

## **The complaint**

Mr and Mrs E complain that Royal & Sun Alliance Insurance Limited (“RSA”) have unfairly declined a claim under their home insurance policy.

Any reference to Mr and Mrs E or RSA includes respective agents and representatives.

## **What happened**

The background to this complaint is well known between parties so I’ve summarised events.

In December 2016 Mr and Mrs E bought their property.

In July 2021 Mr and Mrs E engaged with RSA regarding a crack in their living room wall. RSA reviewed this and said the damage was not consistent with subsidence or the operation of any other insured event so wasn’t covered - concluding the damage was a result of an old crack exacerbated by weathering/general deterioration.

In November 2021 Mr and Mrs E said they engaged their own engineer (Company M) who deemed the crack was due to the footing of their bay window – including the cracking was as a result of historical poor workmanship regarding provision of foundations when replacing an original bay window with a smaller one.

In November 2022 Mr and Mrs E said they found another significant crack within the living room. Soon after in December 2022 a party wall between Mr and Mrs E’s property and their neighbour’s property collapsed. Mr and Mrs E contacted RSA.

RSA appointed an expert (Mr F of Company E) to review the damage and produce a report on the cause. They completed several visits around March and April 2023. Mr F’s conclusions were that the property’s party wall had been built with poor quality bricks that had deteriorated over time.

In July 2023 RSA declined the claim. Mr and Mrs E disagreed and in October 2023 RSA gave its final position on the claim – declining it.

RSA’s decline letter explained that the loss in this case did not amount to an insured peril under any part of the policy. The closest cover on its face that may respond was accidental damage cover but it said the damage was caused by gradual deterioration and therefore could not amount to a sudden incident. It went on to say that even if it had been covered under this peril – the claim would have been caught by an exclusion and not been covered, quoting various terms including wear and tear, poor or faulty bricks, amongst others.

Mr and Mrs E provided a substantial response, detailing the history of the claim and raising various concerns about the handling of the claim, including quotations of various sections from this Service’s website regarding approaches to insurance. In summary:

- The claim should be covered under accidental damage. They believe they’ve shown they couldn’t have been aware of the damage happening gradually and they took all

reasonable action as soon as they became aware.

- There was a lack of professional consensus on the mechanism that cause the house to collapse including a lack of consensus on whether subsidence could be a cause, taking into account subsidence in the area and RSA's inability to categorically rule this out.
- Mr and Mrs F said they had not been given a full copy of Mr F's report. And questioned his experience as an engineer.

RSA responded to each of these points. In summary it said:

- The published approach of this Service highlighted that if there was no insured event then there wouldn't be a claim to consider.
- The definition of accidental damage was clear, and its approach was in keeping with this Service's approach.
- Mr F of Company E was suitably qualified, had considered the potential for deterioration due to prolonged exposure when completing his investigation, and intentionally excavated them from sheltered areas for this reason. It said the report was privileged so it would not share it at this time.

The complaint came to this Service and one of our Investigators looked into what happened. Mr and Mrs E explained the impact on them by the claim being declined. They described delays and concerns they had about RSA's handling of the claim, including RSA not following approaches of this Service, removing foundations without their permission.

Our Investigator didn't uphold the complaint, saying the cause of the damage was deterioration the property's foundations, so there was no insured peril that had taken place under the policy. This meant there was no claim to be covered.

Mr and Mrs E disagreed, again providing a very detailed response. In summary:

- RSA's comments about the cause of the damage being due to the quality of bricks used in foundations was questionable, but in any case there was no way Mr and Mrs E could've known of such underlying issues. And they'd taken reasonable steps in notifying RSA and employing their own independent structural engineer. Noting that RSA's own surveyor had not identified foundation issues upon first inspection.
- The claim was handled poorly, with around three or so months between reporting the damage and RSA's first attendance on site. They said this exposure to heavy rain across this time made it more difficult to establish the cause of the collapse. And said the time taken to give an initial answer on the claim (around eight months) was too long. They described the impact of the house collapse on their family, as well as the impact of losing all of their contents through damage.
- They said in September 2023 they discovered the foundations had been removed without their knowledge or consent – with RSA's agent explaining this was part of their installation of temporary support works to the properties. They said this prevented them from being able to commission their own report into the foundations. And that RSA has done this knowing it would prevent any opportunity to provide technical evidence to rebut RSA's position.
- They quoted several final decisions issued by this Service and said these supported their position the claim should be covered.
- Mr and Mrs E also provided commentary from a project management company challenged why an insurer would decline a claim for faulty materials if the

policyholder could not have known this. And Mr and Mrs E said the company said RSA should prove the matter wasn't subsidence. For this reason and others (including subsidence maps for the UK) they said subsidence still may be a proximate cause of the claim.

