

The complaint

Ms N complains about Royal & Sun Alliance's handling of a claim made under her home insurance policy and about their decision to decline her claim.

What happened

The background to this complaint is well known to both parties, so I'll give only a brief summary of the main developments here.

Ms N has home insurance underwritten by RSA which covers her home and its contents, amongst other things. In February 2022, she made a claim having noticed raised cracks in the concrete floor of her home.

RSA appointed loss adjusters to assess the claim. They inspected the property in March 2022 and concluded that it was being damaged as a result of subsidence.

The loss adjusters commissioned another company to carry out further testing and a drainage survey. Their conclusions were that there was an issue with one of the drain runs, but no leak of water from any of the pipes, and that there were tree roots around the base of the house. The roots were from a horse chestnut around ten metres distant from the house.

In June 2022, the loss adjuster commissioned another report, which confirmed that the tree – given its size and location and the type of soil in the area – could be causing subsidence at the property.

The loss adjuster confirmed that there was subsidence at the house and proposed to take down the tree and monitor the property afterwards, with a view to completing any repair work on the house by around October 2022.

They also advised Ms N that she'd have to make a separate claim relating to the drains. Ms N did so. But she was initially advised that she'd have to deal with the problem herself since the damage to the drains wasn't covered under her policy.

She was told that there was no leak, so the drains weren't causing the damage to the house. But they were compressed in one particular location due to age and should be replaced.

I don't have sight of all of the records relating to the claim about the drains – if there's anything to contradict my assumptions about what happened, no doubt Ms N and/or RSA will provide more detail in response to this provisional decision. However, it appears that after Ms N made a complaint, RSA decided they would repair the drains after all.

It also appears that the contractor commissioned to do the work carried out a further inspection and found more problems with pipes at the rear of the house (in addition to the compressed pipes at the front of the house identified earlier).

Ms N tells us the contractor replaced a run of several metres – in October 2022 – and advised her that those pipes were fractured and leaking water into the ground. She also tells us he said the pipes were damaged because the ground in that area was moving.

The tree was removed in October 2022. And the loss adjuster appointed a building contractor to carry out repairs to the cracking in the house. They attended in November 2022.

By this time, however, the damage to the house was considerably worse. More cracks had appeared in the floor and walls. And the house had become very damp. In Ms N's words, the walls were running with water and the carpets in parts of the ground floor were sodden.

The contractor didn't commence work given that the scope seemed to have changed considerably. And they suggested the loss adjuster appoint a structural engineer to scope out the repairs that now needed to be carried out.

Instead, the loss adjuster commissioned a leak detection survey. The leak detection experts concluded that there was no escape of water from any of the pipes or plumbing in the property. However, there was, in their words:

"A large amount of water... entering the property through the roof and walls and up through the sub-flooring"

They also said cracks were visibly forming on the outside of the building, from the foundations to the soffits, indicating movement in the structure of the building. And there was fungal contamination and mould in almost every room – the fungal spores being a health risk.

They suggested a specialist building contractor be appointed to identify the causes of the damage and scope the necessary repairs, which should be completed after the house had been dried out.

Around three months later, in March 2023, RSA visited the property along with the loss adjuster. They carried out an inspection of the property and suggested to Ms N that the damage was not in fact caused by subsidence.

They later wrote to Ms N to confirm their position. They said the cracks in the walls of the house were not caused by subsidence and had nothing to do with the tree that they'd removed. Rather, they were likely due to shrinkage and thermal movement.

They said the concrete floors had likely been affected by a sulphate attack caused by water getting into the substrate beneath the concrete floor and affecting the floor itself. Again, the cause of the damage was not subsidence.

And they said the house had historic issues with rising damp affecting the ground floor – and upstairs the damp was likely caused by condensation.

In short, they said the damage was not covered by the policy. But they offered to complete repairs to the render at the front of the house and to install a movement joint between the old part of the house and an extension (built in the 1980s). They said this wasn't covered by the policy, but they would do those repairs in compensation to Ms N for the poor handling of her claim.

Ms N had in the meantime commissioned her own expert surveyor to assess the damage at the property. His report – dated March 2022 – came to different conclusions about the cause of the damage to the house.

He said the extension was in fact rotating away from the original part of the house – causing the cracking in the walls. And this "progressive structural movement" was consistent with

subsidence.

He said there were no apparent problems when Ms N purchased the house – in 2021. That appears to be confirmed by the mortgage valuation report produced at the time. If Ms N has a more detailed survey commissioned pre-purchase, I'd be grateful for sight of it now in response to this provisional decision.

Ms N's surveyor also identified issues with the roof, which he says are likely causing the dampness upstairs. And issues with the rear of the property on the ground floor. He says the dampness there is likely due to a previously collapsed drain (now repaired) and possible damage to the damp proof course or membrane.

To be frank, it's not completely clear whether the surveyor is concluding that movement in the structure of the house – due to subsidence – is the ultimate cause of the issues with the roof and the rear ground floor of the property.

He says the issues with the property are subsidence-related. But goes on to say that these two problems are "localised issues". And he does suggest that the roof is possibly sagging because there isn't enough support in the roof's structure to bear the weight of the current roof covering.

However, in conclusion, the report says the cracking in the walls of the house is consistent with subsidence damage. The concrete floors have suffered from heave and have therefore broken up. Underpinning is required to reduce the risk to the property and return stability to it. And all of the damage is recent.

RSA didn't see Ms N's expert's report immediately. But having seen it now, they haven't changed their position.

Ms N complained to RSA about their decision to decline the claim and about delays and poor service in the handling of the claim.

