

The complaint

Mr H is unhappy with Royal & Sun Alliance Insurance Limited's (RSA) handling of a claim he made under his home insurance policy.

What happened

Mr H made a claim to RSA for suspected subsidence damage after he noticed the floor of his property was sinking.

RSA appointed a loss adjuster to investigate the claim on its behalf. They attended Mr H's property to carry out a visual inspection and asked some questions about the construction of the floor. Subsequently, the claim was declined on the basis of an exclusion applicable to cover for damage caused by subsidence.

Mr H is unhappy that neither RSA or its loss adjuster completed any intrusive investigations into the type of floor or the cause of damage. He says the information RSA relied on was his best guess, but he made it clear he wasn't qualified. He says the least RSA should do is cover the cost of establishing the cause of the issue, even if it transpires the cause isn't covered by his policy.

Mr H complained to RSA about its decision, and with the length of time it took for investigations to be carried out and an outcome communicated to him.

RSA maintained its claim decision was correct. But said it was open to considering contradictory expert evidence, should Mr H wish to obtain and provide his own expert report. In terms of the service Mr H had received, RSA accepted there had been avoidable delays and offered Mr H £400 compensation. Mr H accepted this on the basis it wouldn't prejudice his ability to escalate his complaint.

One of our investigators considered Mr H's complaint and thought it should be upheld. She said Mr H had demonstrated there was subsidence, and so the onus should then be on RSA to prove an exclusion applied – which she didn't think it had. She recommended RSA should carry out more detailed investigations and reconsider Mr H's claim.

RSA didn't agree. So, as no agreement could be reached, the complaint was passed to me to decide.

I was minded to reach a similar outcome to our investigator, but for slightly different reasons. So, I issued a provisional decision to give the parties the opportunity to respond before I reached my final decision. Here's what I said:

"What I've provisionally 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 intending to reach a similar outcome to our investigator, but for slightly different reasons. I'll explain why.

Mr H's main concern is with the level of investigation undertaken by RSA or its agents. He feels that his policy should cover the cost of investigating and identifying the cause of damage, even if it isn't one covered by the policy. But while I can appreciate Mr H's strength of feeling here, I'm afraid I don't agree that RSA is necessarily responsible for identifying the underlying cause of the damage.

I say this because Mr H's home insurance policy is what's known as a peril based policy. This means it covers specific insured perils (insured events) only. And when making a claim under this type of policy, the onus is first on the policyholder to demonstrate that they have suffered a loss which would be covered by an insured event in the policy. In this case, that would mean Mr H demonstrating that his property had most likely been damaged by subsidence, or some other insured event.

Where a policyholder can demonstrate they have suffered a loss which is, on the face of it, covered by their policy, the onus then switches to the insurer to show that an exclusion or condition applies which would allow it to decline the claim – should it wish to do so. But to be clear, the insurer is not specifically required to identify what the cause of the damage is, only to establish that an exclusion or condition applies, or to demonstrate that the damage hasn't resulted from an insured event covered by the policy.

Mr H's claim was for suspected subsidence damage, and subsidence is an insured event under Mr H's policy. The policy defines subsidence as:

"Subsidence means downward movement of the site on which your buildings stand by a cause other than the weight of the buildings themselves."

The damage Mr H first noticed which led to him reporting the claim was the sinking of his internal flooring which he noted from gaps appearing between the floors and skirting boards in several rooms. This could potentially indicate subsidence, so RSA appointed its loss adjuster to investigate the claim – which I think was reasonable.

The loss adjuster visited Mr H's property, and considered technical plans of the property, before declining the claim on RSA's behalf. The loss adjuster, initially referred to the following policy exclusion when communicating the decision to decline the claim:

"Damage to solid floors or damage caused by solid floors moving, unless the foundations of the outside walls of part a) the home in which you live are damaged by the same cause and at the same time."

Mr H disputed this exclusion applied on the basis the floor is not a solid floor, but a suspended timber floor. He told RSA this prior to the claim decision being made and stresses that RSA would have known this had its loss adjuster carried out more detailed investigations.

A technical specialist at RSA reviewed the technical findings following our investigator's assessment and added the following:

"There is no damage noted to the walls; either internal or external. This indicates that the foundations are stable."

The design of the foundations according to the plans provided by the insured indicates that the foundations are properly designed; which would account for why there is no damage to the walls. In the absence of any damage to any of the walls, I would not expect (loss adjuster) to be exposing foundations and the underlying ground...

...The fact of the matter is that there is no evidence of any subsidence.

The fact of the matter though is that it is for the insured to prima facie show that there has been subsidence. Only then does it fall to RSA to demonstrate an exclusion. The insured has not satisfied this requirement...