The Investigator looked again but didn't change his mind. He reiterated there was no evidence an insured peril had taken place - neither accidental damage nor subsidence. Nor were there any evidence to suggest there was not an issue with the quality of materials showing them suffering from gradual damage. As Mr and Mrs E disagreed, the complaint was passed to me for an Ombudsman's decision.

On 1 November 2024 I issued a provisional decision. I've included an extract of this below.

"...I'm not intending on upholding this complaint.

Before I explain why, I want to extend my sympathies to Mr and Mrs E. From reading all of their submissions I don't doubt this experience would be incredibly distressing for them.

The nature of my role is that I must assess the evidence from an independent and impartial perspective and reach a decision I consider fair and reasonable in all the circumstances. That may mean at times I may sound matter of fact or dispassionate. I want to be clear I mean no disrespect by this, it's simply a reflection of the position I hold.

Mr and Mrs E's submissions are also extensive, and I won't be responding in similar detail. This is not intended as a discourtesy, but a reflection of the informal nature of our Service. My role is to focus on what I consider the crux of the complaint to be which means I will only comment on those things I consider relevant to the decision I need to make.

This may also mean I don't comment on everything Mr and Mrs E have said but I want to confirm her that I have read and considered everything provided by all parties when reviewing this complaint.

To begin, I want to outline that insurance policies of this nature are not designed to cover all potential circumstances. Mr and Mrs E's policy, like most buildings policies, covers them for damage caused in certain ways, known as insured perils, including storm, fire, flood, escape of water amongst others. This also includes accidental damage, and subsidence cover.

When an insured makes a claim, the onus initially sits with them in the first instance to show an insured peril has more likely than not caused the damage – although, in practice, an insurer will often take steps to consider this point for an insured, as RSA has done here.

Once this has been established, the onus then shifts to the insurer if it is seeking to decline or limit a claim under an exclusion.

This means the first thing I have to consider here, is whether it's been shown an insured peril caused the damage.

So, I'll look at the evidence and expert opinions we have. Then I'll consider two specific perils covered by the policy in turn, subsidence then accidental damage.

### *The available evidence*

I've considered the report provided by RSA from August 2021. This of course was produced prior to the collapse, but I think it's relevant in terms of understanding potential causes to the December 2022 collapse. I understand Mr and Mrs E have a copy of this.

The report is detailed and discusses various considerations around potential subsidence. It concludes none of the damage was due to subsidence. It said there was some evidence of past filling of the crack inside and therefore was a longstanding issue that was never structurally repaired. It discussed potential solutions to this damage but outlined this didn't amount to any insured peril under the policy. I've reviewed this carefully and I'm satisfied the conclusions are persuasive in that the crack in question most likely wasn't caused by subsidence or any other insured peril.

Following this Mr and Mrs E engaged their own engineer (Company M) who deemed the crack was due to the footing of their bay window – concluding the cracking was as a result of historical poor workmanship regarding provision of foundations when replacing an original bay window with a smaller one.

Mr and Mrs E have pointed to this to say this indicates a lack of professional consensus on the cause of the damage at the time. I agree, there may well be differing opinions on the cause of the crack damage. However, both of the opinions indicate the cause was not subsidence nor do they point to any other insured peril under the policy. So, while I understand Mr and Mrs E want to have a definitive answer as to the cause, I disagree in the circumstances this was necessary for RSA to reconsider or take any further steps.

If the technical opinion Mr and Mrs E provided indicated this may be something covered by the policy I may have reached a different conclusion – but simply once RSA established there was no insured peril, I wouldn't have expected it to investigate further nor only stop once it reached a definitive conclusion. I say this going back to my above point about the onus sitting with the policyholder in the first instance.

We then have Mr F's report. This is a detailed report over 110 pages long produced following various inspections of the site. It includes discussions of brickwork and observations from its site visits in April 2023. The report goes on to detail laboratory examination and testing of the bricks amongst other types of analysis. It concludes the internal brickwork for the properties on Mr and Mrs E's road was poorly produced.