RSA responded, admitting service failings but saying that the decision to decline the claim was correct. And they confirmed their offer to replace the render at the front of the house and install a movement joint between the old house and the extension as compensation for Ms N's trouble and upset.

Ms N wasn't happy with this and brought her complaint to us, in March 2023. Our investigator looked into it and thought it should be upheld.

He said RSA couldn't reasonably conclude that the damage to the property was not caused by subsidence, particularly in light of the report from Ms N's surveyor. And they should re-assess the claim – and pay Ms N £250 in compensation for her trouble and upset.

He also said he couldn't consider Ms N's request that RSA pay for her extra heating bills and/or her costs in commissioning the expert survey and/or the loss of contents (furnishing, clothes etc.) at the house due to the damp because Ms N hadn't raised those issues in her complaint to RSA.

Ms N didn't agree with our investigator's view. One of the main reasons being that she didn't think the compensation suggested was sufficient. RSA also disagreed, stating that they weren't convinced by Ms N's expert's report and maintained that their decision to decline the claim was correct.

So, the case was referred to me for a final decision.

I agreed with our investigator that the complaint should be upheld. But I disagreed about what RSA needed to do to put things right for Ms N. So, I issued a provisional decision. That meant Ms N and RSA could provide further information or evidence and/or comment on my thinking before I made my final decision on this case.

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.

This is a complex case and I want to be absolutely clear at the outset about what issues I’m deciding. There are two related questions for me, in making this decision.

One – are RSA justified in saying that the claim is not covered given the available evidence and expert opinion?

And two – even if they are, have they made errors in handling the claim? And, if so, what impact have those errors had on Ms N?

I’ll set out what I’m currently minded to conclude on those two questions, in the order I’ve set them out above.

Are RSA justified in declining the claim?

I’m going to start with Ms N’s policy – and in particular what types of damage or loss are covered and what exclusions might apply.

There can’t really be any dispute about what the policy terms say. And I don’t think they have any ambiguities which might be mis-read or misconstrued.

In short, damage or loss to buildings is covered if it’s caused by any one of a number of listed insured events or perils. These include:

- subsidence, heave or landslip;
- storm or flood;
- escape of water from fixed water systems; and
- accidental damage (sudden, unexpected and visible damage not caused on purpose).

There are specific exclusions relating to subsidence, heave or landslip only. These say RSA will not cover damage to solid floor slabs - or damage caused by the movement of those slabs – unless the foundations of the property are damaged by the same cause at the same time. And RSA will not cover damage caused by faulty workmanship or defective materials.

There’s an exclusion specific to the storm or flood peril only, which says RSA won’t cover damage caused by a rise in the water table.

And there are general exclusions, applying to all insured perils, for wear and tear and/or gradual damage. It’s worth noting that we think it’s fair to apply this exclusion

only where the policyholder was – or ought to have been – aware that the damage was occurring.

It's also worth noting that there's no general exclusion relating to poor workmanship or defective materials. That applies only in relation to subsidence, heave or landslip claims.

There's also no exclusion – which there might be in other buildings insurance policies – relating to damage caused by chemical reactions.

There's quite a long and complex history in this claim when it comes to identifying – or trying to identify - the cause of the damage in Ms N's home.

I'm minded to conclude at present – unless I get other compelling evidence or information – that the house was relatively sound and undamaged when Ms N bought it – relatively recently – in 2021.

I'm aware RSA have drawn attention to one crack in the concrete floor which they say showed signs of an older repair. But there's no suggestion that was, or should have, been evident to Ms N. And the vast majority of the damage currently manifest in the house has happened just before the claim was made or afterwards.

I'm going to try to simplify things by looking primarily at the two most recent competing explanations of the damage to the house.

Ms N's own expert says the damage is "consistent with" structural movement caused by subsidence, likely caused by tree roots and/or drainage deficiencies. And the property needs to be underpinned to make it stable. After which, repairs can be carried out, including to the roof, although the issues with the roof may in part be down to insufficient structural support in the roof itself.

RSA say that's not correct. They point out that Ms N's expert's report has damage caused by subsidence (the cracking in the walls etc.) – and heave (the concrete floor). They say it's inherently unlikely, if not impossible, for both heave and subsidence to be at play at the same time.

They say the cracking in the walls is likely thermal movement or shrinkage. And the floor is very likely (although this would need invasive testing to confirm) suffering from a sulphate attack. This has caused the concrete to expand, forming the raised ridges and cracks in the floor.

They believe the moisture required to kick off this chemical reaction (the sulphate attack) is there because of a high water table in the area. A test hole dug in March 2023, when RSA and the loss adjuster visited the property, filled with water within an hour or so. And that's some five months or so after the drains were repaired, which RSA say shows that the water under the property is ground water and isn't from the drains.

They also say the ground water got to the concrete because there's probably no waterproof membrane between the concrete floor and the substrate beneath it. And there's likely no – or no effective – damp proof course at the property. Hence the rising damp. RSA blame condensation for the damp issues in the upstairs of the property.

I'm not a qualified surveyor or builder. And I'm entirely open to Ms N and/or RSA

challenging the assumptions I'm going to make in this provisional decision. But I need to decide – taking into account all of the expert opinions - what the likely causes of the damage to Ms N's property are – if indeed it's possible to say at this moment in time.

Subsidence can be caused by soil becoming too dry. The soil effectively desiccates, collapses or moves and so can't support the structure built on top of it. It can also occur when the soil becomes too wet and loses the firmness and solidity required to support the weight above it.

RSA's loss adjuster initially concluded that the soil was likely too dry – because of the proximity of the tree and recent meteorological conditions. And so, they removed the tree.

