

The complaint

Mr R complains on behalf of the estate of Mrs F about the way Royal & Sun Alliance Insurance Limited (“RSA”) has handled a claim made under a home insurance policy.

What happened

The circumstances aren’t in dispute, so I’ll summarise the background:

- Mrs F got in touch with RSA in August 2019 to make a claim for damage to her property. It appointed a loss adjuster, C, to handle the claim. C said the damage was caused by subsidence due to trees and covered by the policy.
- C carried out investigations, setup monitoring, and took arborist advice. By December 2020, it had identified a number of trees for removal. Several of them were removed in early 2021. Several more were subject to tree preservation orders (TPO). After gathering further monitoring data, a TPO application was made in October 2021. Mrs F passed away in December 2021.
- The application was refused in February 2022. C continued to discuss the matter with the local authority but, when no progress was made, it said it would abandon attempts to remove the TPOs and carry out some form of stabilisation repair. By November 2022, it told Mr R it would carry out underpinning to the entire property. The tender process began soon after.
- However, by March 2023, RSA said it would revisit and exhaust the tree removal option before agreeing to proceed with an underpinning scheme. C went on to submit a new TPO application, which was accepted in June 2023. With no progress by September 2023, Mr R complained about the way the claim had been handled.
- RSA provided its complaint response in November 2023. As the TPOs had been removed, it said it would remove the remaining trees identified as responsible for the subsidence movement. If that didn’t stabilise the property, it would carry out underpinning. Separately, it said it would monitor until July 2025 to decide whether the property had been stabilised or not. RSA also said the service had been ‘extremely poor’, including delays of around 18 months caused by the way C dealt with the TPO application. But it didn’t offer any compensation.
- Mr R referred the complaint to this Service. Amongst other things, he said:
 - He didn’t think tree removal would provide for a lasting and effective repair.
 - RSA was no longer providing the home insurance policy and no other insurer would offer subsidence cover. This leaves the property uninsured for subsidence indefinitely. C had noted numerous nearby trees that could pose a risk of causing subsidence in the future – but RSA has said it wouldn’t be responsible if that happened.
 - The claim had taken too long and been subject to delays and mistakes. RSA should waive the £1,000 policy excess as compensation.

- In November 2023, ownership of the property transferred to Mrs R. She would like to rent the property out but can't do so whilst the claim is ongoing. In the meantime, she has to pay utility bills and council tax. So she's suffering financial losses due to the delays.
- C asked Mrs F to maintain a TPO tree in 2021, which she did, but only a few months later it included removal of the tree in its application. The £660 cost should be reimbursed.
- Our investigator thought RSA should pay £300 compensation for the distress and inconvenience suffered by Mrs F. And he explained that we can't award compensation to Mr R in his role as representative of the estate. He didn't think RSA had acted unfairly in relation to the other matters complained about.
- RSA agreed to pay £300 compensation. Mr R asked for the complaint to be passed to an Ombudsman and made some further comments.
- RSA later agreed to waive the excess to recognise the poor service and delays. It also agreed to provide ongoing subsidence cover.

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 scope of this complaint is limited to events up to and including RSA's complaint response in November 2023. Whilst the claim has continued in the meantime, I won't be considering anything that has happened since that response.
- It's accepted the damage was caused by subsidence and covered by the policy, so there's no dispute about that. The complaint is primarily about how the claim has been handled, together with associated costs or losses. There are a number of different points to consider, so I'll take each in turn.

