

The complaint

Miss D complains that Royal & Sun Alliance Insurance Limited (RSA) unfairly declined a claim she made for subsidence damage to her garage under a home insurance policy.

Miss D has a representative who dealt with RSA and its loss adjuster, but I'll refer to Miss D throughout. RSA had appointed a loss adjuster to act on its behalf.

What happened

I issued a provisional decision on 8 March 2023 explaining why I was minded to uphold Miss D's complaint. While the background is set out in that decision, I'll summarise it here:

In 2016 Miss D discovered cracks in her garage and made a claim. RSA sent a loss adjuster and when investigating the claim carried out monitoring of garage movement in 2017, which revealed negligible to no on-going ground movement. RSA said the garage wasn't suffering from subsidence and refused the claim.

Miss D disagreed and sent further information to the loss adjuster including a report from a Chartered Engineer that stated:

- Large, stepped cracking clearly indicated downward movement
- Large fir trees had been removed from behind the garage some years previously
- Trial pits were inspected which showed the garage is founded on reasonable ground and the foundation was a standard construction for a single storey garage
- There had been differential movement of the garage foundations manifesting in the cracks
- The subsidence is due to direct and indirect tree root action which has been exacerbated and prolonged by leaking sewers.

RSA reviewed this report alongside other information but maintained its decision.

In my **provisional decision** I explained how Miss D's policy covered damage caused by subsidence and it was for Miss D to demonstrate, on the balance of probabilities, that she had a valid claim. And if RSA relied on a policy exclusion it was for RSA to demonstrate that exclusion applied to the same standard of proof.

I stated how, in my experience of dealing with these types of complaints and other industry related literature I was satisfied the pictures of the damage were classic signs of ground movement damage. But RSA hadn't provided an explanation as to what caused the damage, simply that the monitoring results from 2017 showed negligible movement. I said the absence of movement didn't demonstrate the damage wasn't a result of previous ground movement.

I was persuaded from all the information that the damage occurred during the period RSA

insured the property and Miss D had provided evidence in the form of an engineer's report that opined the cause of the damage was subsidence. I made observations about the way in which RSA's loss adjuster had poorly handled or engaged with the causation point. All they did was rely on the absence of ongoing movement in 2017. I said the lack of engagement with this had put Miss D to significant inconvenience in obtaining further information to substantiate the claim and she'd been involved in an elongated process over six years. I noted she had a representative work on her behalf, but RSA's handling had had an adverse impact on her over a long period and so thought compensation was a fair remedy for that.

To **put things right** I said:

1. RSA should instruct its preferred supplier to carry out a lasting and effective repair, or
2. If RSA can't provide a preferred supplier, then it will need to have a full schedule of repair works commissioned at market rate process and pay that to Miss D so that she can arrange her own repairs, or
3. If RSA does have a preferred supplier, but Miss D wants a cash payment RSA need only pay Miss D what it would cost RSA (this could be some way below the market rate that Miss D would need to pay).
4. Pay Miss D £1,000 compensation for distress and inconvenience.

Replies to my provisional decision

Miss D, through her representative, accepted my provisional decision.

RSA provided comments from its loss adjuster, which I've summarised the main points as:

- As per emails to RSA the garage was founded off shallow foundations bearing onto made ground, which is susceptible to shear strength failure and isn't suitable. This would give the same cracking but wouldn't be covered by the policy.
- They hadn't had sight of Miss D's reports.
- It would be reasonable to require further investigations of the foundations.
- Compensation would be warranted if they overturn their original decision.
- RSA requested the reports from Miss D.

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's response has not persuaded me to reach a different outcome. I'm satisfied RSA's loss adjuster did have Miss D's 2018 engineer's report because I've seen a memo of a telephone conversation in which a Chartered Surveyor from the Loss Adjusting company corresponded with Miss D's representative commenting on the Engineer's findings. And indeed, we have recently passed a copy of the Engineer's report to RSA in any case.

I've considered RSA's point about the foundations, but this doesn't persuade me to reach a different outcome. As I had relayed to RSA via the investigator, none of the loss adjuster's reports (Preliminary advice report; Technical Report and Final Report) commented on

causation but did say movement was recent and cause unknown. It neither ruled in or out ground movement as a cause. And indeed, RSA's final response letter was silent on this too.

It was pointed out to RSA that Miss D's representative had specifically asked the loss adjuster whether defective foundation was RSA's final position, but the information that's been provided didn't show this was the reason for either declining the claim or that it was the cause leading to the damage.

