA's words "pioneering 10 years ago" and not conventional.
>
> Nonetheless, Mrs T and Mr T found an engineer willing to attempt the necessary repairs – and they provided RSA with a quote by March or April 2020. That engineer then declined to continue with the work due to the complications over the VAT payment. Neither Mrs T and Mr T nor RSA have been able to find another contractor willing to attempt the repairs.
>
> That being the case, it seems to me that in order to put Mrs T and Mr T back in the position they were in before the leak and the damage caused by their contractor, RSA will need to replace the underfloor heating system as a whole – possibly with a more conventional system.
>
> Between March / April 2020 and January 2021, as well as the discussions about the VAT payment, there were a number of other delays which seem in most cases wholly – and in other cases almost wholly - RSA's fault.

RSA seem to have been undecided about whether to carry out the repairs or cash settle the claim. There was an issue with the quote their own contractor provided for repairs to the flooring – which appears to have been entirely miscalculated in the first instance.

RSA and the contractor spent no little time asking each other for details about the claim that they already had – or should have had.

And RSA seem to have almost washed their hands of the matter and left it to the contractor to sort out, despite the fact that Mrs T and Mr T had repeatedly said – understandably in my view – that they didn't want to deal with the contractor due to the errors they'd made on the first visit. It only later became apparent that the contractor had "put the matter on hold" on the basis that Mrs T and Mr T had refused to speak to them.

There have also been quite prolonged discussions about the depth of the wood layer on Mrs T and Mr T's existing flooring – which might have been very easily resolved by going to inspect it in situ or by asking Mrs T and Mr T to provide a sample of the undamaged flooring.

In short, there appear to have been a catalogue of errors, failures to take action and mis-communications between RSA and their contractor. All of which led to the unnecessary delay in progressing things between around April 2020 and January 2021, when Mrs T and Mr T brought their complaint to us.

I should be clear at this point that, even though the contractor admitted they'd damaged the underfloor heating and indicated their insurer might ultimately pick up the bill, Mrs T and Mr T were customers of RSA. And it was for RSA to take control of the situation – especially when it became clear there has been a breakdown of trust between Mrs T and Mr T and the contractor.

So, I'm minded – unless either Mrs T and Mr T or RSA provide any further information or evidence in response to this provisional decision - to conclude that RSA are responsible for approximately eight months (April 2020 – January 2021) unnecessary delays in dealing with the claim and the repairs to the damage caused by RSA's contractor.

For that period, Mrs T and Mr T have been unable to get full use and/or enjoyment from their conservatory. There has been a hole in the floor – which Mrs T and Mr T say meant the space couldn't reasonably be used for social events. And the heating has been ineffective, which has meant the conservatory couldn't be used at all in the colder months. I understand Mrs T was in the habit of using the conservatory for home working when the heating was fully functional.

Our website sets out our approach to compensation awards for trouble and upset. We say that awards between £300 and £750 might be fair where the impact of a mistake has caused considerable distress, upset and worry – and/or significant inconvenience and disruption that needs a lot of extra effort to sort out - typically, over many weeks or months.

In my view, that's the kind of trouble and upset caused to Mrs T and Mr T as a result of the unnecessary delays and prevarication caused by RSA's errors.

And because that's gone on for eight months, with increasing stress over that period for Mrs T and Mr T as it appeared the problems weren't getting any closer to being

resolved, I'm minded to require RSA to pay an award at the top end of that bracket. So, I'm suggesting an increase in the compensation proposed by our investigator, from £400 to £750.

Our investigator said that RSA should carry out the necessary repairs / replacements to the flooring and the underfloor heating, rather than attempt to cash settle the claim.

I'm also minded to disagree with that. I don't think it's for us to stand in the way if RSA want to make a cash offer to Mrs T and Mr T that they might find acceptable. And I bear in mind that the policy terms allow RSA to determine how any claim should be settled.

However, I would very much hope that wouldn't lead to further prevarication on RSA's part about how to deal with the claim – or indeed, prolonged negotiations about the exact sum.

I do understand Mrs T and Mr T's concerns about further delays. So, I'm minded to suggest that if RSA haven't either made a cash offer which has been accepted by Mrs T and Mr T or carried out the repairs themselves within three months from the date of Mrs T and Mr T's acceptance of my final decision (assuming they do accept it), then Mrs T and Mr T would be entitled to have their own contractors carry out the repairs and present the bill to RSA for payment.

It may be helpful if I clarify the position as regards one or two other issues that have arisen in this case.

