

## **The complaint**

The estate of Mrs M complains about Royal & Sun Alliance Insurance Limited's (RSA) handling of a subsidence claim made under the late Mrs M's home insurance policy.

This complaint has been brought to the Financial Ombudsman Service by the executor of the estate of Mrs M.

## **What happened**

In August 2022 a subsidence claim was made under the late Mrs M's home insurance policy underwritten by RSA. It took until the end of July 2023 for repairs to be carried out. During this time, Mrs M sadly passed away.

Complaints were raised about RSA's handling of the claim and poor repairs, the estate of Mrs M also complained this had caused costs to be incurred which had reduced the value of the estate.

Across the claim and complaints, RSA offered the estate of Mrs M a total of £1,000 in compensation, but they didn't agree to pay the costs the estate of Mrs M asked for. As the estate of Mrs M remained unhappy, it approached the Financial Ombudsman Service.

One of our investigators looked into things but he didn't recommend RSA do anything further. He recognised there had been poor service and delays, and that wasn't disputed by RSA, but he thought the £1,000 compensation already offered for this was reasonable. The investigator didn't think the estate of Mrs M had suffered a financial loss as alleged, and he also said he couldn't award compensation for any distress or inconvenience to the executor (or others) individually.

The estate of Mrs M didn't agree, so the case was passed to me for a final decision.

## **What I've decided – and why**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so, whilst I appreciate it will come as a disappointment to the estate of Mrs M, I've reached the same overall outcome as our investigator.

I don't intend on commenting on every event, communication or action that occurred during the claim. Instead, I'll focus on what I think is key when reaching a final decision on what I consider is fair and reasonable in all the circumstances of the case. I don't mean this as a discourtesy to either party, instead it reflects the informal nature of this service and my role in it. But I'd like to reassure both parties that I've considered all the information they've provided when reaching my final decision.

RSA accepts things went wrong. This isn't in dispute. They offered the estate of Mrs M a total of £1,000 in compensation across the claim and complaints (£500 in April 2023 and £500 in January 2024).

A brief timeline of key points is as follows:

- In July 2022 a claim was made for subsidence damage to the insured property
- In September 2022 the vegetation influencing the subsidence had been removed
- In February 2023 it was confirmed cracks in the property had closed slightly and RSA said it would look to progress the claim and a new survey and schedule of works was needed
- In late February 2023, Mrs M sadly passed away
- In April 2023, following a complaint, RSA offered the estate of Mrs M £500 for the handling of the claim
- Repair works started in May 2023
- Between May and July 2023 there were delays in the works being carried out, issues with the contractors appointed to complete the works, and poor repairs carried out
- At the end of July 2023 final works were completed and a satisfaction note signed
- A further complaint about the claim handling and delays was raised by the estate of Mrs M, RSA addressed this in January 2024 and offered the estate of Mrs M a further £500 compensation

Subsidence claims are often complex by their very nature and take time to resolve, but RSA already accepts they handled things poorly, and this is why they've offered a total of £1,000 in compensation to the estate of Mrs M.

I recognise the executor and their spouse were caused additional inconvenience personally, by needing to manage the claim progression, visiting the property and regularly liaising and engaging with RSA and other parties in an attempt to move things forward. However, I can't award compensation to them personally for any individual impact to them. This is because the eligible complainant in this case is the estate of Mrs M, and the executor is the representative of the estate. I can only award compensation to the eligible complainant (the estate of Mrs M) for the impact to it, rather than to the individuals associated with or representing it, or for any distress or inconvenience caused to them personally.

However, the estate of Mrs M says RSA's poor handling and delays has caused it further costs and financial losses which have reduced the value of the estate. The estate of Mrs M says this on the basis that there was an equity release loan on the insured property which accrued interest, and the changes in the housing market during this time means the property would need to be sold at a lower amount.

When Mrs M sadly passed away, this resulted in interest on the equity release loan at a rate of £74.98 per day being accrued. The estate of Mrs M argues that because of RSA's failings, the property couldn't be marketed for sale until repairs were complete. So, it says RSA is responsible for that interest amount accrued until the property could be advertised for sale. The estate of Mrs M says this is either £10,753 if the original estimated repair completion date to actual completion date is used, or at the least £3,824 if the revised repair completion date to actual completion date is used.