From all the information I've seen I'm satisfied that Miss D has demonstrated, on the balance of probabilities, her garage has suffered damage as a result of subsidence. I'm not persuaded RSA has demonstrated, to the same standard of proof, a policy exclusion applies.

Industry rules (ICOBs) relevant at the time of the claim required RSA to, among other things, handle the claim promptly and fairly. RSA's initial actions were, in my view, in line with this – it appointed a loss adjuster, Miss D's property was inspected, and a period of monitoring took place. And RSA communicated a decision on the claim promptly thereafter. However, for the reasons explained, RSA and its agent didn't get to grips with the causation point noting that it was the very issue that needed determination. Again, the mere absence of ground movement after the damage had been discovered doesn't demonstrate the damage wasn't caused or a result of ground movement.

I've borne in mind the loss adjuster's oblique reference to the foundations of the garage, but they didn't engage in any meaningful way with the additional information that Miss D shared, particularly her engineer's report from 2018. While I have alluded to the fact that a surveyor from the Loss Adjuster company had communicated with Miss D's representative it didn't, in my view, lead to what reasonably should have been a review of all the circumstances of the claim and a formal determination by RSA as to why Miss D's claim remained declined. There was acknowledgement from the loss adjuster that the removal of trees may have contributed to the damage where the ground would recover, and some heave may occur (an insured peril).

Taking all this into account and having thought carefully about what is fair and reasonable in the circumstances of this complaint, I remain satisfied it should be upheld, and RSA needs to put things right.

Putting things right

While RSA's loss adjuster has said it thinks it would be fair to have an opportunity to reinvestigate / reinspect the foundations I disagree. Several years have passed since the loss adjuster visited the property, authored several reports justifying the declinature of the claim, had sight of the Engineer's report that challenged RSA's claim decision and indeed acknowledged tree removal may have been a contributory factor. And in the main, RSA has failed to engage with causation.

What's apparent, in my view, is that RSA hasn't handled the claim fairly and to delay this even further than RSA has already done would be unfair and unreasonable. RSA's loss adjuster is an expert and identified there was ground movement related damage but had not clearly addressed the actual cause. Miss D's Engineer's report does that and so, in line with our Service's remit to resolve complaints quickly and with minimal formality, I require Royal & Sun Alliance Insurance Limited to put things right as follows:

- a. RSA should instruct its preferred supplier to carry out a lasting and effective repair,
 - i. For the avoidance of doubt, within 28 days of the date on which we tell RSA

Miss D accepts my final decision RSA should have identified a supplier, issued instructions, and liaised with Miss D to advise her of the supplier details and that said supplier will be in touch with her to commence visits to assess the work to be done, or

- b. If RSA can't instruct a preferred supplier to carry out repairs, then it will need to have a full schedule of repair works prepared and costed at market rate prices for materials, labour etc and pay that to Miss D so that she can arrange her own repairs,
 - i. This visit for compiling a schedule of work instructed by RSA should take place within 28 days from the date on which we tell RSA Miss D accepts my final decision
 - ii. The costed schedule of work report coming from this visit is to be made available to Miss D within 28 days of the visit at b.i. above
 - iii. Payment is to follow within 14 days of b.ii. above, that is from when the report is made available to Miss D
 - o If RSA pays later than this it must also pay interest on the amount from the expiration of the 14 days to the date of payment at 8% a year simple, or
- c. If RSA does have a preferred supplier, but Miss D wants a cash payment RSA need only pay Miss D what it would cost RSA to carry out a lasting and effective repair (this could be some way below the market rate that Miss D would need to pay),
 - i. The payment under this part should be paid to Miss D within 14 days of Miss D telling RSA, in writing (or email), that she'd prefer a cash payment. If it pays later than this it must also pay interest on the amount from the date Miss D confirms she wants a cash payment to the date of payment at 8% a year simple.
- d. Pay Miss D £1,000 compensation for distress and inconvenience.
 - i. RSA must pay this compensation within 28 days of the date on which we tell it Miss D accepts my final decision. If it pays later than this it must also pay interest on the compensation from the date of my final decision to the date of payment at 8% a year simple.

My final decision

I uphold this complaint and require Royal & Sun Alliance Insurance Limited to put things right as described above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss D to accept or reject my decision before 19 April 2023.

Sean Hamilton
Ombudsman