Mrs T and Mr T don't want the original contractor – who damaged the underfloor heating – to carry out any work at their home. I think that's perfectly reasonable. If RSA want to settle this claim by carrying out the repairs themselves, they should appoint a different contractor to do the work.

Mrs T and Mr T have also asked how RSA should record the claim - and particularly the claim value – on their own and any other (external) databases. My view is that the claim value should reflect only the costs associated with the repair or replacement of the flooring – that is, the costs arising from the original claim after the leak of water.

Any costs associated with the repair or replacement of the underfloor heating should not be recorded as part of the claim. Those costs have not arisen as a result of an insured event, but because of the contractor's mistake(s) during the original visit.

In all fairness to them, Mrs T and Mr T's ability to obtain insurance in future – and/or their future insurance premiums - should not be impacted by the errors on the part of the contractor which caused the damage to the underfloor heating.

Mrs T and Mr T have said they could have got insurance more cheaply in the last year or so if the claim hadn't been outstanding. They found quotes on-line for cover at around £40 per annum cheaper if there were no claim.

I don't agree with Mrs T and Mr T on this point. Their record is always going to show a claim relating to the water leak in early 2021. As I say, the value on that claim should reflect only the costs related to the flooring. But Mrs T and Mr T would not be obtaining the premium they've suggested (for a customer with no recent claims) given that they have in fact made a claim recently.

> Finally, Mrs T and Mr T objected very strongly to RSA insisting that they'd only pay the VAT element of the claim after an invoice for the work had been produced.
>
> It is reasonably standard practice for insurers to do that. It's not appropriate to pay VAT if the insurer isn't certain that the work will in fact be done by the company providing the quote (or at all). At its very worst, that could lead to allegations of defrauding HMRC.
>
> We'd usually say that it's acceptable to pay a quote in advance but retain the VAT element - to be paid when the policyholder provides proof of completion of the work - provided there's no suggestion that will cause financial hardship to the customer and/or the work is very costly.
>
> It's also usual for contractors to invoice for work on completion, even if a deposit is required before the work is begun. The up-front payment made by the customer is rarely as much as the full quote less VAT. And where there are any issues, the insurer has the option of asking the contractor to bill them directly for the VAT part of the invoice.
>
> So, I'm satisfied RSA didn't act unfairly or unreasonably in initially suggesting to Mrs T and Mr T that they wouldn't pay the VAT element of any invoice in advance."

And for those reasons, I said I was minded to require RSA to:

- pay Mrs T and Mr T £750 in compensation for their trouble and upset; and
- cash settle the claim (at a cash amount agreed with Mrs T and Mr T) or complete the necessary repairs, at the latest within three months of Mrs T and Mr T's acceptance of my final decision in this case; or
- if the claim is not settled within three months of Mrs T and Mr T's acceptance of my final decision, pay the full amount of any invoice provided by Mrs T and Mr T for completion of the work.

The responses to my provisional decision

RSA responded to say that they accepted the proposed outcome in principle. But they weren't able to get their contractors to carry out work within three months at the present time. – to put it in their words, their "…*lead times on our trades is (sic) longer than the three months' time you have allotted*…".

They also said that if they paid Mrs T and Mr T to get the work done themselves, the cost would remain on their claim file until they'd recovered the money from the contractor who'd caused the damage. So, it would be best for all concerned if Mrs T and Mr T were willing to speak to the contractor direct, if only to discuss the cash settlement for the damage.

Mrs T and Mr T responded to my provisional decision after we'd told them what RSA had said.

They also accepted the decision in principle. They said they weren't keen to speak to the contractor but would be happy to receive an offer from them by email, given that would enable RSA to record the claim costs correctly (as set out in my provisional decision).

They also said they would provide a quote for the work from a suitable contractor. But they were keen that RSA weren't given any opportunity to delay things any further by raising

questions about the quote or subjecting it to a long-winded or complex approval process.

Their fear is that if RSA are allowed to approve any quote, they will either obstruct or delay the process again

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.

Since both parties agree in principle with my provisional decision, I don't now have any reason to change the outcome in any fundamental or significant way.

However, I think it is necessary to just clarify what this decision will mean – for RSA and Mrs T and Mr T – if Mrs T and Mr T choose to accept it. And what it might means in terms of next steps.

I think RSA's response to my provisional decision indicates that they haven't completely understood what I think the issues are in this case.

To begin with, I should reiterate that the cost of repairing the damage to the underfloor heating caused by the contractor when he initially visited Mrs T and Mr T is not a cost which should be attributed to any claim.