The report says the bricks used for those foundations were of poorer quality than the facing bricks and, as such, were likely to be weaker, more porous, and so more prone to absorbing water and suffering frost damage, and less durable and capable of enduring weathering. RSA also said structural problems associated with foundations built from this brick type seem to have affected other properties on the same road in the past – quoting a 1998 report for a nearby property which described *"...this batch of clay bricks was inadequately fired and have been deteriorating gradually over years."*

RSA said the evidence it had suggested parts of the party wall foundation that had been rebuilt around 1987 was still in relatively good condition. But it was the parts that hadn't been rebuilt which had deteriorated locally, causing uneven load sharing to the walls which rested on repaired/replaced foundations and original foundations. It said this was supported by the visible cracks in the past. It said that moisture and

freeze thaw cycles had led to its collapse. It also attributed a leaking gutter (described in a pre-purchase survey from 2016) may have added to this moisture.

This report is very clear in its findings that the cause of damage in this case was due to the quality of bricks used during the build, and that this matter has developed and deteriorated over time. I recognise Mr and Mrs E raised concerns about Mr F's qualifications but I don't agree, nor has this been supported by any expert opinion that challenges his findings.

I'll now consider each of the relevant insured perils against this above evidence.

### *Subsidence*

Mr and Mrs E's 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."*

In light of the above evidence described, I'm satisfied there's no persuasive evidence that the collapse of Mr and Mrs E's property was most likely caused by subsidence. From what I've seen it doesn't appear any professional opinion has put forward that the most likely cause is downward movement of the subsoil. The evidence from Mr F's report around the brickwork is detailed and persuasive – with little to nothing to conflict with it in terms of technical opinion that would point to the cause being subsidence instead.

I've considered Mr and Mrs E's points regarding subsidence maps around the area they live, and the professional opinion they obtained which said subsidence could be present without external cracks on walls. But these points do not outweigh the detailed reviews that have taken place and concluded otherwise. Even if in principle Mr and Mrs E were right that subsidence could be present without external cracking (which would be unusual in my experience), this doesn't negate the rest of the evidence that supports a different cause – the failing brickwork.

For these reasons, I'm satisfied the claim was correctly not considered or accepted as a subsidence claim by RSA.

### *Accidental damage*

Under RSA's policy, "*Accidental Damage*" is defined as:

*"Sudden, unexpected and visible damage which hasn't been caused on purpose"*

While the damage claimed for in this collapse is obviously visible, I don't think its disputed that the failing brickwork which caused the collapse was not visible to Mr and Mrs E. RSA has said the failing brickwork was not unexpected as it was an inevitability caused by deterioration. It's also said the matter isn't sudden as the collapse was a manifestation of the gradual deterioration.

I don't think it would be reasonable to consider this collapse to be "*expected*" here as this is only true in hindsight when reviewing the quality of the bricks. And I think RSA has taken an extremely harsh interpretation in suggesting this. And while I don't doubt the brickwork has deteriorated over time, it does appear to me that the resulting collapse damage was sudden.

And from my reading of RSA's wording, I don't think reflects the cause of the damage has to be sudden as it has suggested.

RSA has been clear that it would intend on excluding the claim if this Service did consider the matter could amount to accidental damage. So, the onus now shifts to RSA to show more likely than not, on the balance of probabilities, that an exclusion should apply.

RSA has quoted several different exclusions, saying the following is not covered:

*"Any loss, damage, liability, cost or expense of any kind directly or indirectly caused by or resulting from:*

*"Wear and tear, fading, corrosion, rusting, damp, decay, frost, fungus, mould, condensation or deterioration, or anything that happens gradually over a period of time."*

And

*"poor or faulty...materials"*

From what I've outlined above, I'm satisfied the cause of the collapse was gradually deteriorating brickwork in line with the expert evidence. So, it appears to me that the exclusions have been applied correctly by RSA in declining the claim.

