

The complaint

Mrs C complains Royal & Sun Alliance Insurance Limited has handled her subsidence claim poorly.

RSA's been represented by agents for the claim. For simplicity I've generally referred to the agents' actions as being those of RSA.

What happened

In June 2020 Mrs C made a claim for subsidence to her rental property. RSA felt [REDACTED]. Mrs C says she was initially given an 18-month timescale to conclude the claim – from monitoring, removal of tree to repair.

In November 2022 she complained to RSA about the progress, and its handling, of the claim. By that point, around 30 months in, the tree had yet to be felled. She felt RSA was responsible for unnecessary delay - including by extending monitoring, failing to apply for a [REDACTED] to be removed promptly and taking eight months to arrange for the tree's removal.

Mrs C was also unhappy that RSA failed to make temporary repairs – leading to the loss of tenants and rental income. She said she had had to move back into the property as a result and has lost about £25,000 in rental income. She added she was now living in a poor condition property and experiencing significant distress and inconvenience. She complained she had to micromanage the claim as RSA's contractor has failed to progress it effectively.

In January 2023 RSA issued a final response to Mrs C's complaint. It didn't agree to cover the loss of rent until resolution of the claim as she had requested. It said her moving back into the property invalidated the loss of rent claim. RSA added that the complexity of the claim, particularly removal of the tree, explained the timescales involved so far. But it did accept responsibility for some avoidable delay. It didn't, however, accept it was responsible for problems Mrs C was having with a personal relationship [REDACTED]. But it offered £400 compensation to acknowledge the distress and inconvenience it had caused.

Mrs C wasn't satisfied so came to this service. To resolve her complaint she said she would like RSA to confirm how the claim will proceed in terms of timescale, process and repairs, pay her for loss of rental income, provide Alternative Accommodation (AA) for her and settle her claim for an Aga.

Our Investigator considered the complaint. She recommended RSA provide Mrs C with AA, reimburse her for loss of rent during the period she has occupied the property up until it is suitable to be let – at £2,500 per month and pay her an additional £600 compensation.

Mrs C accept that outcome. But as RSA didn't the complaint was passed to me to decide. It said it didn't accept the property to be uninhabitable. It said the evidence supported many of the issues with the property being maintenance related – rather than resulting from subsidence. It didn't agree to cover AA costs for her.

It said it was concerned Mrs C would profit from full loss of rent being paid whilst residing in the property. So it proposed that if it is to pay loss of rent that a deduction should be made for the rent she paid in her previous property.

I issued a provisional decision. Its reasoning forms part of this final decision, so I've copied it in below. In it I explained why I didn't intend to require RSA to provide Mrs C with AA. I said why I instead intended to ask it to pay her £2,500 per month loss of rent from September 2022 - but allow a deduction of £1,500 per month and an £250 allowance.

My provisional decision also sets out why I intended to find RSA should reimburse Mrs C £1,042 removal costs and pay a total of £1,000 (including any previously paid) compensation for distress and inconvenience. Finally I invited Mrs C and RSA to provide any new comments or information they would like me to consider before issuing a final decision.

RSA responded in agreement with my provisional decision. Mrs C accepted in general but asked for some additional costs to be considered. Following that I explained that, as the policy terms didn't provide cover for various standing costs for the insured property, I didn't intend to require RSA to cover them alongside loss of rent if Mrs C moved out.

I said I did intend to require RSA to pay £1,200 removal costs should Mrs C move out of the insured property before it's in a suitable condition for reletting. I based that on the same reasons given, in my provisional decision, for requiring RSA to cover the moving in removal costs.

Finally I explained why I intended to require RSA to pay Mrs C, should she move out of the insured property, £200 per month for a maximum of eight months. In summary I felt RSA had failed to explain to her, in August 2022, her loss of rent entitlement. I said had it done so she probably wouldn't have moved out of her rental property – and so wouldn't be facing the prospect of paying as a high rent as she is likely to incur if she does return to equivalent rental property.

Mrs C and RSA both provided responses to my latest proposals. I addressed those below.

what I've provisionally 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.

As this is an informal service I'm not going to respond here to every point or piece of evidence Mrs C and RSA have provided. Instead I've focused on those I consider to be key or central to the issue. But I would like to reassure both that I have considered everything provided.

Mrs C's tenants left the property in September 2022. I'm satisfied that the substantive reason for that was the subsidence related damage to, and condition of, the property. Mrs C did serve notice on them – but that resulted from them not paying the full rent due to the property's condition and Mrs C's concern she may face legal or enforcement issues from renting property in a poor condition.

