

## **The complaint**

Mrs A complains Royal & Sun Alliance Insurance Limited unfairly declined her claim for subsidence damage to her home.

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

## **What happened**

In 2019 Mrs A had an extension built to her home. In 2022 she claimed against her RSA home insurance policy. She had noticed damage to the extension, paving and a fence. In February 2023 RSA, following investigations, accepted the claim. It considered subsidence to be responsible for a range of cracking and other damage. It was found to have occurred as result of root induced clay shrinkage. It said once the property had stabilised, following mitigation works, it would undertake repairs.

But in May 2024 RSA informed Mrs A it was now declining the claim, so wouldn't be undertaking repairs. It said the policy excluded loss caused by faulty design. It considered the extension's foundations to be defective. It said they didn't meet depth requirements, considering soil type and the presence of trees. RSA was of the opinion the foundations should have been built to at least 1.75m, rather than their actual depth of 0.85-0.95m.

Mrs A complained about RSA's decision not to cover the repairs. In response RSA found the decision to decline the claim to be correct. It apologised for creating misleading expectations about the claim, paying Mrs A £1,500 compensation. She wasn't satisfied with that outcome, referring her complaint to the Financial Ombudsman Service.

Our Investigator was persuaded the foundation could be considered to be defective. But in his opinion, to meet relevant building regulations, they should have been to a depth of just 1m - rather than the 1.75 to 2m claimed by RSA. But he concluded RSA hadn't done enough to show, had the foundations been built to 1m, subsidence wouldn't have occurred anyway. So as it hadn't been shown the loss or damage was caused by faulty design, he said RSA couldn't fairly rely on the exclusion.

He recommended RSA deal with the claim in line with the remaining terms of the policy. He didn't propose any additional compensation, considering enough had been paid already to recognise the impact of the claim being unfairly declined. Mrs A accepted that proposed outcome. As RSA didn't the complaint was passed to me.

## **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.

As this is an informal service I'm not going to respond here to every point or piece of

evidence Mrs A 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.

Mrs A's policy covers her against loss or damage caused by subsidence. It's accepted the building has suffered subsidence damage. But RSA's now relying on the exclusion to decline the claim for repairs. The full exclusion is:

*'Damage caused by or from faulty design, workmanship or materials.'*

When an insurer wishes to rely on an exclusion to decline a claim it's required to evidence it's reasonable for it to do so. I've considered if it's done that in this case. When it comes to this 'faulty design' exclusion I consider it will only be reasonable for RSA to rely on it if it can show:

- 1) the foundations weren't built in accordance with relevant standards (These provide an objective measure to decide if something is defective),  
  
and
- 2) the damage was caused by, or from, the failure to meet these standards (if a defect is established but hasn't caused the damage it would be unfair to decline the claim).

RSA's raised reasonable arguments about the depth of foundations, when considering the requirements of relevant building regulations and associated guidance in regard to soil type and the presence of trees. It seems they should have been built to, as a minimum for building regulations compliance, a depth of 1m. That requirement is found in Mrs A's specification of works for the original build. Unfortunately, it seems that wasn't complied with for the build.

I accept it's possible, considering the various regulations and guidance that a greater depth was required - possibly the 1.75m to 2m RSA originally suggested, or even the deeper requirement it's more recently referred to. On the other hand, Mrs A did receive building regulations certification to evidence relevant standards were complied with - although I note the certificate states it's evidence, but not conclusive, of compliance with building regulations.

However, I'm not going to discuss here, in detail, or make a determination on likely adequate foundations depth based on the relevant standards, the soil type, vegetation and so on. Neither am I going to consider the fairness of Mrs A having a claimed declined, for faulty design, despite her appearing to have personally acted reasonably and in good faith to achieve certification of building regulations compliance.

I don't need to decide on those aspects. Doing so wouldn't make a difference to the outcome of the complaint. That's because RSA hasn't provided persuasive evidence that the loss or damage was caused by, or from, faulty design. To put it differently, it hasn't reasonably demonstrated that had the foundations been built in line with the standards that the loss or damage wouldn't have occurred.

RSA's evidenced the cause of damage to be subsidence – resulting from clay shrinkage. It's reported that its site investigations confirm the extension sits on soil with a very high shrinkage potential - down to 3m. RSA's arborist's report confirmed the close presence of a group of Elm trees - considered to be a high-water demand species.

RSA's trial pit and bore hole investigations identified roots in soil samples taken to a depth of 0.95m. As a result RSA's conclusion is the damage is attributable to clay soil shrinkage resulting from moisture abstraction by vegetation. However, it doesn't automatically follow that the damage wouldn't have occurred had the foundations been built to depths RSA's suggested were required.

RSA's ground investigations included bore holes down to 3m. These investigations didn't observe roots in any of the samples taken from depths below the foundations - so none were identified in the samples between 0.95m and 3m.

So it hasn't been shown, for example, that roots were present within, but not beyond, the additional depth RSA considers foundations should have reached. If that had been evidenced, I might be persuaded the extension likely wouldn't have suffered subsidence - as that additional depth of foundation probably would have prevented it.

RSA accepts roots weren't found below the foundation levels. It's said, as monitoring shows seasonal movement, the only cause is roots affecting moisture content below the foundations. It's explained its investigations can sometimes miss roots, arguing that doesn't mean there aren't any present. I accept that final point. But it's for RSA, if it wishes to rely on the exclusion, to provide reasonable evidence. Stating that something must be so, isn't in the circumstances persuasive enough for me to consider it fair to decline Mrs A's claim.

First, there's no evidence of roots within the range of RSA's suggested foundation depth. Second the soil is reported to have a very high shrinkage potential down to 3m. So perhaps its possible roots exist in the area between 3m and RSA's suggested foundation depth. If that were the case, the suggested deeper foundation might not have prevented shrinkage and movement anyway.

RSA, with the Investigator reaching a very similar conclusion, has had reasonable opportunity to provide relevant evidence to demonstrate cause. It did suggest it could undertake further ground investigations, but hasn't provided any further evidence.

I note RSA's comments on its right to expect buildings it insures to have been built in accordance with minimum standards. That's a reasonable position. However, where it wishes to decline a claim because relevant standards haven't been met, it's reasonable to expect it to demonstrate that failing is material to the loss. For the reasons given above, I'm not satisfied its reasonably shown that here - that the damage was caused by, or from, faulty design. So RSA will need to deal with Mrs A's claim inline with the remaining terms of her policy.

I understand the claim being unfairly declined will have caused Mrs A unnecessary distress and inconvenience. However, I'm satisfied the compensation already paid to her is enough to recognise this. So I'm not going to require RSA to pay any additional compensation.

### **My final decision**

For the reasons given above, Royal & Sun Alliance Insurance Limited is required to deal with Mrs A's claim, without reference to the exclusion, and in line with the remaining terms of her policy.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs A to accept or reject my decision before 12 June 2025.

Daniel Martin  
**Ombudsman**