

The complaint

Mrs C and Mr G are unhappy that Royal & Sun Alliance Insurance Limited (RSA) has delayed repairing damages arising from poor workmanship under a previous subsidence claim made on their home insurance policy.

Any reference to RSA includes reference to respective agents or representatives. For ease of reading, I will also refer to just Mrs C who is the lead complainant.

What happened

The background of this complaint is well known to both parties and has been detailed by our investigator previously. So, I'll summarise the key points I've focused on within my decision.

- In 2014, Mrs C's detached garage was affected by subsidence caused by a neighbour's tree.
- RSA accepted the claim, and the repair was made following payment of £1,000 excess. Mrs C also said the tree was removed at their cost. The claim was closed in 2016.
- In 2021, Mrs C noticed the damage returning in the same area. And reported this to RSA.
- RSA accepted the claim and after a period of monitoring it said it was in a position to proceed with repairs in February 2023. A settlement offer was also made as Mrs C was considering if she wanted to get the repairs done by her own contractor. The offer was made with notification that a further £1,000 excess was due to be paid.
- Mrs C declined the offer and disputed that an additional excess was due as the claim was for failed works not a new subsidence claim.
- RSA disagreed that it's a continuation of the previous claim and think it's a new episode of subsidence due to the time that has lapsed between the claims.
- Mrs C says RSA sent a contractor to view the damage prior to works commencing. He told her that the original works had not been carried out correctly and the filler that had been previously used had failed. He was of the opinion that partial rebuild would be required. Mrs C has said following some back and forth with RSA another person came and viewed the damage and repeated that the repair had failed.
- Our investigator considered the complaint and upheld it. He recommended RSA proceed with the repairs urgently, or if Mrs C prefer to use her own contractor, RSA should accept this and pay the costs it would've paid for it to repair the damage. He said Mrs C should not pay an additional excess and recommended RSA pay £350 compensation to reflect the distress and inconvenience it caused Mrs C.
- Mrs C agreed. However, RSA at this point made our investigator aware it had already awarded £300 compensation for the delays in a final response letter

(FRL) it issued after our service had started to investigate the complaint but maintained that this episode of subsidence was a separate event from the previous claim because of the time since the last incidence.

- The complaint has therefore been passed to me, an Ombudsman, to make a 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.

Having done so, I am intending to uphold the complaint and I'll explain why.

It isn't in dispute there is damage to Mrs C's garage and there have been delays in the claim progressing. RSA had already agreed to pay £300 for the delay and our Investigator not knowing this offer had been made had also directed RSA to pay £350 compensation for the distress and inconvenience of the delays. I'm persuaded £350 is a fair amount in the circumstances of this complaint.

However, there is still a dispute about whether this damage has been caused by failed repairs from the previous subsidence claim that started in 2014 or if it is a new episode of subsidence and therefore if an additional excess is required to be paid.

I have considered the information supplied by both parties. Mrs C has told us the latest damage is in the same place to where the previous damage was and, in the area, where the repairs were carried out. She said the damage was caused by a neighbour's tree which was removed. She has also said on two separate occasions RSA's contractors that visited the property to review the damage and complete the schedule of works have informed her that the repairs had failed and therefore they felt part of the garage would need to be partially rebuilt to prevent the same thing happening again.

RSA have provided some information regarding the cause of the damage. I can see that in November 2021 RSA gave three possible causes for the current subsidence – consolidation subsidence, root induced clay shrinkage and clay shrinkage subsidence.

In June 2022 it told Mrs C that given the monitoring results it was only able to rule out consolidation subsidence and it was of the opinion that the neighbour's vegetation was influential albeit it recognised it didn't have the evidence to implicate it at that time.

In February 2023, RSA then told Mrs C that the cause of damage was established to be consolidation of fill beneath the foundation.

RSA then when responding to this complaint has said it was re-visiting the reasons why the claim is a new incident with its contractor however its likely to be the ongoing growth of the nearby vegetation, so it would be a further episode where mitigation hasn't been managed or has been outside the insured's control since the last claim.

I'm persuaded RSA hasn't identified the exact cause of the damage. So, it hasn't shown that the current problem is new and unrelated to the previous subsidence claim. I'd expect to see evidence to support its position especially after it carried out an investigation to the damage.

I'm not going to accept an assumption on the cause of damage. And therefore, I'm unable to fairly agree it's a new claim. Mrs C has already experienced delay in the claim, and she has specifically mentioned RSA's contractor carried out a site inspection and have said the prior repairs were inadequate. I find this persuasive given RSA have not provided any reports or

substantial evidence concluding the cause wasn't due to failed repairs. And it is also wanting to send someone to look again to see if a partial rebuild is necessary. I am satisfied RSA have had plenty of opportunity to support its position, but it hasn't. RSA have a duty to handle claims promptly and fairly I therefore direct it to proceed with things as part of the original claim. So, it shouldn't charge a second excess, and this shouldn't be recorded as a second claim.

Putting things right

I direct Royal & Sun Alliance Insurance Limited to proceed with the claim without charging a second £1,000 excess and not to record this as a second claim for subsidence.

If Mrs C and Mr G prefer to use her own contractor, RSA should accept this and pay the costs it would've paid for it to repair the damage.

Pay a total of £350 compensation for the distress and inconvenience the delays have caused Mrs C and Mr G.

My final decision

For the reasons given above, I uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C and Mr G to accept or reject my decision before 21 December 2023.

Angela Casey
Ombudsman