DRN-3967292

The complaint

Mr and Mrs P1 and Mr P2 have complained about their let property insurer Royal & Sun Alliance Insurance Limited (RSA) in relation to a claim they made when their property was damaged by a water leak in 2018.

Mr P2 mostly dealt with RSA and its loss adjuster. So the body of my decision, in the main, will refer only to him.

What happened

A leak was found in March 2018. Mr P2 made a claim to RSA and it appointed a loss adjuster, who, in a matter of days, visited the property to assess the damage. Following the visit the adjuster emailed Mr P2, asking for a copy of the tenancy agreement and, noting that Mr P2 wanted to submit quotes for the repair, asking for a copy of the same.

In May 2018 a loss assessor contacted RSA's adjuster. He said he'd been appointed to handle the claim on behalf of the policyholders and, in June 2018 a quote for initial works was submitted. RSA then appointed a drying specialist which, due to diary clashes over the holiday months, wasn't able to attend the property until 31 August 2018. Extensive stripping out of the property was recommended. Quotes for that were not received from the loss assessor until April 2019. RSA agreed the quote in the sum of £56,715.00 (plus VAT) and Mr P2 began to arrange a start date for that work – strip-out, drying and some reinstatement, to be done. The VAT amount for this quote was later paid by RSA.

That work completed on 9 August 2019. But it had been agreed by RSA that the bath suite might need replacing – the cost for which was not part of the agreed quote. An estimate for the suite of £779.95 had been sent to RSA in June 2019 – but no payment was made. In October 2019 a revised quote, dated 15 August 2019, with a request for "immediate payment", for the bathroom was provided. This was for the sum of £2,352.78 (inc VAT). The loss adjuster felt it equated to betterment but said a contribution towards it, as an uplift of the original estimate price, of £1,564.00 could be made. RSA later, in December 2020, as part of a bulk payment, paid £779.95 in settlement for the bath suite.

Mr P2 also reported that the tenants hadn't been able to move back to the property until 2020. RSA had paid the maximum on the policy for lost rent. And the policy covered the cost of alternative accommodation for the tenants too – so RSA paid for that as well, until the end of August 2019. RSA felt it shouldn't have to pay any more as it had confirmed work had been completed in August 2019. RSA felt the only outstanding work, at that time, was carpeting – and it didn't think that reasonably made the property uninhabitable. Mr P2 argued that RSA had caused delays which had unreasonably prolonged the claim and resulted in their financial losses. Mr P2, along with Mr and Mrs P1, complained to us in 2022 and in February 2022 explained they'd had to pay £10,000 to the hotel the tenants had stayed at to settle an outstanding bill. They said they felt RSA should pay their loss assessor's fees too.

RSA, in its final response issued in December 2021, had refused to pay any more rent or accommodation costs, and it said the settlement for the bathroom could not be increased.

But it accepted that its loss adjuster had not been as pro-active as it should have been at times, which had added to delays caused by the loss assessor. It said it wouldn't reimburse the loss assessor's fee but would pay £750 compensation for the upset caused by its own delays in handling the claim.

When our Investigator considered the complaint, she felt it should be upheld. She said RSA should pay some of the loss assessor's fees (for a set period), that an extra payment for lost rent until the property was habitable in August 2019 should be paid. And that if the policyholders could show that the bathroom cost more to reinstate than the £779.95 paid, RSA should meet those costs. All plus interest.

RSA said it couldn't agree to pay the loss assessor's fee. It said loss of rent and alternative accommodation had been paid until August 2019 – so it didn't agree anything more should be paid. Regarding the bathroom it said the loss assessor had agreed to the payment of £779.95 in settlement of this item. But it also said that, to date, no evidence had been presented to it of any increased cost for the bathroom (beyond the £779.95).

Mr P2 said they'd had to appoint a loss assessor two months into the claim because RSA had done nothing. He said it wasn't fair to say the property was habitable in August 2019 – they received no payment for the bathroom and costs for carpeting etc until 2020. He pointed out they'd had an increased offer from RSA for the bathroom – but which it had never paid. And this offer had been made with RSA having seen their evidence of the increased cost.