It was entirely reasonable for them also to check the drains at the site at the same time, to see if the opposite problem had occurred and the soil was too wet. But the first survey carried out on the drains suggested there was no leak of water from the pipes underneath and/or around the house.

Given the dampness in the ground floor of the house – confirmed by the various testing carried out, including in March 2023 when RSA visited the property – it seems that the loss adjuster made an error in diagnosing the issue, possibly having been misled by the drainage survey. Indeed, taking the tree out might have exacerbated the problem since it was no longer taking any moisture out of the soil after it was felled.

So, I'm going to assume that the problems with the ground floor of the property – and specifically with the concrete floor slabs – are down to excessive moisture underneath the house. I don't think RSA would disagree with that. And whilst Ms N's own expert might be ambivalent on the issue of how the supposed subsidence occurred, he at the very least recognises the extreme damp at the foot of the house and suggests the drains are checked again.

This brings us to two questions. One what happened as a result of the moisture under the house? Subsidence, as Ms N's expert suggests? Or a sulphate attack, which is RSA's theory? And two, how did the water under the house get there? The answers to both questions are crucial if we turn back to the policy terms and try to decide whether the damage to Ms N's house is covered.

According to Ms N's own description of the problems with her downstairs floor, the ridges and cracks which have formed appear to be the result of the concrete moving upwards. She describes the cracks as "raised".

In a sulphate attack, as I understand it, the concrete will expand. This would naturally lead to it pushing upwards and/or pushing at the walls or foundations which surround it – or both. If there were subsidence, one might expect the movement usually to be downwards. This is possibly why Ms N's expert says the floors are suffering from heave, not subsidence, whilst maintaining that there is subsidence affecting the house elsewhere.

It seems to me then that RSA's explanation of the movement and cracking in the floors is more likely accurate than Ms N's expert's hypothesis. Everyone knows there is extreme moisture under the house. If that moisture got to the concrete, a sulphate attack is likely. And the visible damage indicates upwards movement, which might be expected of a sulphate attack.

I'm minded to conclude then that RSA are right to say this claim shouldn't be considered as a subsidence claim.

However, if I refer back to the policy terms, it's still possible the damage may be covered under another insured peril (escape of water, accidental damage, flood or storm, for instance).

And it also means the exclusions which apply only to subsidence, heave or landslip claims do not apply here. The claim can't therefore be declined on the basis of faulty workmanship or defective material – for example, the lack of a damp proof membrane under the concrete floors or the lack of a damp proof course (or an effective one).

I also note again here that there is no exclusion for damage caused by chemical reactions – such as a sulphate attack.

So, what has caused the water to be under Ms N's property?

I don't think anyone is suggesting the damage occurred as the result of a specific storm or flood. So, that isn't the insured peril which would justify the claim here. But also, the exclusion which applies specifically to that peril – for damage caused by a raised water table – will not apply in Ms N's case.

The policy covers damage caused by an escape of water from a fixed water system. I don't think there would be any dispute that the drains around the house are a fixed water system.

And I think there's at the very least a respectable argument to say that the water under the house is from leaking drains.

I bear in mind that the drain repairs were completed in October 2022. It may be safe to assume that there was no further escape of water after that point.

It's also safe to assume though – given what the drainage contractors reported – that there was a significant on-going leak before that time. A leak which, I should point out, the loss adjuster - and/or the drainage expert they appointed - failed to identify initially.

It seems to me entirely possible then that although the drains were repaired long before RSA's visit in March 2023 - which identified a high water level under the house – that water may have been sitting there as a result of a sustained leak on-going up to October 2022.

I bear in mind that the soil in the area is relatively slow to drain, that the intervening months between the drain repair in October 2022 and the March 2023 visit by RSA were cold, and that the tree – which may have been mitigating the leak by taking moisture out of the soil beneath the house – was now gone.

If the water under the house did get there because of the leak from the drains, I can't see any possible logic by which the policy terms could be interpreted to say that the damage caused by that escape of water wasn't covered.

Furthermore, when I look at the accidental damage cover afforded by the policy, I struggle at present to see why the damage to Ms N's policy wouldn't be covered, no matter where the water under the house came from. The damage certainly wasn't caused on purpose.

I note the general exclusion in the policy for damage caused gradually or by wear and tear. I think RSA might be unable to fairly apply that exclusion if the water came from the pipes.

The damage to the pipes over time certainly wouldn't have been visible to Ms N. And it would be rich to say it ought to have been apparent to her, when RSA's own contractor's drainage survey didn't pick it up at first inspection. So, according to our approach on this kind of exclusion (as described above), it wouldn't on the face of it be fair to apply the gradual damage / wear and tear exclusion here.

In summary, I'm minded to conclude that it was unreasonable and unfair for RSA to decline Ms N's claim on the basis that the issues were not caused by subsidence.

Whilst that may be true (I leave open the possibility that further investigations or repairs at the property might put subsidence caused by wet soil back in the picture), other insured perils may apply – especially if one accepts RSA's explanation of the cause of the damage.

RSA appear to me not to have enough evidence to decline the claim against those other insured perils (escape of water and/or accidental damage).

I should say that if I accept RSA's assessment of what's happened to Ms N's floor slabs, then I think much of the damage to her house – the cracking to the walls, the roof distorting, the movement to the structure causing windows and doors to not open properly, the damp etc. – may be caused by the expansion of the concrete floor putting pressure on the outside walls of the property.

And I'm minded to say that if the issue with the floor is covered (as I think it likely is), then the rest of the damage to the house follows and is also covered.

If RSA still think the claim is rightly declined, I'd very much appreciate if they'd explain to me exactly why and how – by reference to the policy terms – in response to this provisional decision.

Did RSA make errors in handling the claim – and if so, what was the impact?