The policy does cover loss of rent. It says if the property is made uninhabitable by subsidence RSA will pay the rent she would have received. RSA's disputed that the property should be considered uninhabitable. I've considered what it said. But I think it's reasonable to say its 'uninhabitable'. I accept its possible some problems, like the roof and windows, may not be directly caused by the subsidence (although I'm not making a finding on this here).

But even if they aren't Mrs C makes a reasonable point that, because of the ongoing movement, she's been unable to have the relevant repairs made. Other issues, such as with the toilet, drains, rear door, cracks and uneven patio seem likely to be subsidence related.

In any event I'm persuaded that there are enough issues with the property (either directly or indirectly caused by the subsidence) that the property can't be relet. RSA's accepted that it's not feasible to make temporary repairs to make it lettable. So it's reasonable to consider the property as 'uninhabitable' – and so RSA should cover loss of rent. So it seems it's uninhabitable or unlettable until the post stabilisation repairs are complete.

RSA paid some loss of rent up to the point the tenants moved out in September 2022. Mrs C seems satisfied with that. So I haven't considered that settlement here. She would like RSA to pay around £2,500 from that point until the property is repaired post stabilisation.

The situation is complicated by the fact that Mrs C, when her tenants moved out, moved into the property. I understand that was to mitigate her loss. Without the rental income she was struggling to afford to pay for a property she was renting for her own household. That's a reasonable decision.

RSA has said as Mrs C is resident in the property loss of rent isn't payable under the policy. I think that's an unreasonable approach. Her living there is reducing the loss RSA is liable for. If she hadn't moved in I'd probably require it to cover the full rent. I do accept RSA's argument, that whilst she's residing in the property, it's not reasonable to require it to pay the full rent she would otherwise have received. The property isn't, even theoretically, available to let. In addition Mrs C would potentially be better off - financially at least, although perhaps not in terms of lifestyle.

So I intend to require RSA to pay Mrs C £2,500 per month loss of rent from September 2022 until the date the subsidence related damage has been repaired to a condition that would allow for it to be relet. But RSA can deduct £1,500 per month (the amount she was paying for the place she was renting) for the period she resided in the property.

RSA can deduct the same amount for any period she continues to reside in the property. However, if Mrs C chooses to move back to rented accommodation, at her own cost, it will need to pay her the full £2,500 per month.

RSA should have agreed something along these lines from September 2022. As it didn't Mrs C has unfairly been without the loss of rent payments. So I intend to require it to add simple interest at 8% to the settlement. This will be due from the first day of each month a payment is to be made for until the date of settlement.

For clarity the loss of rent I intend to award is intended to be in addition to the payment previously offered for the period the tenants were still in residence.

I accept Mrs C and her household have been, and may continue to, live in less than ideal conditions through their occupation of the property. This is an inconvenience to them in terms of lifestyle. It probably results in some distress and potentially some additional costs. As I've said above it also reduces the loss RSA's liable for.

So it seems reasonable for RSA to pay an allowance of sort to recognise the impact of the poor conditions and disturbance to Mrs C's life. I intend to require it pay £250 for every month they have, and continue, to reside in the property. As this is a compensation payment, rather than replacing lost income, RSA won't need to add simple interest.

Mrs C incurred costs when moving to the property. Again as the move reduced the loss to be covered by RSA its reasonable that it covers those costs of £1,042. She's been without those funds since September 2022. So simple interest, at 8%, should be added from that date until the date of settlement.

Our Investigator said RSA should cover the cost of AA for Mrs C, as well as pay loss of rent. I don't intend to require it to do that. It wouldn't be reasonable to require RSA to do so. Mrs C didn't occupy the property at the outset of the claim. Instead she gave up her own residence and moved in (for understandable reasons) in the middle of it.

If RSA were to cover both costs Mrs C would be receiving the full rental income from her property whilst not paying any rent for own accommodation. That would result in her being significantly better off financially. However, as set above, if she wishes to move back to rented property, at her own cost, it would be reasonable for RSA to pay her the full loss of rent on her property.

There has been a dispute about an earlier offer of £6,000 for temporary repairs. I haven't considered that as the claim has moved on. The proposed settlement was to allow the property to be repaired to lettable condition. It's since been accepted it's not feasible to do that ahead of permanent repairs. So that offer is no longer relevant.

Mrs C seems to have accepted the Investigator's view that its reasonable of RSA to only settle the Aga part of her claim when the property has stabilised. However, just in case it's still in dispute, I agree it's a reasonable decision. Her Aga was damaged by movement, so it wouldn't be appropriate to install a new one before the property is confirmed to be stable.

Mrs C says delays with the claim caused her to miss out on a lower mortgage rate. I don't intend to require RSA to reimburse the losses she feels she's incurred. I accept RSA is responsible for some element of avoidable delay that is likely to extend to the claim by a period. But lending decisions are based on a range of factors. I'm not able to say she most likely would have, without the delay, been offered a lower mortgage rate at some earlier point.

