

The complaint

A charity - which I'll refer to as S, complains about how Royal & Sun Alliance Insurance Limited ('RSA') have responded to a claim made under a commercial property policy.

RSA are the underwriters of this insurance policy. Much of this complaint is about the actions of RSA's appointed agents. As RSA accept they're responsible for their agents' actions, in my decision, any reference to RSA should be interpreted as also covering the actions of their appointed agents.

What happened

The background to this complaint is well known to S and RSA. In my decision, I'll focus mainly on giving the reasons for reaching the outcome that I have.

S made a claim for damage to their property caused by subsidence. They raised a number of complaints prior to this complaint. They largely related to the time taken for repairs and losses incurred as a result of claim delays.

This complaint was specifically about delays from 30 June 2023 until April 2024. S asked our Service to consider the complaint and our Investigator recommended that it be upheld. Our Investigator's recommendations were largely accepted by RSA. The one point they didn't accept was the recommendation to repair drainage issues as part of the existing subsidence claim - and not charge a separate policy excess. RSA said damage to the drainage system would be separate to the subsidence claim, be considered under the accidental damage section of cover and incur a separate excess.

As the dispute remained unresolved, it's been referred 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.

Our Service is an alternative, informal dispute resolution service. Although I may not address every point raised as part of this complaint - I have considered them. This isn't intended as a discourtesy to either party – it simply reflects the informal nature of our Service.

The scope of my decision

I reiterate what our Investigator has said - our Service are not buildings experts or surveyors. Our role in a complaint like this is to decide if, on balance, RSA have fairly responded to the claim in line with the policy terms and the service they've provided when doing so.

As both parties have accepted the majority of our Investigator's recommendations - reimburse £5,300 and add 8% simple interest, pay £500 for distress and inconvenience caused and progress the claim without further delays, my decision will focus on the remaining point that's in dispute.

RSA argue that any repair for damage to drainage (pipes) is likely wear and tear linked to clay root shrinkage, separate to the subsidence claim, should be considered under the accidental damage part of the policy and incur a separate policy excess. Their main argument is the subsidence damage to S' property was clay shrinkage caused by the effects of tree roots and not by any water leakage from the drainage pipes. They argue any damage to those pipes is not linked to the clay shrinkage and, although it may have been caused by tree roots - it would need to be addressed under the accidental damage section of cover.

On the other hand, S argue that both loss events (subsidence and damage to drainage pipes) are linked. They say subsidence and tree roots have likely affected the pipes. This has meant water has escaped from the pipes, therefore likely contributing to the subsidence issue as tree roots will seek out water.

Having carefully considered the vast evidence, expert opinions, reports and photographs provided, I find RSA's position to be unreasonable.

There is no way to know for certain what proportion of the damage has been caused to the pipes by subsidence (caused by clay shrinkage) and what has been caused only by tree roots directly affecting the pipes. But that's not the test I'm applying here. The test is '*what's more likely than not to have happened?*'.

I find it more likely than not that the damage to the drainage pipes was linked to subsidence and should be dealt with under that claim - not a new claim with a separate policy excess. The alternative explanation is the two issues (the property movement and pipe damage) aren't linked and, on balance, I'm not persuaded by this for the main reasons below:

- The evidence here shows damage to drainage pipes in the vicinity of areas where damage to the main building structure has also been observed.
- It wouldn't be unexpected that movement significant enough to affect a large structure like a building would also impact pipes.
- RSA placed heavy emphasis on the movement measurements:

"....level monitoring determining a 15mm drop in level over four months which is significant with good recovery (bounce). However, there was a break in period of monitoring between December 2022 and July 2023, which determines monitoring stations did not return to the datum point or beyond, noting the largely inclement weather over 2023."

But this ignores that damage to the pipes likely had already occurred by that point. No party is claiming that water escaping from drains was the proximate cause of the ground movement - but it stands to reason that it would likely have attracted tree roots seeking out water.

- No persuasive evidence has been provided by RSA to support gradual causes/wear and tear as the proximate cause of the damage to the pipes being claimed for.

Due to the informal nature of our Service, I've not commented on every opinion expressed in the hundreds of pages of expert opinions here around the claim – just what I consider to be material to this complaint outcome.

RSA will be aware that our approach to subsidence complaints is well established. On balance, I find it more likely than not that the damage being claimed for here to the drainage pipes is linked to the existing subsidence claim and S should be indemnified as part of that existing claim. Therefore, RSA need to include it as part of repairs being carried out under the subsidence claim and not charge a separate policy excess. In order to ensure the repair for the existing subsidence claim is lasting and effective, if the drainage pipes aren't included

as part of the subsidence repair - it could not fairly be described as lasting and effective repair. This is because water would continue to leak and increase the likelihood of tree roots seeking out that water and in turn potentially affecting the movement of the property.

Given the time this complaint (and overall claim) has taken to reach this point and for completeness, although the other parts of our Investigator's recommendations weren't disputed by RSA, I'm including them in my direction here.

Putting things right

Royal & Sun Alliance Insurance Limited will need to (if they've not already done so):

- Reimburse the £5,330 that S has shown it incurred as a financial loss and add 8% simple interest from the date it was deprived of these funds until RSA makes payment to S.
- Pay S a further £500 in recognition of any inconvenience caused by their actions.
- Provide S with an update and resolve this claim without further avoidable delays.

And:

- Arrange for repairs to be carried out to resolve the damaged drains, this needs to be included as part of the existing subsidence claim and RSA should not charge S a further policy excess under the accidental damage section of cover.

My final decision

My final decision is that I uphold this complaint and direct Royal & Sun Alliance Insurance Limited to follow my direction, as set out under the heading 'Putting things right'.

Under the rules of the Financial Ombudsman Service, I'm required to ask S to accept or reject my decision before 7 January 2025.

Daniel O'Shea
Ombudsman