First of all, I'd like to make it clear that in my view, the service provided to Ms N almost throughout this claim has been very poor.

There are numerous examples, in RSA's own claim notes and in records provided by their loss adjuster, which show Ms N chasing for information or progress on her claim and getting no response at all, or little meaningful response when RSA or their agents did manage to get back to her.

There are also sometimes quite lengthy periods of delay where there is no progress at all on the claim. Her complaint to us came just over a year after she made her claim,. At that point, RSA had just given her their decision about the claim – which reversed everything they'd said previously.

Up to that point – in the course of a full calendar year - they'd managed to take down

a tree and have a relatively straightforward repair carried out to drain. It's not clear how that might have taken more than a year to achieve.

During that time, Ms N reported further damage to her house – becoming quite extreme over the period in question. And she also reported that the damp was causing relatively severe health issues for her family. None of which appears to have brought any urgency to RSA's agents' handling of the claim.

I'll say below how I think Ms N should be compensated for this extremely poor service but suffice to say for now that the handling of the claim has not been at the standard I'm sure RSA would expect to provide to their paying customers.

So, there were numerous errors here, all of which add up to a very unpleasant and stressful experience for Ms N. However, let me come now to the main point.

When Ms N first reported her claim, in February 2022, the floor in some of her downstairs rooms had begun to crack. She doesn't appear, at that time, to have had the severe problems with damp she's now experiencing. She didn't report a problem with her roof at that point – or with her doors and windows. And most of the cracks in the outside of the house which are now evident weren't there – or weren't visible – when she made her claim.

If RSA had declined the claim after a first assessment by the loss adjuster and/or relevant expert inspections and reports had been gathered – which might reasonably have taken a few months – then Ms N could have made alternative arrangements to get the fundamental problem(s) resolved. And her house would not be in the state it is now.

Ms N might have wanted to question the claim decision (and might have challenged it successfully ultimately), but she would have known where she stood and could have made informed decisions about what needed to be done to the house to make it stable and secure.

Instead, RSA's agents (on RSA's behalf) accepted the claim and gave Ms N to believe that they were going to identify the root causes and address them. And they indicated that everything should be sorted by October 2022.

Ms N was perfectly entitled to believe that the issues were in the right hands and would be resolved as soon as practically possible. There was no reason for Ms N to think she might need to take any further action herself to protect her home and/or to stop the damage becoming worse.

So, even if I am persuaded that the damage to Ms N's house isn't strictly speaking covered by the policy, I'm minded as things stand to instruct RSA to make all the necessary repairs to the property.

They led her to believe they would do so at the outset. They left her with that impression for more than a full calendar year – during which time the damage to her home and possessions became far worse.

And at the end of that year or more, they finally decided they didn't think the damage was covered and left her with a house that is uninhabitable - according to the leak detection specialists who inspected the property – and in need of far more extensive repairs than would have been required in February 2022.

In summary, RSA can't reasonably promise to do something for a customer, then leave them in the lurch more than a year later having failed to fulfil that promise and with a much worse situation as a result of the delay in addressing the fundamental problems with the house.

Again, if RSA believe my thinking on this issue is flawed, they can set out the reasons why in their response to this provisional decision. But unless they provide compelling evidence or information now, I'm minded to say they should carry out all necessary repairs at the property to restore it to an acceptable condition.

Suggested next steps

As I've set out above, I'm minded to conclude that RSA's decision in March 2023 to decline Ms N's claim is unfair and unreasonable. And I'm minded to require them to carry out all necessary repairs at the property to ensure its stability and to restore it to an acceptable condition.

Given the impact on Ms N and her family, who have been living in terrible conditions after the damp issues impacted the house, I'm also minded to require RSA to pay Ms N £2,500 in compensation for her trouble and upset.

I think this is justified given the sustained distress, upset and worry caused to Ms N over more than a year, as RSA have at first delayed the claim unnecessarily and then finally declined it. I also bear in mind the impact on Ms N's family's health.

As our investigator pointed out in his view on this case, the Financial Conduct Authority (FCA) rules which govern the way our service operates say that we can't look into a complaint if the complainant hasn't already raised it with the business concerned.

He said this meant we couldn't currently consider Ms N's requests that RSA pay for her expert report (£525), her additional heating costs as the house became more and more damp or the loss of possessions in the house due to the damp and mould.

I don't agree with that. Ms N's complaint to RSA – which she then brought to us – was that RSA delayed her claim and then declined it, whilst providing very poor customer service.

RSA had a chance to address that complaint before it was brought to us. Nothing has happened since that point to give rise to any new complaint issues, which remain the same.

In asking for her expert fees and heating costs to be paid, Ms N was, in my view, setting out consequential losses she suffered as a result of the delays and claim decision, rather than raising new complaint points.

The same, I believe, goes for her contents which have had to be disposed of. It's not a new issue, it's a consequence of the matters already raised in Ms N's complaint to RSA and to us.

If RSA disagree, they can explain why in their response to this provisional decision. But in the absence of any further compelling evidence or information, I'm minded to conclude that RSA should:

- pay Ms N the £525 she spent on her own expert report;

- pay any extra heating costs in the relevant periods, assuming that Ms N can provide bills / bank statements or other evidence to show the additional expenditure; and
- consider Ms N's claim for lost contents (including furniture, clothing and/or carpets) which have had to be thrown away as a result of damp or mould infestation, in line with the terms of the policy and on receipt of reasonable evidence or information from Ms N to demonstrate the loss.

I'm also minded to require RSA to add interest at 8% simple on the expert fees, the heating costs and the price of the lost contents. Calculated from the date Ms N made the payments for the report, the heating and/or to replace the lost possessions, to the date RSA reimburse her.

