DRN-4985653

The complaint

Mrs L and Mr L complain about Royal & Sun Alliance Insurance Limited's on-going handling of a claim relating to subsidence at their property.

What happened

The background to this complaint is well known to both parties, so I'll provide only a very brief summary here.

Mrs L and Mr L have a buildings insurance policy underwritten by RSA which covers a property they own.

In 2014, they became aware of issues at the property which we now know were due to subsidence. And they made a claim to RSA.

RSA accepted the claim. And in short, have been dealing with the issues at the property since that time.

Mrs L and Mr L have made several previous complaints to RSA about their handling of the claim. And they've brought five previous complaints to our service.

In summary, before this current complaint was made, RSA had paid a total of £3,300 to Mrs L and Mr L in compensation for the trouble and upset they've experienced as a result of RSA's errors in the handling of the claim.

That includes £1,200 paid after we considered a complaint about delays and poor communication up to November 2021.

In response to the current complaint, RSA offered a further £6,700 in compensation, to bring the total paid during the life of the claim to £10,000.

Mrs L and Mr L weren't happy with that. And brought their complaint to us.

In brief, their complaint is as follows.

One - £10,000 in total in compensation over the life of the claim is insufficient to cover the trouble and upset they've experienced, including the effect it's had on Mrs L's health in particular.

Two – the cash settlement now offered by RSA and accepted by Mrs L and Mr L, they say under duress, includes a contingency of only £5,000 – against a total estimated cost for repairs of close to £200,000.

Three – RSA should pay for five additional months' loss of rent at the property after the period up to February 2025, which they've already agreed to cover.

Four – RSA have issued a certificate of structural adequacy which describes the subsidence damage at the property as having been "moderate". Mrs L and Mr L believe it should be

categorised as “minor”.

Five – RSA have not guaranteed to provide on-going cover for the property after November 2024, when the policy is due for renewal.

Our investigator looked into Mrs L and Mr L’s latest complaint and didn’t think RSA had done anything wrong.

Mrs L and Mr L disagreed and asked for a final decision from an ombudsman.

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 compensation

Previous complaints have been resolved with compensation paid to Mrs L and Mr L totalling £3,300. This includes compensation for claim delays and poor communication up to November 2021. The issues at the property first arose in 2014.

It’s not for me now to go back and review the previous complaints, or their outcomes – which were accepted by Mrs L and Mr L. So, in terms of the claim delays and associated confused communications, I can only look at the period after November 2021.

I acknowledge that the frustration, stress and anger felt by Mrs L and Mr L will naturally have become greater as time went on with the claim still not being resolved. However, Mrs L and Mr L accepted £1,200 in compensation for the delays and poor communication in the seven year period up to late 2021.

RSA’s additional £6,700 – to cover the period between November 2021 and early 2024 (when this current complaint was made) appears on the face of it to be a fair and reasonable escalation of the rate of compensation compared to the earlier longer period.

Leaving that aside and looking at the wider picture, our investigator rightly asked Mrs L and Mr L to take a look at the information we publish on our website about our compensation awards.

As we say there, we think awards of up to £5,000 are appropriate in cases where a business’s mistakes caused sustained distress, potentially affecting someone’s health, or severe disruption to daily life typically lasing more than a year.

Awards over £5,000 are, by definition, for cases where the impact goes beyond that and is extreme.

So, I can’t reasonably conclude that RSA’s award of £10,000 (in total) in compensation for Mrs L and Mr L’s trouble and upset is in any way unfair or unreasonable, even taking into account the impact Mrs L and Mr L tell us the claim has had on Mrs L’s health.

Our service provides a free – and intentionally quicker and less formal – alternative to court action. If Mrs L and Mr L believe that a court would award much higher compensation in their case, they are free to reject this decision and pursue the matter themselves through the courts. That might allow a much more forensic and detailed testing of the evidence relating to the impact on Mrs L and Mr L of any errors on RSA’s part.