...The facts are self-evident from the documents on file. In truth there was no requirement for (loss adjuster) to request the design documents as the claim could have been declined without reviewing them.

(loss adjuster) should have declined the claim simply stating that there was no evidence of subsidence rather than referencing the exclusion. That however doesn't change the outcome of the claim."

RSA has argued that Mr H hasn't demonstrated that the damage was most likely caused by subsidence. But given the damage, sinking/sloping floors, is one of the more common indicators of subsidence issues, I think Mr H has enough, in the first instance, to demonstrate he likely has a potential claim for an insured event under his policy. So, I've next considered whether RSA has subsequently done enough to show that an exclusion applies, or that the issue has not resulted from subsidence or another insured event.

As I've explained, in order to decline the claim, RSA needs to demonstrate that the loss isn't one which would be covered under the policy terms – but it doesn't need to categorically identify what the cause of the damage is.

In order to do this, I would expect RSA (via its agents) to adequately investigate the claim before reaching a claim decision. RSA initially pointed to the policy exclusion for damage to (or caused by) solid floors moving – but it has since accepted this exclusion doesn't apply here. Instead, based on the fact there is no cracking to any of the internal or external walls, RSA has concluded that there is no subsidence at all.

In ruling out subsidence as a cause, I'd expect RSA to provide reasonably detailed and persuasive expert opinion as to how it has been established that the damage has not been caused by subsidence, and to state what they believed the likely cause to be instead. RSA has not done that here. And while I appreciate the lack of cracking could potentially suggest there is no subsidence, I don't think it's sufficiently persuasive, in isolation, to reach that conclusion. Particularly as I'm aware (as was RSA) that the structure of the house has previously been underpinned – which could explain how there could be ongoing ground movement on the site, without movement of, or cracking to, the external walls. And RSA itself has highlighted that the floors are not connected to the internal walls, which could again explain how the floors could potentially be subsiding without damage to internal walls.

Again, I'm not a technical expert, so I can't say whether or not the above is correct. But it's enough to make me doubt the persuasiveness of RSA's conclusions. Especially given RSA has not put forward any alternative theories as to what the cause of damage might be. And given RSA declined the opportunity to look beneath the sinking flooring – through a pre-prepared access hatch – during its inspection.

Even if I were persuaded that RSA had done enough to rule out subsidence as the cause of damage – which I'm not – I'm also not persuaded it has properly considered whether the damage would be covered under another part of the policy either. I note RSA says there is no other peril causing the damage. But it hasn't explained how it considered that question or arrived at that conclusion. So, I don't think it would be fair or reasonable for me to conclude that RSA has done enough to demonstrate the loss isn't covered under the policy.

Based on everything I've seen, I'm not persuaded that the onus has reasonably shifted back to Mr H to show that the damage has been caused by subsidence – or another insured event. This is because I don't think RSA has done enough to demonstrate the damage has not been caused by subsidence, or something else covered under the policy terms.

In order to put things right, I'm intending to direct RSA to appoint a new loss adjuster to reattend the property and complete a more thorough investigation into the damage – particularly, whether it has been caused by subsidence, or another insured event. I'll not be directing RSA as to whether or not intrusive investigations are required, as that's a matter for its experts to decide. But should RSA remain of the view that there is no subsidence and no other insured event causing the damage, its expert report should explain exactly how those conclusions were reached, how those causes were ruled out, and what the expert thinks the likely cause of damage is instead.

Again, RSA doesn't need to categorically determine the cause of damage, but its expert report should be sufficiently detailed to persuasively rule out any insured events – if it seeks to decline the claim.

To be clear, I'm not expecting these new investigations to be carried out or new reports provided in response to my provisional decision. I'm merely setting out what I think should happen as a resolution to this current complaint. So, the parties simply need to let me know whether they accept this proposed resolution, as a way forward, when they respond. If no agreement on the claim can be reached following my proposed additional investigations, then a new complaint will be able to be made at that stage.

Finally, I've considered the level of service Mr H received from RSA and its loss adjuster during the claim and the impact this had on Mr H and his family. It's not in dispute that there were avoidable and unnecessary delays in investigating the claim and providing a claim decision. I also think RSA, via the loss adjuster, created avoidable uncertainty by referring to the policy exclusion when it shouldn't have done. And I think RSA has caused further avoidable distress and inconvenience by, in my view, unfairly declining the claim based on inadequate technical evidence.

I've thought carefully about everything Mr H has said about how the delays and service issues have impacted him and his family. Taking everything into account, I don't think the £400 compensation already paid by RSA is sufficient to fairly compensate Mr H for the impact of the poor service he's received. So, in addition to carrying out additional claim investigations and reconsidering Mr H's claim, I think RSA also needs to pay Mr H a further £300 compensation."