On the face of it – and unless I receive further information to contradict my current view – it's my opinion that Ms N's house is currently uninhabitable. The mould growth appears to present an immediate and on-going risk to the health of Ms N and her family.

So, I'm also minded to require RSA to provide alternative accommodation for Miss N and her family – in line with the terms set out in the policy – until such time as the necessary repairs are completed to the point that the house is inhabitable again."

And on that basis, I said I was minded to require RSA to:

- re-open Ms N's claim;
- carry out all necessary repairs to make the house stable and to return it to an acceptable and inhabitable condition;
- provide alternative accommodation for Ms N and her family until those repairs are completed to the extent that the house is inhabitable again;
- pay Ms N £2,500 in compensation for her trouble and upset;
- pay Ms N the £525 she spent on her own expert report;
- pay any extra heating costs in the relevant periods, assuming that Ms N can provide bills / bank statements or other evidence to show the additional expenditure;
- consider Ms N's claim for lost contents (including furniture, clothing and/or carpets) which have had to be thrown away as a result of damp or mould infestation, in line with the terms of the policy and on receipt of reasonable evidence or information from Ms N to substantiate the loss; and
- add interest at 8% simple on the payments they make to Ms N to reimburse her for the expert report costs, the extra heating costs and the cost of replacing lost possessions.

The responses to my provisional decision

Ms N's response

Ms N responded to my provisional decision to say she largely agreed with the suggested outcome.

She provided a copy of some of her utility bills for the relevant period. She'll need to send those to RSA rather than to us.

She confirmed that there was no more detailed survey of the house prior to her buying it, only the valuation report we've already seen.

I'll briefly summarise below the further points she made.

The crack in the front room which RSA suggested was pre-existing, she thinks appeared in early July 2022. It may have appeared filled in because the edges had worn off due to heavy use of that part of the room and fallen into the crack, filling it up.

Ms N got two quotes for repair work to the roof. Both said the roof structure wasn't in line with current building regulations but would have no problem bearing the weight of the tiles. Both confirmed the roof on the older part of the house was now sagging.

And they concluded there was no point getting the work on the roof done until the movement in the walls of the house had been sorted out. Ms N tells us further cracks have appeared in the walls of the house.

Ms N says when RSA visited in March 2023, they said they would drill into the floor plate in order to confirm the cause of the damage to the floor. But they changed their mind and didn't do so.

She also says that she's had work done in the garden. This exposed the drains and showed that the repair work previously carried out by RSA needs re-doing. The gradient is not sufficient to keep the waste flowing effectively and a "trap" has been created, where a pool of waste gathers.

As part of that garden work, a hole of 6-8 feet in depth was created. Even at that depth, there was no water at the bottom of the hole. Ms N suggests this shows that RSA's theory that ground water caused the issues with the floors is mistaken.

Ms N also says the cracks in the house are getting worse. And she asked whether – if my decision remains the same (or similar) – we'll be giving RSA a timetable for the completion of any necessary works.

RSA's response

RSA responded to my provisional decision to say they disagreed with the proposed outcome. I'll summarise their reasoning below.

It might be best to start out with the matters which aren't now disputed. RSA agreed with my tentative conclusion that the damage to Ms N's home (or the majority of it, at least) isn't likely to be due to subsidence.

They also agreed that the damage to the floors has most likely been caused by excessive moisture getting to the concrete of the floors. And that therefore, the question of whether they are liable for the repair costs (to the floors - and anything which is a consequence of the damage to the floors) turns on where that water came from - and when.

RSA say they disagree with my provisional conclusion that the water most likely came from the drains.

They provided a further copy of the drainage expert's report of July 2022, which said there was no leak of water from the drains. And any defects (for example a shallow fall at the rear of the property where the drain was holding water) weren't covered as they hadn't been caused by insured events.

They also said the water in the trial excavation at the property – which was remote from the drainage defects – must have been ground water. They say this is an on-going problem and is likely due to run off from neighbouring agricultural fields. They say this could – and very likely would - be confirmed by further ground investigations.

They also say the house has a history of dampness – as evidenced by works to the walls undertaken by the previous owners, which involved the use of foil-backed plaster, presumably as a barrier to damp.

In terms of the policy itself, RSA say the accidental damage cover is clearly for things that happen suddenly. And the damage to Ms N's house hasn't happened suddenly.

They agree that the gradual damage exclusion can't be applied *if* the water damaging the floors is from the drains – because that will not have been apparent to Ms N. But they say this is irrelevant because the water isn't from the drains (see the reasoning above) and so this isn't an escape of water claim.

As for the timing, RSA say the damage clearly pre-dates the inception of the policy – and so is not covered. And they refer again to the (single) crack in the floor which they say appears to have been filled (by the previous owner) with a “cementitious filing” (RSA's own words) after the installation of central heating pipes.

RSA also disagree with my suggestion that the issue with the floors may have been causing the cracking to the walls of the house. They say the walls have resisted any lateral pressure from the expanding concrete floor slabs. The pressure release has been upwards (rather than outwards) and resulted in the cracking of the floor slab. RSA's expert says he's only ever seen damage to walls caused by outward pressure like this in cavity wall constructions.

In terms of the poor service and delays, both RSA and their loss adjuster have said that they were affected by “subsidence surges” in 2018 and 2022 – and by the restrictions they operated under during the COVID epidemic.

And they think I should bear those factors in mind when considering compensation for the delays and poor service. The loss adjuster also pointed out that removing the tree wasn't straightforward, given the objections from Ms N's neighbour.