The contingency included in the cash settlement

As I understand it, Mrs L and Mr L have accepted the cash settlement offered by RSA. That being the case, it's at least arguable that it shouldn't be for me to go behind that agreement in this decision.

However, even if I were to do so, I wouldn't be upholding this element of Mrs L and Mr L's complaint.

In brief, no-one currently knows whether any contingencies will arise in the course of the repairs to the property – or what they might be.

RSA have covered all of the repair work that is currently required - and added £5,000 on top. I hope that will be sufficient for the repairs to be carried out to an acceptable level.

If though Mrs L and Mr L find unforeseen and costly repairs which are needed but which were not included in the current scope, I'd expect that RSA will consider any evidence they're able to provide.

And if the (so far undiscovered) damage which needs repair was in fact caused by the original peril (the subsidence) and/or by the works which have already been attempted by RSA's contractors at the property, then I'd expect RSA to consider making a further payment to cover the cost of those repairs.

At present, that possibility is entirely hypothetical. And I don't believe it would be fair or reasonable to ask RSA to add now to the contingency afforded in the current schedule of works.

If and when Mrs L and Mr L find that further unforeseen repairs are necessary – as a result of the subsidence and/or the work carried out by RSA's contractors – and RSA then refuse to consider the relevant evidence or refuse to make any additional payment, then Mrs L and Mr L can make a further complaint.

The loss of rent payments

RSA have covered loss of rent at the property through to February 2025. Mrs L and Mr L believe a further month should be added because RSA haven't accounted for the month it took them to properly finalise their settlement offer.

And they think it's unlikely the repairs can be completed by February 2025 in any case - and want a further four months' payments to account for the time at which contractors are likely to be available to carry out the work.

I'm not going to get involved in the arguments about when the true and finalised settlement offer was in fact made. It's not important. What matters is whether the payment through to February 2025 is reasonable given the likelihood of the repairs being completed.

I think it *is* reasonable in all the circumstances. And I'm not going to require RSA to extend the loss of rent payments. Mrs L and Mr L have known for a considerable period of time that the likely outcome of the claim was a cash settlement – and they could reasonably have made assumptions about when that cash was likely to arrive.

So, contractors could have been lined up to begin work from before now. If Mrs L and Mr L were waiting on the outcome of this complaint before engaging contractors, that was their choice, not RSA's. And given that I'm not upholding the complaint, it wouldn't be reasonable to ask RSA to effectively pay loss of rent for the time taken for our investigations to be completed.

Moderate or minor damage

Mrs L and Mr L's only real rationale for saying that the damage should be recorded on the certificate as "minor" is that it would make it easier for them to sell the property if that were the case.

I can see no other evidence or reason to suggest that the damage should be categorised in that way. And to be frank, if the cost of repairs – as evidenced by the cash settlement – is now close to £200,000, it would seem odd to regard the damage caused to the property as minor.

The certificate will affirm that the building is structurally adequate, which is in any case the main thing when it comes to allaying any fears potential future buyers might have.

On-going cover

RSA have agreed to cover the property through to the next renewal point – in November 2024. And they've said they may look to renew the policy, depending on the situation at the time.

RSA are entitled to consider whether to agree renewal in November 2024 – as any insurer would be at any policy renewal point. However, they will then be expected to comply with industry standards, and they will be expected to act fairly and reasonably towards Mrs L and Mr L.

That might be achieved by renewing the policy. It might be achieved through other means, like finding another underwriter willing to provide cover on the same or similar terms.

In short, I can't justifiably bind RSA to renewing the policy in November 2024 (or thereafter). If and when RSA refuse to renew and/or fail to make fair and reasonable alternative arrangements for Mrs L and Mr L, then they would be entitled to make another complaint – which they can bring to our service if they aren't satisfied with RSA's response.

My final decision

For the reasons set out above, I don't uphold Mrs L and Mr L's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs L and Mr L to accept or reject my decision before 10 October 2024.

Neil Marshall
Ombudsman