Claim next steps

- A key complaint point is the next steps for the claim. In a nutshell, whether it's fair for RSA to pursue tree removal or whether it should proceed straight to underpinning.
- The policy only covers damage caused by subsidence. Taken literally, that means repairing cracks and the like – but nothing more. However, RSA should ensure any repair is lasting and effective. To achieve that, the property must be stabilised prior to repair. As a result, RSA is responsible for stabilising the property.
- Where subsidence has been caused by clay shrinkage due to trees, there are usually two options to stabilise the property – remove the relevant trees or underpin. It's common for insurers to try tree removal first, as it tends to be significantly less expensive and disruptive, particularly where the damage is to the main building, as it is here. I don't think that's unfair in principle.
- Here, RSA initially chose the tree removal option. Some trees were removed but not those with a TPO. Movement continued, so the property hadn't stabilised. RSA then explored the underpinning option. It didn't change because it didn't think tree removal would bring about stability – it changed because it didn't think it would be able to have the trees removed. When the revised TPO application was successful, that

showed it may be able to have the trees removed – so it changed back to that option.

- The position reached at the November 2023 complaint response was that C would arrange for tree removal and monitor until July 2025 to see if the property stabilises. RSA has committed to underpinning if stability isn't achieved. Given how long the claim will have been outstanding for by that time, I consider that's a fair commitment to make – and one I would expect RSA to fulfil.
- If the property does stabilise, RSA won't underpin and will carry out repairs. There are other trees nearby which haven't been identified as the cause of subsidence, but which the arborist says may pose a future risk. RSA had been clear that if those trees later cause subsidence, it won't be responsible as it no longer insured the property.
- This understandably gave Mr R cause for concern and contributed to his complaint. However, RSA has since recognised it should provide ongoing subsidence cover, which resolves this problem. I think it shows RSA is confident it can bring about stability. And, if it fails to do so, RSA will be responsible if there's a later subsidence problem, subject to the terms and conditions of the policy.
- Overall, I'm satisfied the position RSA reached for the claim next steps at the November 2023 complaint response, together with its agreement to provide ongoing subsidence cover, was a fair and reasonable position.

Claim handling

- RSA is required to handle claims promptly and fairly. Where it doesn't do that, it may be fair for it to pay compensation. That could be for distress and inconvenience and/or any financial losses directly caused by failing to fulfil that requirement.
- I'll look at the claim handling in two parts – August 2019 to December 2021, and December 2021 to November 2023. And financial losses in the next section.
- Initially, the claim progressed in line with usual practice for a subsidence claim and as I'd expect it to – appropriate investigations were carried out to establish which trees were causing the movement. That included monitoring, which is vital evidence for a TPO application, and which inevitably takes time to collect meaningful data.
- An application was made, and in principle, I'm satisfied that was an appropriate next step for the claim. However, RSA has accepted mistakes were made with the application which meant it was unlikely to be accepted. Even when Mr R pointed the mistakes out, the application wasn't changed.
- After our investigator's involvement, RSA has agreed to pay £300 compensation for the distress and inconvenience caused to Mrs F by the failings in its claim handling up to December 2021. I'm satisfied that's fair and reasonable in the circumstances, as the delays and poor service up to that point were relatively modest.
- RSA has conceded there were significant failings after that. It identified around 18 months of delays, mainly caused by the initial TPO application, the follow up to its refusal, and the time spent exploring stabilisation options. The only meaningful progress was to submit the revised TPO application.
- There were also service problems during that time. The file shows communication with Mr R was poor. Time after time, notes say 'Mr R called for an update' or similar.

He often found out about key claim developments long after they'd happened, despite clearly taking an active interest in the claim. Even when RSA acknowledged this and recognised the need to change, communication remained just as poor. RSA committed to underpinning, undertook the tender process, and then decided not to proceed with it. This badly mismanaged Mr R's expectations.

- It's clear RSA let Mr R down badly between December 2021 and November 2023 and he's undoubtedly suffered distress and inconvenience as a result. RSA recognised this but didn't offer any compensation. That's very disappointing.
- Mr R asked for the £1,000 policy excess to be waived to compensate him. RSA has now agreed to do that, which I think is the right thing to do in the circumstances.
- Mr R was acting as a representative of Mrs F's estate, which means I don't have the power to award compensation any further compensation to him, if I thought RSA should pay more. And the estate can't suffer distress and inconvenience, so I can't award it compensation for delays and poor service. As a result, I won't be able to consider whether RSA should offer anything further on this point.

