

## **The complaint**

Mr S and Mrs S complain about Royal & Sun Alliance Insurance Limited (“RSA”)’s handling of their buildings insurance claim.

All references to RSA also include its appointed agents.

## **What happened**

### *What my decision covers*

I’m aware this claim has been ongoing since 2018 and that Mr S and Mrs S have brought a previous complaint to our service. My findings focus on events between August 2021 to the date of RSA’s final response to Mr S and Mrs S’s complaint in October 2023. Any reference to dates outside of this are for the context of answering this complaint only.

The details of this complaint are well known to both parties, so I won’t repeat them in full. Below is intended to be a summary of the key issues that form this complaint.

- Mr S and Mrs S initiated a claim for subsidence in 2018.
- The cause of subsidence has been identified to be clay shrinkage caused by tree roots.
- An Arborist provided a report regarding surrounding vegetation in September 2021. Their report set out trees in Mr S and Mrs S’s property, and in two other neighbouring properties, were the likely cause, or contributing, to the current subsidence damage.
- The report set out the trees and vegetation had been subject to pruning, so work wasn’t required at that time. However it said if ongoing movement occurred these would require removal.
- RSA carried out a period of monitoring at the property from November 2021 to November 2022. In March 2023, RSA contacted Mr S and Mrs S. It said the offending vegetation had been removed and as monitoring didn’t show any significant movement had taken place, it was satisfied it could proceed to carry out repairs to Mr S and Mrs S’s property.

Mr S and Mrs S were unhappy with RSA’s proposed repair solution and its handling of the complaint. They raised a complaint with RSA and in summary have set out the following:

- They said the trees hadn’t been removed and so the cause of the clay shrinkage was still present.
- Mr S and Mrs S also pointed out the trees were subject to Tree Preservation Orders (“TPO”) and their removal could potentially cause heave.
- They feel the property should be underpinned. As the trees are subject to TPOs they’re concerned they may not be able to obtain permission in future when the trees require further pruning.
- Mr S and Mrs S had to chase RSA for responses to questions and for progress updates on multiple occasions. The progress of the claim had been slow and ongoing for some time. Mr S and Mrs S set out the impact this had on them which they said

caused unnecessary stress and mental strain – and included multiple visits to their doctor.

RSA sent its final response to the complaint in October 2023. It said:

- It acknowledged Mr S and Mrs S's frustrations in the time taken for the claim to move forward. It accepted it had failed to respond to emails and there had been several issues with poor claim handling and communication with Mr S and Mrs S which caused delays in the claim progressing.
- It had delayed providing a reimbursement to Mr S and Mrs S for a payment for tree works by around 3 months.
- Monitoring had shown the property to be stable, so therefore vegetation left behind would not be affecting the property to the same degree. So, it didn't agree there was an issue with the proposed repairs.

Mr S and Mrs S disagreed, so they brought their complaint to our service.

#### *Our investigator's view of the complaint*

Our investigator recommended Mr S and Mrs S's complaint be upheld. She wasn't persuaded RSA's proposed solution was effective and lasting.

She said as tree roots regrow over time, they would need to be maintained – and the arborist report in 2021 set out if movement reoccurred the trees would need to be removed. As there wasn't evidence, such as an agreement with Mr S and Mrs S's neighbours to maintain the trees in their properties, she wasn't persuaded they would be maintained to a level to prevent the subsidence issues reoccurring. Therefore, this wasn't an effective and lasting solution.

She said RSA should've recognised the cause of the subsidence hadn't been dealt with in an effective and lasting manner, so this had caused delays in the claim progressing by around two years.

She recommended RSA reconsider matters and put in place a new solution to prevent the property subsiding when the trees regrow.

Our investigator said RSA acknowledged there had been instances of poor communication to Mr S and Mrs S. But she also considered the claim had been ongoing for a substantial period and the property had damage which Mr S and Mrs S were continuing to live with.

She acknowledged the concern and worry Mr S and Mrs S had spoken about that the property could collapse and that they had to dispute matters with RSA and its agents multiple times.

In consideration of the above, she recommended RSA pay Mr S and Mrs S a further £1,100 compensation for the distress and inconvenience caused (increasing this to a total of £1,500).