The complaint was passed to me for an Ombudsman's consideration. I felt it should be upheld – but on different grounds to those set out by our Investigator. I felt further loss of rent should be paid by RSA (to August 2019) but wasn't minded to make it pay any of their loss assessor's fees, or for accommodation costs/losses beyond August 2019. I felt a further payment, plus interest for the bathroom suite should be paid too – but not to the value the complainants were asking for. To explain my views on the complaint and what RSA should do to put things right, I issued a provisional decision. My provisional findings were:

"*Loss assessor fees*

I know Mr P2 has explained that they appointed the assessor because RSA had done nothing in the first two months of the claim. And I think it's fair to say that RSA did little in that first two-month period – it could have done more. But, in balance of that view, I have to bear in mind that RSA's loss adjuster, following the visit in March 2018, did email Mr P2, confirming that their quotes for reinstatements were awaited. Other than the tenancy agreement for the property being provided, no documents were presented to the adjuster until the loss assessor became involved in May 2018. I think the adjuster should have chased the quotes in that time – the matter shouldn't have been left in abeyance. But as Mr P2 knew the adjuster was waiting for quotes to be presented, I don't think it's fair to say they had to appoint a loss assessor due to no action by the adjuster. As such I can't fairly and reasonably make RSA reimburse any of the assessor's fees.

Habitability

I think Mr P2 has a point about habitability – and it is one that RSA has so far overlooked. The adjuster wanted to see confirmation that work at the property had been completed. And that was presented by the loss assessor. The completion confirmation confirmed that work 'as per the quote' had been completed on 9 August 2019. But what the adjuster missed was that 'the quote' was for strip-out and some reinstatement work. It did not include replacing the bathroom suite. Which RSA had agreed to cover the cost of but hadn't paid. And a property without a working bathroom is not habitable. I note that there was a delay in the adjuster getting the completion confirmation from the loss assessor which I also think was partly responsible for cultivating the situation where a misunderstanding like this was able to arise. But the adjuster should have been able, as I have been, to check what work was completed in August 2019 and, thereby, determine what remained outstanding. However, I have to bear in mind that a policyholder, even when left in a difficult and unsatisfactory position as a result of failures by their insurer, has to mitigate their situation. It's in light of all of that that I've reached my provisional decision on the loss of rent and alternative accommodation issues.

Loss of rent and alternative accommodation

In August 2019 the property, barring the bathroom suite, carpets and curtains, had been stripped, dried and reinstated. The only outstanding issue remaining which made the property uninhabitable was the absence of the bathroom suite. Fitting a bathroom suite would take a couple of weeks at most and the cost claimed for this here is £2,352.78. With the cost for the tenants to stay in the hotel for a month being £3,410.00.

As of August 2019, RSA had only paid for loss of rent and alternative accommodation through to March 2019. So knowing that costs were outstanding in that respect, that costs would continue to mount if the family stayed in the hotel, and that the property could be made habitable again for less than the cost of even one month's further stay in the hotel, I think progressing with the bathroom reinstatement would have been the prudent and reasonable thing for Mr and Mrs P1 and Mr P2 to have done. Whilst I do think RSA's loss adjuster, even at this time, was not managing things too well, it seems their loss assessor wasn't either – taking months to update the adjuster with the work completion and then to raise concerns about outstanding costs. It's difficult for a policyholder in that type of situation, but given the sums involved and the relative ease with which potential costs could have been avoided, I can't reasonably find RSA is liable for any lost rent or accommodation costs beyond August 2019.

However, only the accommodation costs were paid through August 2019. The payment for lost rent only extended to the end of March 2019. That was because that was the limit on the policy for this – twelve months of cover. But I do think that the claim, over its course, was delayed by RSA's loss adjuster by at least five months – there were times, such as at the outset, when it just wasn't progressed or furthered as it should have been. And that is even bearing in mind that sometimes the adjuster was waiting on detail being provided by the assessor. RSA, as it has acknowledged, could and should have done more. I note it has paid compensation – but that covers distress and inconvenience only. I think Mr and Mrs P1 and Mr P2 had a financial loss because of those delays as well – rent lost between April and August 2019 inclusive. RSA's file shows that the rent was £1,950, payable on the first of each month. So I'm going to require RSA to pay them £9,750, with interest on each of the five sums of £1,950 that make up this total. Interest should be applied on the first sum from 1 April 2019, on the second from 1 May, and so on to the last amount on 1 August, all until settlement is made.*