Mr and Mrs E have outlined the published approach of this Service that relates to situations where an exclusion applies but we think a policyholder couldn't have reasonably known of the damage occurring, and they took reasonable action as soon as they could. This says that we typically uphold these types of complaints as we think this is fair and reasonable. This published approach has two particularly relevant exceptions that are detailed on our website. This includes:

- Wear and tear – *"If we think the damage was caused in this way, we're unlikely to take the usual considerations into account when we're deciding on a gradual damage complaint. This is because everything will wear out eventually. An insurance policy can't protect a customer from that."*
- Accidental damage – *"Cover for accidental damage isn't usually a standard part of a policy. It tends to be available for customers to add to their standard policy for an additional premium."*

*The extra cover provided by the accidental damage section of the policy can be much wider than the insured events. That's why we're unlikely to take the usual considerations into account around a consumer's awareness of the issue when we're deciding on a gradual damage complaint. Doing so could make insurers pay for a wide variety of situations they never intended to cover."*

My thoughts are in line with this approach. For the avoidance of doubt, I'm satisfied Mr and Mrs E weren't aware of the issues, and it seems they did take reasonable steps. But because the claim is made under the accidental damage peril – which I'm satisfied is the only peril under the policy that could be engaged with in the circumstances – in line with our published and established approach, whether Mr and Mrs E were aware and took appropriate steps as soon as possible does not change anything here.

For these reasons I'm not intending to direct RSA to go beyond its policy terms

because the circumstances of this claim are so far removed from the type of situation that accidental damage was designed for. And as I'm satisfied RSA has fairly declined the claim on this basis there's nothing further for me to consider here.

#### *Other considerations*

I've taken into account all of the final decisions that Mr and Mrs E have pointed to. All of these have varying circumstances to their own (including an all-risks policy complaint amongst other differences). So, these are not like-for-like comparisons. Furthermore, all of our final decisions are based on the individual circumstances within the case at hand.

Mr and Mrs E have indicated they believe RSA removed brickwork to allow it to decline the claim without any risk of any other expert reviewing the evidence and reaching a different conclusion. I've seen nothing to support this accusation within my review of the file and steps taken by RSA. Mr and Mrs E have said the foundations were removed without their knowledge and consent – in the circumstances this is not the kind of step I would've expected RSA to seek permission for within their usual handling of a claim of this nature.

Mr and Mrs E said they believe there were unnecessary delays in reaching an outcome – describing an eight-month period to reach a final conclusion on the claim. From what I've seen, an RSA agent did attend within a few days of the incident. Following this RSA had to put the demolition and clean-up work to tender – which it said it had one company agree to do so – which began in late March.

Mr F's review of the site took place shortly after. I understand that this review wouldn't have been possible until the site was cleared – and given the multiple properties affected and challenges around this, this time frame doesn't strike me as unreasonable. Following this review the answer was given within less than three months. Given the extent of testing, various visits, and time it took to produce the report, I'm not persuaded this amounts to any sort of meaningful delay or unreasonable timeframe.

I recognise there was some further back and forth following this – but from what I've seen this was due to Mr and Mrs E raising points and RSA engaging and answering these points – so I don't see this as a failing on RSA's part. So as a result, I'm not persuaded there's any significant delays or concerns around communication that would lead me to conclude RSA has handled this matter as I'd expect.

I also note Mr and Mrs E have requested a copy of the Mr F report. I've arranged for a redacted copy of this to be shared with them in the spirit of natural justice. I'm satisfied the version they will receive contains the key evidence that I've relied upon in reaching this decision."

For all of these reasons I said I was not intending on upholding the complaint. And I gave both parties until 15 November 2024 to respond with anything further. Mr and Mrs E asked for an extension of a week which I granted.

RSA provided me with nothing further. Mr and Mrs E provided an extensive reply, in summary they said:

- *Mr F's report* - the report failed to consider all of the evidence – including a paragraph that related to soil conditions impacting brick deterioration. They say the sample size was limited – and therefore should not be relied upon. They question some of the

findings – and said his expertise was limited to mechanical engineering and instead required a civil engineer's analysis to address structural and geotechnical aspects. They also comment that the report does not make definitive statements and uses terms like “likely”.