However, RSA concluded that they're happy to pay the compensation suggested in my provisional decision, given that it will cost less than the repairs they offered to carry out as a gesture of goodwill to Ms N.

RSA also say the loss adjuster's original report highlighted non-subsidence-related (and so, uninsured) defects, which they said Ms N would be best advised to resolve herself. This included damage to the bedrooms and cracks in the render over the front party wall and front right window.

They say it's therefore unreasonable for me to conclude that RSA need to put right all of the damage to Ms N's home.

The original loss adjuster report also said the drainage issues should be resolved by Ms N – although RSA don't mention this specifically in their response to my provisional decision.

RSA say the dampness and mould issues in the upstairs of the house are mainly due to condensation which has not been properly managed or mitigated by Ms N – probably due to the increasing costs of adequately heating the house in the relevant period.

And they say the issues with Ms N's roof weren't reported at any point as part of the claim.

RSA conclude – in direct response to the proposed outcome set out in my provisional decision – that:

- They shouldn't pay for Ms N's expert's report, since he added nothing to the investigation / debate.
- Any payment for increased utility bills should be based on the number of units used, not the actual cost, given that energy prices rocketed during the period in question.
- Carpets shouldn't be included in any settlement of the claim because they were being replaced before the claim was submitted.
- Damage to contents caused by damp is not claim-related – because the damp was pre-existing and/or caused by condensation (which led to the mould which has affected some of the contents).
- There is no liability for alternative accommodation because the need for it arises from the mould, which is caused by the damp / condensation (not an insured event).
- There's no evidence to suggest the house is unstable.

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.

The drains and the water underneath the house

In their response to my provisional decision, RSA rightly agreed that the key question here is how – and when – water came to be underneath the house and impacting the concrete floor slabs. So, I'm going to deal with that first, at least in part because other things flow from it.

As part of their response, RSA sent us a copy of a drainage report from their contractors, dated July 2022. We already had copies of that report on file. It was one of two reports – the other being dated March 2022 and being from a different contractor – which concluded there was no leak from the drains (or parts of the drainage system at least) and any damage to the pipes or faults with them were uninsured.

In my provisional decision, I made it clear that we were aware that RSA's original decision to decline any part of the claim relating to the drains had been reversed. And RSA instructed their contractors to carry out work on the drains – which they did, in October 2022.

According to Ms N, the contractor told her, in October 2022, that the drains had been quite significantly damaged and had to be replaced along a relatively long stretch. As I said in my provisional decision, that would inevitably lead to the conclusion that there had been a significant leak of water from that part of the drains over a reasonably prolonged period of time.

I also said in my provisional decision that we hadn't yet had sight of any documents (reports, invoices etc.) relating to the work carried out in October 2022 on the drains – or indeed sight of anything which might explain why RSA had changed their mind and decided to cover repair work to the drains after all.

Surprisingly perhaps, RSA didn't provide any further documents in response to my provisional decision to show what work they carried out in October 2022, or to explain why they decided to carry out those repairs.

We went back to RSA and pointed out that this was the key to understanding how water might have been standing underneath the property and so affecting the concrete flooring slabs. And we asked them again – quite specifically – to provide any records relating to the October 2022 drain repairs. RSA didn't respond to that request, which was both surprising and disappointing.

Because of that, I'm left with absolutely no option but to conclude that the drains were very likely leaking – quite significantly. And that it's more likely than not that the excessive moisture underneath the house was caused – to a significant degree – by the leaking drainage pipes.

As RSA said in their response to my provisional decision, *if* the water came from the drains, then the damage to the house caused by that *is* covered and RSA must pay for the associated repairs.

I should stress that it's more likely than not that the dampness issues in the lower storey of Ms N's house are related to the cracking in the floors and to the excessive water underneath the house. And so, those issues must also be covered by the policy.

For the sake of clarity – and in response to RSA's comments on my provisional decision – I think the question of whether this claim would be covered under the accidental damage peril therefore becomes redundant – because this is an escape of water claim. Although I accept their comments on the accidental damage cover have some validity.

I don't believe it would be fair to decline this claim on the basis that the damage pre-existed the inception of the policy. When the first crack in the concrete floor slab appeared is a matter of debate – as is whether it had been previously repaired.

But the original valuation survey on the house didn't pick up any problem and it's clear that the vast majority of the damage (at the very least) has occurred whilst Ms N's family have been in the house and whilst they've had their policy with RSA.

Damage to the walls and roof of the house

RSA blame the dampness upstairs in the house – and the subsequent problems with mould – on condensation. They believe the cracking to the walls of the house is due to thermal movement.

Given the extent of the damage, the fact that it's getting progressively worse, seemingly very quickly, and the fact that the damage arose quite suddenly (it not being evident when Ms N bought the house), I think RSA's explanations stretch credibility.

Ms N reports further cracking – and the existing cracks becoming worse. Her own expert felt the house needs to be stabilised to prevent further movement. And two roofing contractors have turned down work at the house on the basis that the structure is moving – making roofing repairs redundant until the underlying issues are resolved.

The contractor originally commissioned by RSA also felt that the repairs they were tasked to complete were pointless given that the fundamental issues with the structure hadn't been resolved.

So, there's body of opinion which appears to be suggesting that RSA's explanations of the root cause(s) of the issues with the property aren't correct and that the house is – contrary to RSA's assertions – not currently stable.

On balance, I think it's very unlikely that the problems with the property above the floor level are due to thermal movement and/or condensation.

I'm not going to take issue with RSA's expert about the effect the expansion of the concrete in the floor slabs may or may not have had on the rest of the house. He has greater expertise than I do.