Mrs C has made a few specific requests around the future conduct of the claim – for example she'd like this service to require RSA to confirm timescales and the appointment of an expert to assess for a scope of works. I'm not going to set out any specific requirements along these lines for RSA. Doing so would be getting too involved in the detail of the claim handling. I can see from a recent update that RSA's set out intentions to monitor the property until the Spring and to draw up a schedule of works once stabilisation is confirmed. It also seems to be trying to work with Mrs C to progress the claim effectively.

That seems a reasonable plan. I hope it results in the claim being satisfactorily resolved for Mrs C. But it doesn't absolve RSA of responsibility for historic avoidable delay. I accept it's point that the claim is complicated by the involvement of third parties – [REDACTED] However, without going into detail, RSA could at stages have progressed the claim more effectively than it has so far. This

has no doubt increased the distress and inconvenience experienced by Mrs C during the claim.

So having considered everything I agree with the Investigator that RSA should pay Mrs C a total of £1,000 compensation (including the £400 offered in the January 2023 final response and anything paid following the Investigator's recommendation).

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'll start with the proposed £200 contribution towards Mrs C's likely increased cost of rent should she return to private rented property. RSA seemed unclear as to why this is being awarded. For clarity I'm not requiring this to be paid under the terms of Mrs C's policy. I don't consider it an AA payment or contribution.

Instead I'm requiring it to be paid as she will face increased costs as a result of a failing by RSA – so outside of any policy entitlement. In the summer of 2022 it failed to respond in good time to her enquiry about loss of rent entitlement. If it had replied it should have explained she would be entitled to loss of rent. And had that happened I consider she probably wouldn't have relinquished her private rented accommodation. She now wishes to return to provide rented accommodation. As I explained previously, she will likely incur higher costs – mainly due to loss of some protection from market rental inflation deriving from her status as a sitting tenant.

So the additional cost arose from RSA's mistake – not informing her of the loss of rent entitlement. So it's fair that it covers that additional cost – or loss. I'm not going to repeat here how I came to £200 for a maximum of eight months. Both parties are aware.

RSA referred to my proposed £2,500 loss of rent payments for the insured property. It said this has already factored in rental inflation. It asked that I review that figure. I used that figure as that was the rental level, factoring in inflation, that RSA had already agreed to previously in the claim. I'm not to review it at this stage in the complaint. It's a separate matter to the £200 I've more recently proposed.

Regarding the £200 proposal Mrs C made some additional comments about comparability of her old rental property to her proposed new one. These haven't persuaded me that I should increase that award. So I will require RSA to pay her £200 per month for a maximum of eight months in the event she does move out of the insured property.

RSA didn't dispute the proposed award of £1,200 removal costs for moving out of the insured property. Mrs C felt this wasn't enough to cover all the costs. She provided a quote for around £2,000 (including VAT). She said the previous cost I'd based my proposed award on only covered removal of large furniture – she had moved many items herself. I wasn't aware of that when I proposed the award. It may be that costs of a full removal service are higher than what I proposed.

However, I'm conscious that Mrs C is keen for this complaint to resolve to allow her to secure a tenancy. So I'm going to prioritise reaching that point and avoid the further delay inevitable from allowing RSA time to respond to any change in the proposed award. If it wishes to voluntarily increase the payment for moving out it can – but I'm not going to require it to do so. I will maintain my proposed award of £1,200 for moving out costs.

Neither Mrs C or RSA objected to my finding on the requested standing costs for the insured property. So I'm not going to require RSA to cover these alongside the loss of rent payments.

Other than that set out directly above I haven't seen anything to persuade me to change the outcomes proposed in my provisional decision. So I haven't changed those – just added the two extra awards discussed here.

My final decision

For the reasons given above, I require Royal & Sun Alliance Insurance Limited to pay Mrs C:

- £2,500 per month loss of rent from September 2022 until the date the subsidence related damage has been repaired to a condition allowing for relet. £1,500 per month can be deducted for the period she resided, or continues to choose to reside, in the insured property. Simple interest, at 8%, is to be added to the payments covering the period from September 2022 to the date of my final decision.
- £250 allowance for each month she resided or continues to choose to reside in the insured property.
- £200 per month contribution towards increased rental costs (for a maximum of eight months) should Mrs C move out of the insured property before its in a condition for relet.
- £1,042 to cover the costs of moving to the property in September 2022 (simple interest is to be added to this at 8% from September 2022 to the date of settlement),
- £1,200 to cover removal costs should she move out of the insured property before its in a condition for relet.
- £1,000 (including the £400 offered previously and any paid following the Investigator's recommendation) compensation in total for distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 11 December 2023.

Daniel Martin
Ombudsman