I'm also going to require RSA to make a further interest award. RSA knew it had only paid for accommodation costs through to the end of March 2019. And, at that time, it knew the works hadn't started. It was 8 April 2019 when it was confirmed that Mr P2 was looking to arrange a start date – with extensive striping, drying and reinstatement work being required. But RSA did nothing to arrange or consider any further accommodation payment. It should have done and, in the circumstances, I think it should have paid a sum upfront to cover a further reasonable period of accommodation. But it didn't do that, instead it left its policyholders to struggle and manage costs by themselves. It was only in December 2020 that a payment of £16,830 for accommodation costs for April 2019 – August 2019 was paid. I'm going to require RSA to pay interest on that sum from 8 April 2019 until payment was made for that period, which I believe was sometime in December 2020.*

Bathroom suite

I know RSA thinks that the settlement for this shouldn't be reviewed because the loss assessor agreed to the sum paid. But I don't think that is quite right, or fair. The assessor, in an email, asked RSA to pay the sum offered – a bulk payment (for which the bath suite was only a small part). When the adjuster asked if this was accepted in full and final settlement the assessor did not reply in writing. I think, from what RSA has said, there was a call between the adjuster and assessor, but no notes of it have been provided. The adjuster then reported that the assessor agreed with its offer, but Mr and Mrs P1 and Mr P2 did not. RSA made the payment anyway. So I think RSA knew the matter was to be contested and that its policyholder had not accepted payment on a full and final basis.

The payment RSA made for the bath suite though was, somewhat inexplicably, for the original claim amount put forward to it in June 2019. Even though its loss adjuster, recommending the 2020 payment, had agreed to pay £1,564.00 for the suite instead of £779.95. Mr P2 rightly queried the settlement for that reason at least. But again the adjuster didn't seem to notice or, if they did, understand that concern.

Mr P2's other concern about the bathroom suite though is that even an offer of £1,564.00 is insufficient. He's said that because payment against the estimate of £779.95 wasn't made in a timely manner, they had to shop elsewhere which caused an increase in costs. RSA's loss adjuster's view of the new quote was that it equated to betterment. Mr P2 thinks that argument is flawed – not least because the adjuster stating that view was not the same adjuster as was involved at the outset – there had been multiple changes in personnel during the course of the claim. So I've looked at the two quotes – the second of which I'm satisfied RSA has seen and can reasonably be considered as an invoice as it includes a request for 'immediate payment'.

I think RSA has a point. RSA agreed it would be liable for the cost of replacing the bathroom suite – and that is what the sum of £779.95 reflects – a bath, basin and toilet. And that was agreed to because it was likely the suite would be damaged during strip-out (with all the tiles etc needing removing). But the second quote/invoice includes things like a radiator – that isn't something which is likely to be damaged during strip-out, or because of the leak. And it isn't something for which RSA had agreed to pay. So I do think the invoice reflects an element of 'betterment' against what had been agreed to. Having considered the costs detailed, I think that RSA's offer to pay £1,564.00 for the bathroom is fair and reasonable.

As I said RSA, so far, hasn't made good on its offer to pay the uplifted sum. And it only paid the sum of £779.95 a year and a half after the proof for that cost was put forward and a reasonable request for its payment was made. So I'm going to require RSA to pay an amount equivalent to interest on the sum of £779.95 from 12 June 2019, until the bulk payment, which included this sum, was paid in December 2020. And I'm also going to require RSA to pay £784.05 (£1,564 minus £779.95), plus interest* applied from*

15 August 2019 – the date 'immediate payment' of £2,352.78 was required – until settlement is made.

Compensation

RSA has paid £750 compensation. And this has clearly been a prolonged claim. I think that if RSA had been responsible for its entire delay, I might likely find it fair and reasonable to require it to pay more than that in compensation. But I don't think I can fairly and reasonably say it is responsible for everything that went wrong here. Not least as it was not the only professional involved in managing the claim. But also, for example, whilst it could have chased more in the first two months, it wasn't entirely unreasonable for it to expect the policyholders to present the quotes they'd said they wanted to provide. So I don't intend to make RSA pay more compensation for distress and inconvenience."

RSA said it had nothing further to add, that it accepted the provisional decision.

Mr and Mrs P1 and Mr P2 explained how incredibly upset they'd been by my findings – that they will have a significant and devastating impact if they remain in my final decision. They provided comment and evidence in reply to my findings.

Regarding the loss assessor's fee, they said they were disappointed that my view differed to that of our Investigator. And prior to them appointing their loss assessor, they had chased RSA without response on the issue of rent cover. It wasn't reasonable for RSA to have left them without answer. They said it is clear that RSA failed them and unclear why I should think they can find the sum of their loss assessor's fees from other settlements paid by RSA, which were meant to cover the cost of other things.

