

The complaint

Mrs P complains Royal & Sun Alliance Insurance Limited (RSA) unfairly declined her home insurance claim.

RSA's been represented at points by an agent for the claim. For simplicity I've referred to the agent's actions as being RSA's own.

What happened

In October 2022 Mrs P became aware of cracking to the front of her property. In mid-February 2023 she took out an RSA home insurance policy. In early April 2023 a surveying firm (S) investigated the matter for her. It found her property was being affected by movement of an adjoining property. It reported a tapered crack between the two properties, cracks between windows on Mrs P's and internal cracks to plaster. In July 2023 Mrs P made a claim, against her RSA policy, for subsidence damage to her property.

RSA, having considered the claim against Mrs P's subsidence and accidental damage (AD) covers, declined the claim. It didn't accept the damage to be covered by Mrs P's policy as subsidence. It said the policy only covered subsidence happening to the site or land belonging to her buildings. It didn't accept there to be subsidence on her land. It said rather it was the adjacent property's land and building which were subsiding - caused by the effect of a tree on the soil. And it was that movement which was damaging Mrs P's property.

After considering the claim against Mrs P's AD cover, RSA said historic photos showed the damage had been present for several years – starting in around 2017. It explained the policy terms exclude loss or damage occurring or arising from an event occurring before the start of the insurance.

Mrs P complained to RSA about the decline and the service it provided. RSA didn't respond to her complaint within the required time limit. So in January 2024 Mrs P referred a complaint to the Financial Ombudsman Service. She said she's unhappy with RSA's decline, its service and approach to her claim.

Our Investigator said whilst subsidence is occurring to the neighbouring property it is impacting Mrs P's property. So he recommended RSA, on a fair and reasonable basis, cover the damage as subsidence. He said RSA should repair any damage once the neighbouring property is stable. He said in line with an Association of British Insurers (ABI) agreement RSA should deal with the claim but share costs with Mrs P's previous insurer - considering there was damage likely to have occurred before the inception of this policy. Finally he recommended it pay Mrs P £100 compensation to recognise the unnecessary distress it had caused.

Mrs P accepted the proposed outcome. RSA didn't accept there to be subsidence damage to her property. Neither did it accept there to have been any damage to her property since the policy inception in February 2023. Given RSA's objections the complaint was passed to me to decide.

I issued a provisional decision. In it I explained why I didn't intend to require RSA to accept her claim or to do anything differently. As my reasoning forms part of this final decision, I've copied it in below. I also invited Mrs P and RSA to provide any further comments or evidence they would like me to consider. RSA didn't respond. Mrs P didn't accept the proposed outcome. She provided further information in support of her argument that RSA should accept her claim.

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.

As this is an informal service I'm not going to respond here to every point or piece of evidence Mrs P and RSA have provided. Instead I've focused on those I consider to be key or central to the issue. But I would like to reassure both that I have considered everything submitted. I realise this will be frustrating for Mrs P. But having done so, I don't currently intend to require RSA to deal with her claim or to do anything differently.

I've first considered if, in the circumstances, Mrs P's claim meets the terms of the policy for 'subsidence' cover. The policy covers damage caused by subsidence or heave of the site on which her buildings stand or of land belonging to her buildings.

The policy defines subsidence as downward movement of the site on which the buildings stand by a cause other than the weight of the buildings themselves.

Both Mrs P's expert S and RSA are of the opinion the adjacent property is moving because of subsidence to the site on which it stands. This is considered to result from the impact, on the soil, of a tree located on the far side of the adjacent property. The resulting movement of the adjacent property is said to be pulling it away from Mrs P's. S found this is likely to be causing a tapered crack between the two properties. He said it may be contributing towards cracks between ground and first floor windows on Mrs P's property.

RSA's position is that the policy term hasn't been met – as the site on which Mrs P's property stands isn't subsiding. Instead it is the adjacent site that is subsiding. I accept it's possible that Mrs P's site is also subsiding, despite it being further away from the tree than the adjacent property. However, I haven't been provided with anything which either argues that is the case or persuades me it most likely is. S, for example, doesn't claim it is. So, based on the above, I'm satisfied that RSA's argument that the circumstances don't meet the terms of Mrs P's subsidence cover is reasonable. I will return to this issue later.

RSA also declined to accept the claim, including under AD cover, on the grounds the reported damage is historic. It said the damage started around 2017, so before the policy began in mid-February 2023. It argued the policy began after the dry weather, a condition associated with subsidence, of 2022. It thought the adjacent property would have suffered the most movement during that dry spell. RSA said there is a lack of evidence of subsidence damage to the adjacent property after February 2022. So, consequently it thinks that the cracking between the properties won't have developed since then, meaning Mrs P's property hasn't suffered damage during the period it's been providing cover.

I've considered various evidence for this point – including historic photos referred to by RSA and in S' report. RSA's compared historic photos of Mrs P's property,

available on the internet, to its own taken at its site visit for the claim. There are also S' photos to use as a comparison.

Having compared the photos, RSA concluded the cracks to the outside of Mrs P's building were present before the policy began in early 2023. I've compared August 2020 images to S' from April 2023 and RSA's from August 2023. It's not clear the most substantial damage – a tapered crack between the two properties – has progressed in any significant way between August 2020 and August 2023. The crack doesn't appear to be obviously longer or wider in the later images.

