

The complaint

Mr H and Ms H complain about Royal & Sun Alliance Insurance Limited's ("RSA") decision to decline a claim they made for a problem with their septic tank.

Ms H has been leading on this complaint, so for ease, I've referred to her throughout my decision. Any reference to RSA includes the actions of its agents.

What happened

The circumstances of this complaint are well known to both parties, so I've summarised events.

Ms H has a home insurance policy which is underwritten by RSA. She made a claim on the policy when, during an inspection of her septic tank by her own engineer ("S"), it was brought to her attention the second chamber wasn't at the correct water level, and it was thought this could be due to the tank being damaged.

In error, RSA appointed an engineer who wasn't suitably qualified to validate the claim. The engineer had said the claim wasn't covered as there wasn't evidence of accidental damage. RSA apologised for its mistake, paid £75 compensation to Ms H for the difficulties this had caused, and appointed a drainage contractor – who I'll refer to as "D" – to validate the claim.

D reviewed the tank whilst full and empty and reported the tank was in "*below average condition*". D identified roots at the bottom of the tank, which it said would have caused the tank to leak from the second chamber rather than filter into the drainage field. So, RSA declined the claim saying the damage wasn't caused by an insured peril – and was instead due to wear and tear - for which there was no cover under the policy.

Ms H brought a complaint to the Financial Ombudsman Service. An Investigator considered it but didn't uphold it. She reviewed the evidence from both parties, but was more persuaded by D's findings and so, considered RSA's decision to decline the claim to be fair and reasonable in the circumstances. She also thought the compensation previously paid was sufficient.

Because Ms H disagreed, the complaint has been passed to me for an Ombudsman's 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.

- RSA has declined the claim on the basis an insured event hasn't taken place, saying the problem with Ms H's septic tank is due to "wear and tear" - an uninsurable risk. It says the septic tank had corroded, which in turn, had allowed roots to enter the tank, and cause the water level to not sit correctly which had affected the tank's functionality.

- The policy covers accidental damage to the building. It's accepted the septic tank forms part of the building. But for there to be cover under the policy the damage must be "accidental", which the policy defines as "*sudden, unexpected and visible damage which hasn't been caused on purpose*". So, Ms H must show the septic tank has suffered damage which meets this definition for a claim to be accepted.
- Ms H's expert, S, said the first chamber of the tank containing the solids was in good working order, but the second chamber, where the liquids are contained and then dispersed to a soakaway or drainage area, were not sitting at the correct working level.
- S said it believed the tank had incurred some damage below the water line, and the effluent was leaking from the tank. It highlighted trees in the immediate area of the tank which it thought had caused damage to the tank. D's report also found this to be the case. It's not in dispute that the tank is damaged.
- But D said the tank had corroded in areas, which had made it possible for the tree roots to penetrate it. It said the outfall was dry, full of earth and had an ant's nest in it, which suggested it hadn't been used for some time.
- Our investigator spoke to S who explained it couldn't rule out that corrosion had enabled the roots to ingress, saying it couldn't put a timescale on when this would have occurred and how long it had been going on for.
- Turning to the definition of accidental damage - I think it's reasonable to say the damage was unexpected and wasn't caused on purpose. But I don't think Ms S has shown the damage was "sudden". Whilst it might have been brought to her attention suddenly - when it came to light during an inspection - the damage *itself* needs to be sudden. From what I've seen, Ms H wasn't aware of a problem until it was incidentally discovered during a routine inspection.
- The experts don't dispute the existence of the roots and how this has affected the functionality of the tank. D pointed to corrosion, and S told us the cement and brick of the tank had a degree of wear which *could* make it more porous. S didn't think the tank being 40 years old meant it wouldn't be fit for purpose but accepted it couldn't say the damage had occurred suddenly.
- RSA don't appear to be relying on a "wear and tear" policy exclusion but is instead making the point that the damage is gradual in nature and not indicative of a sudden event – and from what I've seen, I'm satisfied that's a reasonable conclusion.
- Given Ms H wasn't aware of the problem until the inspection, and the damage to the tank was below the water level and at the base of the tank, I consider it reasonable to conclude the damage wasn't visible either.
- As an aside, the condition of the pipes and drains in connection with the septic tank haven't been identified as being an issue and I note the soakaway hasn't been inspected owing to its location on land which isn't owned by Ms H. So, at this time, there doesn't appear to be another cause impacting the tank's functionality.
- In the absence of this, and considering the available evidence, I think D's view on causation is more likely. And so, I consider its decision to decline the claim on the basis there isn't an insured event to be fair and reasonable in the circumstances.
- Ms H's concerns about RSA appointing an unsuitably qualified contractor to validate

the claim were justified, but I'm satisfied its apology, together with the compensation paid and the appointment of a qualified engineer to validate the claim were sufficient. So, I won't be directing it to do anything else.

My final decision

My final decision is I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H and Ms H to accept or reject my decision before 21 November 2024.

Nicola Beakhust
Ombudsman