RSA disagreed with our investigator's view of the complaint. In summary it said the following:

- The cause of subsidence had been identified and following a period of monitoring the property had been shown to be stable.
- The cause of subsidence had been removed by the pruning of the trees. And as stability had been demonstrated it felt it had achieved a lasting and effective repair.

- Mr S and Mrs S have a duty to mitigate any future damage by continuing to prune their trees.
- Mr S and Mrs S's neighbours have a duty to abate nuisance. RSA says if they failed to maintain the trees by pruning them, and the damage reoccurred, they would be liable to bear the cost of it. As the damage would be foreseeable.
- RSA also provided a copy of a letter dated February 2021 from an agent of a third-party insurer ("TPI") to Mr S and Mrs S, regarding one of their neighbour's properties. It says this sets out to achieve long term stability the pruning needs to be carried out every two years.
- It disagreed with the compensation recommended. It didn't agree the claim had been delayed for around two years for the reasons set out by the investigator.
- It said monitoring had been carried out as recommended and the claim had not been delayed as investigations had been ongoing. It also pointed out while there was damage at the property, this was moderate and wasn't causing structural concerns.

The complaint has now passed to me.

### **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'm upholding the complaint. I'll explain why.

#### *The cause of subsidence*

Mr S and Mrs S are unhappy with RSA's proposed repairs.

In the letter proposing repairs in March 2023, RSA said 'offending vegetation' had been removed, but I've not seen any evidence that supports this is the case. The arborist report from September 2021 sets out trees identified to be causing the issues had been pruned. Not that they've been removed. It also says if further movement occurred the trees would need to be felled.

Cutting back the trees will have reduced the water content needed and will stabilise the ground for a time, which it appeared to have done when monitoring concluded in November 2022. However, pruning isn't usually an effective and lasting repair without tight management or control.

In this case, the trees responsible are located not just in Mr S and Mrs S's property, but in the properties of more than one neighbour. So even if Mr S and Mrs S were to maintain trees on their property, to mitigate further damage the other neighbours will also need to ensure their trees were routinely pruned. And I haven't seen any evidence, such as an agreement or guarantee, is in place with the third parties involved here.

I acknowledge the letter RSA provided from the TPI informs Mr S and Mrs S of the need to trim their tree every two years. But it doesn't set out what was required of either neighbour and what the direction to prune the trees every two years was based on (as in, it doesn't refer to a report or expert opinion).

But in any event, if the trees required pruning every two years as suggested this means roots were likely grow back and to cause damage if not mitigated every two years. And I don't consider a two-year time period sufficiently demonstrates a lasting and effective solution has been achieved.

So, I'm not persuaded Mr S and Mrs S pruning their tree alone would achieve long term stability. Whilst the third parties may have certain duties to abate nuisance, RSA has a duty to its policyholder to fulfil the policy terms, carry out a repair that is lasting and effective and, act fair and reasonably in all the circumstances. And for the reasons I've set out above, I don't think its proposal does that.

RSA should have considered what I've set out above. Had it done so I think other solutions could've been considered and put in place following monitoring being completed in November 2022, and the complaint could've progressed quicker.

So, I do agree it has caused avoidable delays here.

### *Delays*

I'm aware this claim has been ongoing for some time – claims like this are by nature disruptive and very inconvenient. However, I'm sorry to read of the additional stress Mr S and Mrs S said they've been caused by RSA's actions.

RSA acknowledged there have been issues with communication and itself has pointed to delays in the claim progressing caused by its claim handling. Having considered what RSA itself has acknowledged and alongside what I've set out above, I think the compensation recommended by our investigator is in the region of what I think fairly recognises the distress and inconvenience caused to Mr S and Mrs S by RSA's actions.

### **Putting things right**

To put things right RSA should:

- Reconsider its repair solution to ensure a lasting and effective repair is put in place to mitigate future root growth. I'm aware Mr S and Mrs S have expressed concerns regarding potential heave if the trees were to be removed, but this is something I'd reasonably expect RSA to factor into its further considerations.
- Pay Mr S and Mrs S £1,500 compensation.

### **My final decision**

My final decision is that I uphold Mr S and Mrs S's complaint.

To put things right I direct Royal & Sun Alliance Insurance Limited to do as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S and Mrs S to accept or reject my decision before 5 December 2024.

Michael Baronti  
**Ombudsman**