They said they did send a quote for drying equipment to RSA's loss adjuster on 27 April 2018. A response on this was chased on 10 May 2018 and by 22 May 2018 the property had begun to suffer with damp and mould. It was in light of that lack of response that they decided to appoint a loss assessor. And it was still a number of months before cover was approved or any payment was made.

Requiring RSA to pay a further five months lost rent, they said, only covers that financial loss. It does not provide compensation for the funds not having been provided when they should have been. And similarly, they point out, RSA delayed paying for the alternative accommodation. They feel I seem to be saying that they did not need to be indemnified and should have infinite resources available to them to mitigate.

They said it is not fair to expect them to mitigate losses when RSA's failures were otherwise destroying them financially. RSA had substantially underpaid them for lost rent and alternative accommodation which, amongst other outgoings, they said, had drained their cash flow. They said they feel that my view in this respect is not balanced, is factually incorrect and is one-sided in favour of RSA. They referenced case law. They explained this shows that RSA had a duty to indemnify them before they incurred expenses. And that given RSA's habits in dealing with their claim, they had no belief RSA would indemnify them. They cannot be expected to have mitigated their loss.

In respect of the bathroom they said that the quote in August 2019 was like-for-like and it just showed necessary plumbing fixings in addition to the bathroom suite. And they only supplied this because RSA had insisted on seeing a formal quote, having rejected their evidence of an on-line order basket (the estimate for £779.95). The on-line order basket did not include plumbing fixings, such as valves and traps, which were all in the August 2019 quote and were all necessary for the suite to function. Regarding the mirror and towel rail within the

quote – these were damaged whilst RSA delayed the claim at the outset. They said it is not unreasonable to replace these items.

They concluded that they have been let down by RSA. They said that in light of its failures my decision must be equitable, fair and just.

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.

I appreciate that my findings were upsetting for Mr and Mrs P1 and Mr P2. That is regrettable. And I do understand that in not awarding them certain costs, their financial position will be significantly and severely affected. But I have to assess their complaint from an impartial position and I can only make awards against RSA to put right the reasonable impact of its failures. Unfortunately that may mean that I do not see things the way they do, and that there is a disparity in my findings – about what happened, what RSA did wrong and/or what it should do to make up for that – from what they expect me to determine.

I know that there had been some contact with the loss adjuster following his visit on 15 March 2018. And I did say provisionally that the loss adjuster should have done more at that time, acted more pro-actively to try and move the claim along. And I appreciate it was frustrating for the complainants to not get answers from the adjuster to the emails they sent. I appreciate that they felt the way to deal with that was to appoint a loss assessor. But that appointment came at a cost which they knew was not covered by their policy. And there was no agreement from RSA to cover such a cost. I'm also mindful that the detail regarding the reinstatement claim, sent to the adjuster at the end of April 2018, which was chased in early May, was not a full quote for the drying works. It was only an estimate for what drying equipment would be needed and at what cost. The full quote for drying and stripping, dated 17 May 2018, was only presented by the loss assessor when it was appointed. But it was this detail that the adjuster had said he was waiting to see to progress the claim. So prior to the assessor being instructed, RSA had not done what it should've done – but neither had Mr and Mrs P1 and Mr P2 done what RSA was expecting them to do. In the circumstances I don't think it would be fair or reasonable for me to make RSA cover the cost of the loss assessor's fees.

I appreciate that not having the loss of rent payment before has caused some difficulties. To compensate for the money being 'missing' for so long, I have awarded interest. I know that some upset would have been caused by the money not being paid either, and I did consider in my provisional decision what upset RSA had caused due to its delays. I explained that RSA had paid £750 compensation and, having considered everything, I did not think it would be fair or reasonable for me to make it pay anything more.

In my provisional decision I acknowledged that RSA delayed making payments and that it should have paid some things earlier – upfront even, where it knew there would likely be a cost incurred over the coming months. I understand that the fact that RSA did not do this left Mr and Mrs P1 and Mr P2 in an extremely difficult and pressured position. I also understand that by August 2019 they'd lost faith in RSA and did not believe it would properly indemnify them for the bathroom reinstatement costs. I've also considered the case law detail they've provided. However, I still think they could reasonably have done something differently to mitigate the difficult and, at that time, currently potentially very serious situation RSA had put them in. RSA was wrong for putting them in that situation and causing them to have to make really difficult choices about how to move things on. But that doesn't mean I can just reasonably find it liable for all the costs that resulted from the choice Mr and Mrs P1 and Mr P2 made.