But I am willing to conclude that, if that isn't the explanation for the problems with the structure, RSA have no credible alternative explanation at present. And it wouldn't be far-fetched to suggest that the issues with the walls and roof are likely connected in some way to the volume of water underneath the house and the effect that's had.

I'll come back to this – and the question of what that means in terms of what happens next - in the section below about what needs to be done to put things right for Ms N.

Alternative Accommodation

RSA say they shouldn't be required to provide alternative accommodation because the issue which makes the house unsafe – the mould – is due to condensation and/or long-standing damp issues on the ground floor. Neither of which are insured events under the policy terms.

As I've said above, I disagree with that. I'm satisfied it's more likely the damp issues downstairs are connected with the excessive amount of water under the house (which I think was most likely from the leaking drains repaired in October 2022) and the damage to the floors.

The damp upstairs appears to be due to the cracking in the walls and instability of the structure. That was the conclusion of a number of the experts (other than RSA and/or their loss adjuster) who have been involved with the property since the claim was made.

It follows that I stand by what I said in my provisional decision about alternative accommodation. Again, I'll return to this again in the section below.

Ms N's contents claim

In my provisional decision, I said RSA should consider Ms N's claim for contents which have been lost due to the damp / mould, in line with the policy terms.

RSA appear to accept that they will have to consider Ms N's contents claim. But in their response to my provisional decision, they've essentially put down some markers about what is likely to be covered and what is not.

It's not for me to go into that now. I was simply suggesting that RSA consider the contents claim. I wasn't suggesting any particular outcome to that consideration.

If RSA choose not to cover the carpets at the house, they'll need to explain that decision to Ms N. If she disagrees, she'll be entitled to make a new complaint about that issue specifically.

I will however say this – I've concluded, for the reasons set above, that the mould is not due to condensation and is most likely the result of an insured cause. So, RSA should not

decline any part of the claim for mould-affected contents on the basis that the mould damage isn't covered.

I should also stress that it would not be fair and reasonable for RSA to decline any part of the contents claim on the basis that the items in question had already been thrown away and couldn't be inspected.

RSA will be entitled to ask for proof of ownership, in line with the policy terms, as I said in my provisional decision.

The utility bills

As I've said above, Ms N needs to send copies of her utility bills to RSA now, in order to allow them to consider that part of the claim.

For the sake of clarity, I agree with RSA's point, made in response to my provisional decision. They shouldn't be expected to cover the absolute monetary increase in utility costs over the period in question, given that energy prices increased significantly at that time.

As RSA say, they should be expected to cover the cost of *extra units* of energy used by Ms N and her family during the period in question.

The roof

RSA say that the issues with the roof were never raised as part of the current claim. Whilst I agree with that, it appears that those issues may very likely be related to the general instability of the structure.

From what Ms N tells us – about her own observations and those of her potential roofing contractors – it appears the roof is moving. She tells us it's now visibly sagging in places.

It's likely then that the roof issues are related to the more general issues affecting the structure of the house. We have no sure and credible explanation of those issues as yet, as I've already said. But my current hypothesis is that they're likely related to the moisture affecting the house from below.

I'm aware that there's not a great deal of concrete evidence to support that conclusion, but it is at present the most likely explanation, in my view. And the lack of concrete evidence about the causes of the damage to the house is RSA's responsibility. They've been dealing with this claim for around two years so far.

Again, I'll return to this in the section below when I'll say what I think needs to happen now to put things right for Ms N.

The current state of the drains

Ms N tells us that the drain run which was repaired by RSA in October 2022 has a step in it, which is causing water to gather and not flow out of the system. And she says the gradient of that pipe is too shallow, which means the water doesn't efficiently drain away.

Ms N believes RSA should re-repair the relevant drain run to address those faults.

That wasn't part of the original claim, as far as I'm aware. Although I have to add a rider to that to say that, as I've already mentioned, we haven't seen any documentation relating to – or explanation of – what work was carried out on the drains in October 2022 and why.

I think it's inherently unlikely that RSA's October 2022 repairs reduced the gradient of the existing pipework. And so, any correction of that defect may not be covered.

As for the step, or trap, in the pipe work, if that was present before RSA undertook the repairs in October 2022, then it's unlikely to be covered under the policy terms. But if the trap has been introduced *as a result of* the repair work, then RSA should correct it.

Again, I'll say more about how those questions are resolved in the section below.

Ms N's expert report costs

RSA said in response to my provisional decision that they ought not to be liable for the cost of Ms N's expert's report because, in effect, he'd added nothing to the understanding of the claim and/or the issues with the house.

It's true that Ms N's expert appears to have (probably) wrongly suggested that subsidence was the cause of some or all of the issues with the property. Which is, by the way, exactly what RSA's loss adjuster did, for the first year or so of the claim.

However, that's not really the point. I wasn't suggesting RSA should pay the expert's costs because he'd provided great insight or unlocked our understanding of the issues.

The point was that Ms N felt that she had to seek independent expert advice because RSA appeared not to be giving a full and convincing explanation of the causes of the issues with her property. That's something they weren't doing at the time - and frankly still haven't done.

So, I don't think it was unreasonable or profligate of Ms N to seek an independent view. And I think she did so only because RSA weren't getting to the bottom of the issues with the property. So, I remain of the view that RSA should pay the cost of the expert report.

Putting things right

I understand RSA's comments about the poor service and delays – and what may have caused them. Although I think it's a fundamental principle that, whatever the background circumstances, their customers are entitled to expect RSA to fulfil their obligations under the terms of the policy – in a reasonably timely manner.

However, RSA have said they're happy to pay the £2,500 compensation for Ms N's trouble and upset suggested in my provisional decision. So, there's no need for me to get into the argument about how justified (or not) the delays and poor service were.