- *Subsidence assessment* – RSA failed to consider subsidence as a potential cause – quoting an email from January 2023 from RSA which they said highlighted criticism of its own actions for not investigating matters back in 2021. Mr and Mrs E argue this shows RSA were negligent in its assessment and therefore should not be able to deny their current claim.
- *Expert opinions* – internal RSA correspondence indicates several expert opinions were sought and this shows that it has not been transparent or fair in its decision making.
- *Foundation evidence* – due to RSA's actions in removing foundations, Mr and Mrs E are left without an ability to conduct their own independent forensic investigation and therefore disadvantaged in presenting their case. They say this raised concerns about a balanced and equitable assessment.
- *Missed opportunities* - RSA was contacted in late 2022 regarding cracking to the rear of the home. They say RSA initially ignored this due to a previous review by its agent. Mr and Mrs E say had this assessment taken place then the collapse may have been prevented. Mr and Mrs E have said they do not dispute that the poor quality of bricks contributed towards the collapse of the home – they believe the evidence they've presented shows subsidence was a potential cause, and that it was possible that sulphates and other chemicals in the soil may have caused the bricks to decay – therefore this claim should be covered under the policy.
- *Other issues* – RSA's role left a potential conflict of interest as it commissioned experts yet also made decisions on the claim. Mr and Mrs E quote case law – saying the absence of the Mr F report has prejudiced their position (while they have it now) they should have received this around the time it was produced. They say they did not receive other reports that have been completed – but even if these were provided now it would be too late to allow for meaningful engagement.

### **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, I'm not upholding this complaint. I'll address Mr and Mrs E's most recent comments in turn.

- *Mr F's report* – Mr and Mrs E have said in their view Mr F's report was not a credible one as it was limited in investigation and failed to comment on certain subjects. As I've outlined previously the report is extremely detailed – so the fact they disagree with Mr F's conclusions doesn't change my mind. I've also been given no professional opinion that supports this critique they've made. Part of their concern relates to their suggestion that the brickwork could've been corroded over time by soil conditions. But simply – even if it was, this wouldn't change anything. I say this as soil conditions impacting brickwork over years is not an insured peril in and of itself - it wouldn't amount to subsidence, and even if I considered this to amount to accidental damage, it would still fall under the exclusions that relate to wear and tear, corrosion, and anything that happens gradually over time as RSA has previously relied upon. I've already addressed concerns about Mr F's qualifications – and I don't agree his view shouldn't be relied upon. I also have no concern about an expert

using terms like “*likely*” when giving their professional opinion, and this doesn’t persuade me the evidence was not thorough.

- *Subsidence assessment* – I’ve reviewed the email Mr and Mrs E have provided. Within it RSA appears to be critical of its review from 2021. Given its position I see no reason to not also accept that a failing took place. However, given my findings that there appears to be no subsidence present – I’m not satisfied further investigation at this time to rule out subsidence would’ve been necessarily material in the events that followed as there’s no certainty this type of investigation would’ve flagged concerns around the failing brickwork.
- *Expert opinions* – within my review I’ve explained and outlined all of the key evidence I’ve been provided and relied upon.
- *Foundation evidence* – this matter was addressed within my provisional decision.
- *Missed opportunities* – Mr and Mrs E have speculated that had RSA attended their home some weeks before the collapse it may have prevented the incident from occurring. I’m not satisfied this is most likely the case in light of the extent of the damage and the time and efforts that went into establishing the actual cause – the failing brickwork. Mr and Mrs E indicate sulphates and chemicals in the soil may have led to the corrosion of the brickwork. But as I’ve outlined above – this isn’t an insured peril and would be caught by the exclusions I’ve previously outlined even if it fell under accidental damage.
- *Other issues* – I have no concerns in principle about RSA both commissioning reports and making decisions in relation to claims. My focus is as to whether RSA has acted fairly in handling the claim – which is what I’ve considered. Mr and Mrs E feel strongly that RSA has prejudiced their position by not providing them with Mr F’s report previously. While I understand their frustration, I think RSA did provide detailed reasons as to why it was declining the claim so I don’t agree it left them without an understanding of the evidence. In any case they have a copy of the report upon my instruction. If Mr and Mrs E decide to instruct their own expert to comment on or produce their own report regarding this – I would expect RSA to consider this.

Overall, I want to be clear I recognise the strength of feeling from Mr and Mrs E about this matter. And that I have real sympathy for the position they find themselves in. But for the reasons I’ve given previously, and those above, my mind hasn’t been changed that RSA has fairly declined this claim in line with the available evidence.

### **My final decision**

For all of the above reasons, I’m not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mrs E and Mr E to accept or reject my decision before 23 December 2024.

Jack Baldry  
**Ombudsman**