S reported other external cracks – including between the windows. It's not clear those progressed either. Based on what I've seen the damage in 2023 appears to be essentially the same as that which existed before the policy began.

S' report included a photo of internal cracking – he described it as minor separation between the ceiling and the front wall in a bedroom. I haven't been provided with, for comparison, any earlier images of the exact same location. However, I note S' photo was taken only six weeks or so after the policy began. It's possible that damage occurred in that short period. However, it seems unlikely considering the external damage dates from at least a few years before. So overall there isn't much to persuade me that the damage was or is still happening beyond the start of Mrs P's cover with RSA.

So first of all Mrs P's claim doesn't strictly meet the terms of her subsidence cover (as the subsidence isn't to her site). And there's little that persuades me that the relevant damage progressed to any significant extent during her period of cover with RSA. With those considerations in mind, I can't say it would be fair or reasonable to require RSA to deal with her claim under her subsidence or her AD cover.

I realise this will be frustrating for Mrs P, but this means I don't intend to require RSA to accept her claim or to do anything differently. I will, though, consider any additional evidence she provides in response to this provisional decision.

I don't intend to require RSA to pay Mrs P any compensation. The Investigator awarded her £100 to recognise the impact of delay in providing a claim outcome and for her having to chase it for updates. But I consider an initial outcome to the claim was provided in reasonable time. And I haven't seen any service failings that persuade me it would be appropriate to award any compensation for distress or inconvenience.

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.

My provisional decision didn't require RSA to accept Mrs P's claim, under either subsidence or AD. I reached this outcome for two key reasons. First the claim didn't strictly meet the terms of the subsidence cover (as the subsidence isn't to Mrs P's land). Second I wasn't persuaded the relevant damage had progressed to any significant extent during the period RSA has provided her cover.

Having considered Mrs P's latest information, I'm of the same position on the first reason. She hasn't provided anything new or of significance to persuade me there's likely been subsidence to her land. On the second, having considered the latest information, the matter is finely balanced. But ultimately there still isn't enough to persuade me relevant damage

likely progressed to any significant extent during her period of cover with RSA. So I'm not going to require RSA to accept her claim.

Mrs P's latest information reiterates any subsidence is to the adjacent land - and resulting from roots from a tree found beyond the far side of it. I still haven't been provided with anything which persuades me her land is likely subsiding. So her claim doesn't, strictly, meet the requirements of her subsidence cover.

Mrs P said RSA can't know her land isn't subsiding as it hasn't commissioned a report or evidence that it isn't. I'm not going to require RSA to undertake monitoring or root investigation of her property. I consider its decision not to do so to be reasonable. Expert opinion, including Mrs P's own surveyor's, points to the damage to her property resulting from movement of the adjacent one.

I next discuss evidence of damage to Mrs P's property since RSA became her insurer. That was in February 2023. She's provided some additional external and internal photos of her property – recent and historic. She said these demonstrate progression of damage and continued deterioration since February 2023.

I've considered the photos, including in comparison to those provided previously. The external images don't support cracks or other damage having progressed in any significant way since February 2023.

There are 11 photos of the interior. Some allow for comparison of the same areas before and after (or shortly after) February 2023. None of these comparisons persuades me of new damage, or of any significant progression to existing cracks, since that date.

There are three or four more internal photos, from December 2024, of rooms at the front of the property. These show cracking to coving or plasterwork. Unfortunately, I haven't been provided with images of these areas allowing for a comparison of condition pre-February 2023. So I've considered other relevant evidence to decide if, in combination, these photos are persuasive of progressive damage since February 2023.

Mrs P provided a May 2024 email from the loss adjuster for the adjacent property's subsidence claim. It refers to level monitoring readings of that property from August 2023 to May 2024. That is approximately months 6 to 14 of her period of cover with RSA - a significant portion of the time under consideration. The loss adjuster explains the monitoring doesn't show seasonal patterned movement.

S' April 2023 report, from a few months into the relevant period, refers to cracks to plaster throughout the property. It describes these as being of cosmetic nature due to the general age and condition of the property and plaster.

So the available monitoring doesn't support seasonal movement to the adjacent property (considered responsible for movement to Mrs P's) and her report from only a few months into the relevant period, notes existing age related cracks throughout. Of significance for me is that, in addition, the available comparisons, before and after February 2023, of internal and external cracks, don't support the damage as being progressive since that date.

It's finely balanced, but ultimately there's still not enough to persuade me relevant damage most likely progressed to any significant extent during her period of cover with RSA. Further the claim doesn't strictly meet the terms of her subsidence cover (as the subsidence isn't to her land). With those considerations in mind, I still can't say it would be fair or reasonable to require RSA to deal with her claim under her subsidence or her AD cover.

As set out a key issue is Mrs P's ability to show damage happening to her property during the period of her cover with RSA. If she can, by documenting the ongoing condition of her property, provide RSA with further evidence, I'd expect it to be given fair consideration.

My final decision

For the reasons given above, I don't uphold Mrs P's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 21 February 2025.

Daniel Martin
Ombudsman