Whilst I appreciate it will come as a disappointment to the estate of Mrs M, I've reached the same outcome on this as our investigator, and I won't be directing RSA to pay the interest. I'll explain why.

Where a business has made an error, we'd look to put the complainant back in the position they would have been but for the error occurring. Where there is alleged financial loss due to a business's error, we'd need to be persuaded that those financial losses/costs were solely and only caused due to that error and if things hadn't gone wrong, they wouldn't have otherwise been incurred. So, when reaching a decision on this, I need to consider what the most likely position would have been if the error hadn't occurred.

In this case, that means, if there weren't any errors by RSA in their claim handling, and the repairs were completed much sooner, would the estate have avoided the interest charges i.e., were those only incurred solely because of RSA's failings.

The estate of Mrs M says that it was unable to put the property up for sale until repairs were completed at the end of July 2023. It says that if it wasn't for the delays and poor handling by RSA, it would have been able to do so at an earlier point in time. So, the estate of Mrs M argues that RSA should be responsible for the interest charges during this time and up to the point the property could be advertised for sale.

I accept that the estate of Mrs M lost out on the opportunity to market the property sooner, but that's different to RSA actually causing an otherwise avoidable financial loss. The interest would always have been payable up to the point the property sold from when Mrs M sadly passed away. So, to conclude there was a financial loss caused solely by RSA, I'd need to be persuaded that if the repairs were completed earlier, the property could have been advertised and it would have actually sold sooner, and the loan could have been cleared and no interest accrued, but the only reason this didn't happen was due to RSA's failings. But I'm not persuaded, on balance, this is the case.

I say this because the property was put up for sale at the end of July 2023 when works were completed, but as I understand it, it still hasn't sold - or at least hadn't when our investigator last spoke to the estate of Mrs M in mid-February 2024. During this period, the estate of Mrs M said they did have a buyer, but they later pulled out of the sale. This is because the buyer was unable to secure a mortgage, or insurance, because the property had suffered subsidence previously, so they had to pull out.

Given the property still hasn't sold, or at least hadn't by mid-February 2024, I'm not persuaded that it would have had the delays and poor handling not taken place and it had been advertised sooner. So, on balance, if the errors hadn't occurred and the property was put up for sale in February or May 2023, the interest would likely always have been accrued in any event, given that it still hasn't sold. Therefore, whilst I accept RSA handled the claim poorly, I'm not persuaded that RSA is solely responsible for the interest costs incurred, or that they otherwise could've or would've been avoided but for RSA's failings.

The estate of Mrs M also says the property market has changed and the property will need to be sold at a lower value and they say this loss is due to RSA's failings. They said they have already dropped the advertised price by £25,000 and may need to further reduce it due to changes in interest rates. But I can't hold RSA responsible for changes in the property market. And I'm not persuaded it would have sold any sooner but for RSA's poor handling for the reasons explained.

The estate of Mrs M also said the probate value was lower due to repairs being outstanding at the time, so capital gains tax may be incurred due to RSA's handling and delays – although these amounts mentioned don't actually correlate with what is in the grant of probate. Works would always have been required to the property regardless, and it's unclear at exactly what point they could have been finalised. The property also hasn't sold (or at least hadn't by mid-February 2024), and the estate of Mrs M also said the sale value is impacted by the housing market changes and will likely be reduced/changed again. So, I don't think it's been demonstrated at this stage that RSA has caused the estate of Mrs M a specific financial loss here either.

As outlined, I accept that the estate of Mrs M lost out on the opportunity to market the property sooner due to RSA's claim handling. But, on balance and for the reasons explained, I don't think that RSA is solely responsible for the costs incurred or that they would otherwise have been avoided. RSA has already offered £1,000 compensation for the impact and inconvenience to the estate of Mrs M for the delays in being unable to market the property sooner, and I'm satisfied this is fair and reasonable for the impact of this in all the circumstances of the case. Therefore, I won't be awarding anything in addition to this.

### **My final decision**

Royal & Sun Alliance Insurance Limited has already made an offer to pay £1,000 compensation in total to settle the complaint and I think this offer is fair in all the circumstances.

So, my decision is that Royal & Sun Alliance Insurance Limited should pay the £1,000 compensation already offered, if it hasn't already done so.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mrs M to accept or reject my decision before 25 June 2024.

Callum Milne  
**Ombudsman**