I've explained above why I'm still of the view that RSA should pay for Ms N's expert report.

RSA have made perfectly valid points about how the additional heating costs should be calculated. But none of that impacts my view RSA should cover the additional utility costs Ms N has had to pay.

I also have no reason to change my mind about the contents claim. I said RSA should *consider* Ms N's contents claim. RSA have outlined some of the factors they may take into account when looking at that claim. That's fine. As I've already said above, Ms N can make a further complaint if she's not happy with the outcome.

Because Ms N has been deprived of the money she paid out for the expert report, the additional utility costs and to replace her lost contents, I remain of the view that RSA must add interest at 8% simple to the payments they now make to Ms N.

I've explained above why I think it's most likely the damage to the house is covered. So, I will be requiring RSA to re-open the claim and make any necessary repairs to the house to make it stable and inhabitable.

Given my thoughts on how the damp has arisen in the house, as set out above, it's clear I don't agree with RSA that the mould in the house – which makes it uninhabitable – arises from long-standing damp issues at the house or from condensation.

Nothing RSA have said in response to my provisional decision has made me change my mind on that point. So, I am going to require RSA to provide alternative accommodation for Ms N and her family, in line with the policy terms, until the house is inhabitable again.

In short, I also haven't changed my mind about the overall outcome to this complaint as regards the repairs to the house – and I'm now going to require RSA to do exactly what I said I was minded to require them to do in my provisional decision.

In terms of the repairs to the property, in practical terms, this means RSA should now do what their original contractor suggested in November 2022 - and what their leak detection expert also suggested after that - and commission a full structural survey.

This should set out the damage to the property, identify the causes (or most likely causes) of that damage and propose a schedule of works with the aim of making the house stable and inhabitable again.

I accept that any such survey may show that my assumptions about the causes of the damage to the property may be mistaken and/or only part of the story.

It's my view that I'm now placed in a position of having to make those assumptions – on the balance of probabilities – primarily because RSA and/or their agents haven't properly investigated these matters after the claim was made in February 2022. They certainly haven't gotten to the bottom of things or provided any credible – or evidenced - explanation of the damage to Ms N's house.

I'm also disadvantaged by RSA's failure to provide any information at all about the drain repairs that were carried out in October 2022. We have no idea why RSA reversed their decision on whether the drain repairs were covered – and why – or about what repairs were actually carried out – and why. That's frustrating, given that we've asked for that information more than once and very specifically.

What I can't justify at this point, given the situation Ms N's family find themselves in – and the amount of time this has been going on – is simply asking RSA to investigate again. In fairness to Ms N, and given the most likely cause of the damage, the only reasonable outcome here is to require RSA to scope the repair works and get them carried out as soon as possible.

I take RSA's point that their loss adjuster's original report did suggest that Ms N should herself address some of the (non-subsidence-related) issues with the house – for example, the cracking to the outside render in various places. But it seems to me that if she had done so, any such repairs would now be redundant. It's likely the property is still moving and unstable, for the reasons I've set above.

In any case, my main point still stands. Ms N made a claim to RSA in February 2022 - and they said they were addressing the fundamental cause(s) of the problems with the property (even if some of the damage wasn't due to those cause(s) – and so wasn't covered – so they thought).

At the time, they concluded the cause was subsidence (caused ultimately by the horse chestnut tree). That theory is now accepted by all concerned to have been mistaken.

Ms N finds herself several years later with a property which is now uninhabitable and with ever-increasing damage mainly because, in my view, RSA have never established and addressed the fundamental cause(s) of the damage to the property.

So, it's my view that the only fair and reasonable way to proceed is to require RSA to repair the property, even if it proves impossible now to definitively identify the root cause(s) of the damage. RSA had an opportunity, over the last two years, to definitively pin down the root cause(s) of the damage and have failed to do so. And that's their responsibility, not Ms N's.

I should add that, in light of the further comments Ms N has made about the drain run that RSA repaired in October 2022, I'd expect the survey(s) RSA are now to carry out to include those drains.

As I say above, if any defect in that drain run is either covered by the policy or was caused by the way RSA repaired the drains in October 2022, then RSA will need to carry out further repairs.

Ms N will understand that it's impossible for me to set a timetable for the necessary repairs to the property, given that those still need to be scoped out.

The survey should be undertaken as soon as is practically possible. Only after that can a timetable for the works be agreed. If Ms N is unhappy with the timing of the survey - and/or the subsequent repairs works – she'll be entitled to make another complaint.

My final decision

For the reasons set out above and in my provisional decision. I uphold Ms N's complaint.

Royal & Sun Alliance Insurance Limited must:

- re-open Ms N's claim;
- carry out all necessary repairs to make the house stable and to return it to an acceptable and inhabitable condition;
- provide alternative accommodation for Ms N and her family until those repairs are completed to the extent that the house is inhabitable again;
- pay Ms N £2,500 in compensation for her trouble and upset;
- pay Ms N the £525 she spent on her own expert report;
- pay any extra heating costs in the relevant periods, assuming that Ms N can provide bills / bank statements or other evidence to show the additional expenditure;
- consider Ms N's claim for lost contents (including furniture, clothing and/or carpets) which have had to be thrown away as a result of damp or mould infestation, in line with the terms of the policy and on receipt of reasonable evidence or information from Ms N to substantiate the loss; and
- add interest at 8% simple on the payments they make to Ms N to reimburse her for the expert report costs, the extra heating costs and the cost of replacing lost

possessions.

If Royal & Sun Alliance Insurance Limited considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Ms N how much it's taken off. It should also give Ms N a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms N to accept or reject my decision before 19 April 2024.

Neil Marshall
Ombudsman