Financial losses

- Mr R has noted the estate had to pay utility bills and council tax on the property between December 2021 and November 2023, when ownership transferred to Mrs R. As these are financial losses incurred by the estate, I can consider whether RSA should pay any of them as compensation for the way it handled the claim.
- I can't consider any losses beyond that time for two reasons. Firstly, that's after the complaint response. Secondly, this complaint has been brought by the estate, so I can only consider any losses suffered by Mrs F or her estate. And once ownership of the property transferred to Mrs R, the estate no longer faced any losses.
- In order to find RSA should pay such losses, I would need to be satisfied they were incurred as a direct result of RSA's delays. Or, to put it another way, had there been no delays, the losses wouldn't have been incurred.
- Without any delays, the estate would have no option but to pay utility bills and council tax until ownership of the property transferred to the beneficiary, Mrs R, or the claim was finalised – after which Mrs R would have rented the property out. The former happened in November 2023. The latter hasn't happened yet, but the claim was subject to significant delays.
- At the time of the complaint response in November 2023, RSA had agreed to arrange tree removal and monitor until July 2025, after which it would decide what kind of repair to carry out. That means the end date for the claim is uncertain, but it's likely to take a further 18 to 24 months from November 2023. The extent of delays up to November 2023 were on a similar timescale. So even if there had been no delays, it's unlikely the claim would have been finalised by November 2023.
- Overall, the nature of the claim means even if it was handled without any delays, it would likely have taken until at least November 2023 to finalise. And, as a result, the estate would have had to pay utility bills and council tax during that time regardless. So I'm not satisfied these losses can be directly attributed to RSA's delays. It follows that I won't require RSA to pay anything towards them.

Tree maintenance cost

- In line with the arborist's advice, Mrs F had her TPO tree maintained in June 2021. That cost her £660. Only a few months later, C submitted a TPO application including the removal of that same tree. As a result, Mr R has questioned why Mrs F was asked to maintain the tree – and says her estate should be reimbursed.
- I note C later removed this particular tree from the initial application due to its maintenance. So I think its inclusion was a mistake, rather than an indication that C had asked Mrs F to spend money maintaining the tree in the knowledge it would soon seek to remove it.
- In these circumstances, I'm not persuaded RSA acted unfairly on this point. So I won't require it to reimburse the cost to the estate.

Ongoing subsidence cover

- As RSA has agreed to provide this since the November 2023 complaint response, and I understand the policy has already been setup, this point is resolved.
- This approach is in line with guidance set out by the Association of British Insurers, which I consider amounts to industry best practice.
- In summary, if an insurer deals with a subsidence claim, the guidance says it's usually good practice for the insurer to offer ongoing subsidence cover. The aim is to ensure policyholders in such circumstances can continue to access subsidence cover. The guidance says this arrangement should extend to a new owner if the property is sold – subject to other risk factors that may be presented by a new owner. There may be other circumstances where the guidance doesn't apply, but the emphasis is on insurers seeking to offer ongoing cover wherever possible. If Mrs R intends to sell the property and/or change its usage, it may be helpful to get in touch with RSA to discuss ongoing cover.

Claim developments since November 2023

- As explained above, any claim developments since the November 2023 complaint response are outside the scope of this complaint and haven't been considered.
- But, as a general point, I would expect RSA to keep in mind its requirement to handle claims promptly and fairly. And especially so in this case, given the significant delays and service problems encountered so far. Mr R is entitled to raise a new complaint about events since November 2023 if he wishes.

My final decision

I uphold this complaint.

I require Royal & Sun Alliance Insurance Limited to:

- Pay £300 compensation.
- Waive the £1,000 subsidence excess.
- Offer ongoing subsidence cover.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mrs F

to accept or reject my decision before 15 January 2025.

James Neville
Ombudsman