Mrs T and Mr T aren't making a claim under their policy for the repairs to that damage. They are – quite properly and reasonably – asking RSA to repair damage their contractor caused. The claim in this case, by contrast, is for the initial damage caused to the flooring by the leak from the Xmas tree – and for that alone.

In other words, the damage to the underfloor heating was not caused by an insured event. It is not the subject of a claim. The costs to put it right should not be recorded anywhere – now or in future – as relating to an insurance claim made by Mrs T and Mr T.

So, any attribution of the actual or potential cost (for repairs to the underfloor heating) is to be removed immediately from RSA's records - and from any shared records - relating to Mrs T and Mr T's claims history.

Those costs should not be taken into account in any way, or affect the premiums offered to Mrs T and Mr T, when they apply for insurance – with RSA or anyone else – in future. And they should be free to make any such applications as and when they wish – and as soon as they wish - without that cost being on their claims record.

That will be the case whether or not it's RSA who pay out to Mrs T and Mr T or their contractor. And whether or not RSA, if they do pay out, seek to recover and/or succeed in recovering those costs from the contractor.

It's not for me to tell RSA how they can achieve this using their own systems and/or processes. I'm simply saying that they need to dissociate those costs from Mrs T and Mr T's claims records, by whatever means, in order to be fair to Mrs T and Mr T.

The same underlying principle applies to RSA's comments about their lead time for contractors. The bottom line is that Mrs T and Mr T have now waited more than two years to have what began as a simple and relatively small area of damage in their conservatory repaired.

I would have imagined that RSA might find a way to prioritise the work required at Mrs T and Mr T's home. But if that proves impossible, that was accounted for in my provisional decision. RSA will either have to pay Mrs T an agreed amount of money to resolve the claim-related damage *and* the damage caused by the contractor, or they will have to accept an invoice or receipt from Mrs T and Mr T if and when they get the work completed after the three months has passed.

Any such invoice or receipt would, of course, have to reflect work done to repair the original damage and the damage caused by the contractor – and nothing more. And it would have to reflect replacement of the flooring and/or heating system with the same or equivalent materials or systems.

I understand Mrs T and Mr T's reservations about getting into a cycle of yet more delays with RSA approval of quotes or invoices. But I'm sure they'll understand that I also can't legitimately write them what would in effect be a blank RSA cheque.

It would not be unfair or unreasonable for RSA to review and consider any quote provided by Mrs T and Mr T – and /or any invoice or receipt, if the work is carried out by Mrs T and Mr T's contractor after the three months RSA have to resolve the matter in a different way.

But that should only be to check that the proposed or completed works are sufficient to put Mrs T and Mr T back in the position they were in before they made the claim – and do not in effect amount to betterment.

It's not my role to hypothesise about what might or might not happen in future and/or what the consequences of that would be. But I can say that if in future Mrs T and Mr T feel that RSA are further delaying or obstructing the process and/or failing to provide good customer service, they'd be entitled to make a further complaint to RSA – and then to us if they aren't satisfied with RSA's response.

Putting things right

As I've said, I won't be changing anything fundamental in the outcome I proposed in my provisional decision.

I'm still going to require RSA to provide a suitable, agreed cash settlement or carry out the repairs within three months of Mrs T and Mr T's acceptance of this decision. Or, if that doesn't happen, accept an invoice or receipt from Mrs T and Mr T if they get the repairs carried out after the three months has passed.

And I'm going to require them to pay £750 in compensation to Mrs T and Mr T for their trouble and upset.

However, given the responses to my provisional decision, I'm also going to clarify matters by adding to my formal decision outcome that RSA cannot record (anywhere) the cost of the repairs of the underfloor heating as claim-related.

My final decision

For the reasons set out above and in my provisional decision, I'm upholding this complaint.

Royal & Sun Alliance Insurance Limited must:

- permanently remove from any existing claim-related record (on their own or shared databases) any reference to the cost of the repairs of the underfloor heating;

- pay Mrs T and Mr T £750 in compensation for their trouble and upset; and

- cash settle the claim (at a cash amount agreed with Mrs T and Mr T) or complete the necessary repairs, at the latest within three months of Mrs T and Mr T's acceptance of my final decision in this case; or

- if the claim is not settled within three months of Mrs T and Mr T's acceptance of my final decision, pay the full amount of any invoice provided by Mrs T and Mr T for completion of the work.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs T and Mr T to accept or reject my decision before 15 March 2023.

Neil Marshall
Ombudsman