I have to think about what could reasonably have been done. In August 2019 Mr and Mrs P1 and Mr P2 knew that accommodation and loss of rent costs since March 2019 were outstanding. And that RSA had refused to pay more lost rent and that no offer had been made to pay further accommodation costs (although the latter were later paid by RSA through August 2019). But they also knew that RSA had said it would cover the cost of a replacement bathroom suite. Admittedly RSA had challenged the on-line order basket presented to evidence that cost, and asked to see another quote. So the costs weren't determined or agreed. But I'm satisfied that liability for RSA to indemnify its policyholders for the bath suite had been agreed.

As I noted provisionally, the further quote presented by the policyholders to replace the bath suite was £2,352.78. And payment of that, which would have allowed for the bathroom to be reinstated, would have made the property habitable such that the tenants could have returned within a couple of weeks. I accept that is not an insubstantial amount of money. And that finding that sum when there were plenty of other financial pressures accruing, many of which were on account of RSA's failures, would have been incredibly difficult. But the monthly net loss for rent and accommodation costs to the policyholders was £5,360. And they had no offer from RSA, at that time, to cover any outstanding or on-going losses in that respect. But they did have an agreement that RSA would pay something for replacing the bath suite. And reinstating the bathroom could bring to an end the other net losses that were accruing and would continue to accrue unless the house was made habitable.

The case law referenced looks at whether a policyholder should act when indemnity hasn't been agreed. It includes the following "Even a profitable business will reasonably defer a decision whether or not to reinstate until it knows whether the funds will come from insurers". So the case law does show "reasonableness" is at the heart of any decision. And, as I said above, RSA had agreed to indemnify Mr and Mrs P1 and Mr P2 for the bathroom suite – it was only the cash sum for which that had not been agreed. I'm sorry for the upset my view on this will bring to the complainants, but I don't think they made a reasonable choice in the circumstances. And I can't fairly make RSA liable for the consequences of their unreasonable choice.

I appreciate that certain fixings will be needed to fit a bathroom suite – but it's far from clear what parts, other than the suite itself, would have needed replacing here. I think it is possible that the mirror and radiator may have been damaged during 2018. But the mirror and radiator weren't claimed for from RSA, or raised with it as something that would need replacing. Rather they just appeared as a cost in the quote that was presented to evidence the cost for the agreed bathroom suite replacement. Overall I think RSA should have agreed the sum of £779.95 in June 2019 when it was presented. And I accept that it was at its request that the August 2019 quote in question was sourced. But I also accept that RSA had reasonable concerns about the cost of this quote and I've found it does include items that were not part of the agreement which had been made – to pay for a replacement bath suite, which the quote was presented to evidence the cost of. I'm satisfied that RSA's offer to pay a total of £1,564 for replacing the bath suite was, in all the circumstances here, fair and reasonable. It should have made good on that offer. Because it did not and because it delayed in even paying the sum of £779.95, it will have to pay interest*.

Putting things right

I require RSA to pay Mr and Mrs P1 and Mr P2:

- £9,750 as compensation for rent lost. Plus interest* on each of the five sums of £1,950 that make up that total, applied on the first of those from 1 April 2019 and until settlement is made, and on the second from 1 May 2019 until settlement is made, and so on.

- An amount equivalent to interest* applied to the sum of £16,830 from 8 April 2019 until settlement of that sum was made.
- £784.05, as the outstanding sum for the bathroom suite, plus interest* applied from 15 August 2019 until settlement is made.
- An amount equivalent to interest* applied to the sum of £779.95 from 12 June 2019 until settlement of that sum was made.

*Interest is at a rate of 8% simple per year and paid on the amounts specified and from/to the dates stated. HM Revenue & Customs may require RSA to take off tax from this interest. If asked, it must give Mr and Mrs P1 and Mr P2 a certificate showing how much tax it's deducted.

My final decision

I uphold this complaint. I require Royal & Sun Alliance Insurance Limited to provide the redress set out above at "Putting things right".

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs P1, and Mr P2 to accept or reject my decision before 17 April 2023.

Fiona Robinson
Ombudsman