I asked both sides to provide any further evidence or arguments they wanted me to consider, before I reached a final decision.

Mr H said he was happy to accept my provisional findings, so long as RSA appointed a different loss adjuster to the one used previously.

RSA responded to confirm it didn't accept my provisional conclusions. It provided additional points from its technical specialist which said, in summary:

- It's incorrect to say the property was underpinned, rather it was built on piled foundations.
- It's unclear why I've said the floor is suspended timber when the declinature letter suggests Mr H confirmed the floor was concrete and independent of the walls.
- For damage to manifest in this way, it must be one of two potential causes:
 1. There is a floor slab below the finished floor and this floor has intermediate supports built off it. If this has settled under its own weight it could cause the removal of intermediate support to the timber floor joists and consequently they would be undersized for the increased span.
 2. The floor joists are simply undersized and have deflected.
- It's unlikely the house was built on piles to prevent clay shrinkage, so this indicates the soil is likely weak or backfilled, which would suggest option one (above) being more likely.
- Either way, there would be no cover as option one would be caught by the policy exclusion and option two wouldn't amount to an insured event.

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.

I've also carefully considered the responses to my provisional decision. Having done so, my conclusions remain unchanged. I'll explain why.

Firstly, I acknowledge the incorrect terminology I used in my provisional decision when referring to the piled foundations as underpinning. But the overall point I was making remains. That is, given the foundations are piled and the floor appears unconnected to the walls, it's possible the floor could be subsiding without cracking damage to the walls.

In terms of the lack of clarity as to whether the floor is solid or suspended timber, there remains no definitive evidence of this either way – which for me supports that RSA's investigations prior to declining the claim were inadequate. RSA has referred to the declinature letter, which suggests Mr H said the floor was solid. However, Mr H has argued throughout that any information he gave the loss adjuster was caveated with the fact he was not an expert and didn't know for certain. He also says the loss adjuster was offered the opportunity to inspect a pre-prepared access hatch in the flooring yet declined. And I've seen evidence that Mr H sent emails to RSA following this, and following conversations he said he had with his builder, which clarified that the floor was suspended timber, not solid concrete.

In my view, when investigating a claim for potential subsidence damage to an internal floor, RSA ought reasonably to have established how the floor was constructed before deciding on whether the claim could be covered. And given Mr H was unable to confirm for certain, I think RSA ought to have checked itself before reaching a decision on the claim. Particularly given that it was offered the chance to easily inspect beneath the floorboards during the site visit.

I've thought carefully about RSA's newest explanations as to how the damage could have occurred. But I'm mindful that the position now seems to have shifted again, from the argument being there is no evidence of subsidence at all, back to being there is likely subsidence, but the damage being caught by the exclusion. This back and forth still makes me question the persuasiveness of the opinion and the fairness of the claim decision.

I'm also not persuaded that it would be fair to suggest the claim could be fairly declined on the exclusion, based on the available evidence, even if I accepted the new arguments. I say this because it's still not clear to me whether the floor is a solid floor or a suspended floor – which I understand to be distinctly separate things. I appreciate a suspended floor could potentially have a solid slab beneath the void beneath it. But I don't think this means a suspended floor can fairly be considered a solid floor – which by my interpretation, the exclusion requires. I also think the exclusion requires a lack of damage to the foundations of the external walls, rather than to the walls themselves. And while a lack of damage to the walls could indicate a lack of damage to the foundations themselves, I'm aware that the foundations themselves have not been inspected to rule out damage to the foundations by the same cause.

In any event, I'm not making a finding that the exclusion doesn't apply. Rather, my finding is I'm not persuaded that RSA has done enough to show that the exclusion most likely applies, or that there is no insured event causing the damage, because I think its claim investigations were inadequate.

Ultimately, I remain of the opinion that RSA's decision to decline Mr H's claim based on the limited investigations undertaken was unfair. I appreciate RSA feels the claim is unlikely to be covered, and I accept that may still prove to be the case following more detailed investigations. But in order to reach a fair and reasonable claim decision, I still think RSA needs to appoint a new loss adjuster to properly investigate the damage being claimed for, before reconsidering its position on the claim.

Neither side provided any additional comments or evidence in response to my provisional findings around compensation. So, in the absence of this, and given everything I've said above, I also remain of the view that RSA should pay Mr H a further £300 for the avoidable distress and inconvenience it has caused him.

My final decision

For the reasons I've explained above, and in my provisional decision, I uphold Mr H's complaint.

Royal & Sun Alliance Insurance Limited must:

- Appoint a new loss adjuster to investigate the damage on its behalf
- Reconsider the claim upon receipt of the new loss adjuster's report
- Pay Mr H a further £300 compensation for the distress and inconvenience it has caused him.

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

Adam Golding
Ombudsman